



Department of Local Government,
Industry Regulation and Safety



Decision Regulatory Impact Statement

Phase 2 of the review of the
Residential Tenancies Act 1987 (WA)

January 2026



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Phase 2 of the review of the *Residential Tenancies Act 1987 (WA)*

This Decision Regulatory Impact Statement (DRIS 2) has been prepared in compliance with the Western Australian (WA) Government's requirement for Regulatory Impact Assessment.

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

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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 (WA).

The Department of Local Government, Industry Regulation and Safety (LGIRS) – Consumer Protection Division (Consumer Protection) administers the RTA and provides a range of regulatory services in support of the Act.

The rental sector in WA has experienced significant change in recent years, with people renting for longer and, in many cases, renting for life. Consumer Protection is undertaking a review of the RTA to make sure it meets the needs of this changing rental market.

The review commenced in 2019 with the release of a Consultation Regulatory Impact Statement (CRIS) for public comment. The CRIS examined a number of issues across the lifecycle of a tenancy and outlined options for reform.

A Decision Regulatory Impact Statement (DRIS 1) was published in May 2023 outlining recommendations for the first phase of proposed reforms arising out of the review. This Decision Regulatory Impact Statement (DRIS 2) outlines recommendations for the second phase of proposed reforms.

The key proposals for reform include:

- establishing minimum standards for rental premises;
- regulating the boarding and lodging sector;
- introducing measures to improve tenant protections during the tenancy application process and increase the types of information that the lessor must disclose prior to the tenancy;
- expanding the circumstances in which lessors may terminate tenancies, including for eligibility-related grounds;
- giving tenants greater freedoms to terminate a fixed term tenancy in certain circumstances and including a break lease fee in fixed term agreements;
- strengthening the rights of sub-tenants and co-tenants;
- giving lessors greater freedom to determine how to dispose of abandoned goods in rental premises; and
- a number of other minor reforms including removing the lessor's ability to charge option fees and strengthening tenant protections regarding swimming pool barrier fencing.

It is acknowledged that changes to the legislation will impact on a number of groups, including lessors, tenants and state government agencies.

However, stakeholder feedback on the operation of the RTA suggests that the current mechanisms in place to regulate residential tenancy agreements are not adequate in some areas. The recommendations respond to these challenges while seeking to minimise the potential cost burden on lessors.

TERMINOLOGY

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

TERM	MEANING
ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
boarder	A boarder generally stays at another person's house or property paying rent with meals supplied by the lessor. Boarders also receive services such as meals, laundry and cleaning.
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.
Building and Energy	Department of Local Government, Industry Regulation and Safety – Building and Energy Division
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.
Consumer Protection	Department of Local Government, Industry Regulation and Safety – Consumer Protection Division
CRIS	The Consultation Regulatory Impact Statement released in relation to this review in December 2019 ¹
DEMIRS	Department of Energy, Mines, Industry Regulation and Safety
DRIS 2 or this DRIS	This Decision Regulatory Impact Statement
DRIS 1	Decision Regulatory Impact Statement for phase one reforms dated January 2022 ² and published in May 2023.
fixed term agreement	An agreement to rent for a set period of time with a defined start and end date.
LGIRS	Department of Local Government, Industry Regulation and Safety
lodger	A lodger generally stays at another person's house and pays rent, but is generally not supplied with meals or other services.

¹ [Residential Tenancies Act 1987 \(WA\) review 2019 public consultation paper - Consumer Protection - DEMIRS.](#)

² [Residential Tenancies Act 1987 \(WA\) review Decision Regulatory Impact Statement: \(Phase 1\) - Consumer Protection - DEMIRS.](#)

TERM	MEANING
National Cabinet recommendations	Recommendations of National Cabinet outlined in 'A Better Deal For Renters' ³
NSW	New South Wales
NT	Northern Territory
pet bond	An amount paid above the normal security bond to keep a pet
periodic agreement	An agreement to rent for a recurring period without a defined end date.
public housing	Public housing is owned and managed by the State Government.
QLD	Queensland
REIWA	Real Estate Institute of Western Australia
Review	Review of the <i>Residential Tenancies Act 1987</i> (WA)
RTA	<i>Residential Tenancies Act 1987</i> (WA)
SA	South Australia
SAT	State Administrative Tribunal
social housing	Together, public and community housing is known as social housing.
TAS	Tasmania
VIC	Victoria
WA	Western Australia

³ The Hon Anthony Albanese MP, Prime Minister of Australia, 'Meeting of National Cabinet—Working together to deliver better housing outcomes', *Media Release*, 16 August 2023, Attachment 2.

1 BACKGROUND

1.1 Residential tenancies in Western Australia

As noted in the Executive Summary to DRIS 1, the WA rental sector is experiencing substantial change. Traditionally, renting has been seen as a transitional option for people while they save money for a deposit to purchase their own home, however, many are now renting permanently because it is the only option available to them.⁴

The rental market is providing a home to an increasing number of families and older Australians. The number of older Australians renting is expected to increase into the future as younger renters, who are unable to afford to purchase their own home, remain in the rental market into their older years.⁵

The private rental market across Australia is expanding. In 1994-1995 the private rental market comprised 19.6 per cent of the WA population and by 2019-2020 this had increased to 22.5 per cent.⁶ At the time of the 2021 census, a total of 29.5 per cent of WA households were renting.

It is expected that demand for the rental market will continue to grow especially as home ownership becomes less affordable for larger numbers of younger Australians. In 1981, 67 per cent of WA people aged 30-34 owned their home; in 2021 the proportion had declined to 43 per cent. The age group 25-29 has seen a similar decline from 52 per cent in 1981 to 43 per cent in 2021⁷. This indicates that young people are relying more heavily on other housing options, including the rental market, for their housing.

The CRIS discussed how tenants are increasingly from a broad demographic, including families with children and a greater diversity of age groups. There is research to show that some of these demographics, such as older age groups, are typically less secure and more financially vulnerable.⁸

In light of the changing rental marketplace, the need for security of tenure, and the ability of tenants to make the rental premises their home, were identified as key drivers for reform in the review of the RTA.⁹

1.2 Regulatory Impact Assessment

The Western Australian Government is committed to a regulatory impact assessment process aimed at carefully considering the fundamental question of whether regulatory action is required or if policy objectives can be achieved by alternate measures, with lower costs for business and the community.

⁴ DRIS 1, page 1.

⁵ DRIS 1, page 1.

⁶ ABS: <https://www.housingdata.gov.au/visualisation/home-ownership/household-tenure>

⁷ ABS: <https://www.housingdata.gov.au/visualisation/home-ownership/household-tenure>

⁸ CRIS page 11.

⁹ CRIS page 11

In developing and reviewing legislation, the potential costs of regulation must be carefully considered and weighed against the potential benefits. This paper has been developed as part of the regulatory impact assessment process and sets out recommendations for Government based on an analysis of the costs and benefits of proposed options for reform.

1.3 Review process

Stakeholder feedback was sought in response to the CRIS that was released in December 2019.¹⁰ 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 across the entire lifecycle of a tenancy and considered issues relating to: security of tenure; pre-commencement matters; rent, bonds and other charges; minimum standards, maintenance and use of the premises; termination of tenancies; dispute resolution; boarding and lodging; and measures to improve the quality of the rental market.

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). Bodies representing stakeholder groups¹¹ also comprised a significant proportion of responses at 15 per cent. This is an indication that the consultation represented many more individuals than the 350 who provided individual submissions.

In July 2020, Consumer Protection also held a series of workshops with lessors to gain further feedback on specific topics in the CRIS.

In addition to stakeholder feedback, Consumer Protection also examined legislation in other jurisdictions and research relevant to tenancy issues. Cross jurisdictional analysis tables are accurate to 31 December 2024.

1.4 Recommendations of DRIS 1

Feedback to the CRIS indicated that some topics were of significant importance to stakeholders. The proposals that received a high response rate were selected from the CRIS to be included in DRIS 1, which was published in May 2022.¹²

DRIS 1 made the following recommendations:

Recommendation 1 - Without grounds termination

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

¹⁰ [Residential Tenancies Act 1987 \(WA\) - review 2019 public consultation paper - Consumer Protection - DEMIRS](#)

¹¹ Includes advocate groups, government departments and other organisations.

¹² [Residential Tenancies Act 1987 \(WA\) - review - Decision Regulatory Impact Statement: \(Phase 1\) - Consumer Protection - DEMIRS](#)

Recommendation 2 - Fixed term agreements

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.

Recommendation 3 - Streamlined bond disposal process

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.

Recommendation 4 - Dispute resolution

That a dispute resolution model is implemented whereby the Commissioner 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.

Recommendation 5 - Frequency of rent increases

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

Recommendation 6 - Modification of premises

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 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.

Recommendation 7 - Pets

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 majority of recommendations in DRIS 1 have been implemented in the *Residential Tenancies Amendment Act 2024* (2024 Amendment Act). Recommendations 1 and 2 were not included in the reforms and recommendation 6 was implemented in a modified form. The 2024 Amendment Act also includes amendments to prohibit rent bidding. These amendments are consistent with recommendations made by National Cabinet (see 1.6 below).

1.5 Recommendations in this DRIS

This DRIS outlines recommendations for the remaining issues canvassed in the CRIS.

In some sections of this paper, cross references are made to DRIS 1 findings and recommendations. The numbering of the recommendations in this DRIS continues from the numbering of the recommendations outlined in DRIS 1.

For ease of reference below is a list of each recommendation number, heading and page where it can be found in this DRIS:

Chapter 2: Before the tenancy begins

Recommendation 8 – Tenancy application process	p. 15
Recommendation 9 – Lessor disclosure	p. 26

Chapter 3: Rents bonds and other charges

Recommendation 10 - Option fees	p. 30
Recommendation 11 - Amount of security bond	p. 34
Recommendation 12 - Bond guarantees	p. 37
Recommendation 13 - Rent control measures	p. 48
Recommendation 14 - Challenging a rent increase	p. 49
Recommendation 15 - Utilities costs	p. 57
Recommendation 16 - Solar panels	p. 57
Recommendation 17 - Clarify obligation regarding utilities	p. 57
Recommendation 18 - Rates and other charges	p. 59

Chapter 4: The premises

Recommendation 19 - Minimum standards	p. 69
Recommendation 20 - Repairs and maintenance	p. 78
Recommendation 21 - Drug testing of premises	p. 81
Recommendation 22 - Pool barrier compliance and information	p. 87
Recommendation 23 - Pool barrier repairs	p. 87
Recommendation 24 - Portable pools	p. 87
Recommendation 25 - Wilful damage of the premises	p. 89

Chapter 5: Termination of tenancy agreements

Recommendation 26 - Termination for repeated breaches	p. 93
Recommendation 27 - Eligibility related grounds for termination	p. 98
Recommendation 28 - Sale of the rental premises	p. 104
Recommendation 29 - Mortgagee possession	p. 108
Recommendation 30 - Termination of tenancy agreement by the tenant	p. 117
Recommendation 31 - Break lease clauses	p. 117

Chapter 6: Boarding and lodging

Recommendation 32 - Boarding and lodging	p. 126
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Chapter 7: A quality rental market

Recommendation 33 - Training for lessors p. 132

Recommendation 34 - Lessor register p. 139

Recommendation 35 - Code of practice p. 144

Chapter 8: Miscellaneous

Recommendation 36 - Disposal of abandoned goods p. 148

Recommendation 37 - Rights in share housing p. 153

Recommendation 38 - Consultation on modifying the RTA p. 156

1.6 National Cabinet – A Better Deal for Renters

In August 2023, National Cabinet agreed to “A Better Deal For Renters” to harmonise and strengthen renters’ rights across Australia (National Cabinet recommendations).¹³

Some of the National Cabinet recommendations have already been implemented, either through previous changes to the Act or as a consequence of recommendations of DRIS 1. Other National Cabinet recommendations impact on matters considered by this DRIS and are noted in this document where relevant.

¹³ The Hon Anthony Albanese MP, Prime Minister of Australia, ‘Meeting of National Cabinet—Working together to deliver better housing outcomes’, *Media Release*, 16 August 2023, Attachment 2.

2 BEFORE THE TENANCY BEGINS

2.1 Regulating the tenancy application process (CRIS Part 3.1)

Issue

The review considered whether there is a need for the RTA to regulate the collection of personal data from rental applicants and the subsequent use, storage and destruction of that information.

The RTA does not regulate the questions that can be asked of a prospective tenant or the information they can be asked to supply. Nor is there protection for the prospective tenant's privacy or of the handling of their personal information once received by the lessor.¹⁴

Over the years Consumer Protection has received enquiries and concerns from prospective tenants about the type of information that is being asked of them at the application stage.

Current situation

While the types of information a lessor can request and evidence they can require a tenant to provide varies, prospective tenants are generally asked for the following:

- details of income, including copies of pay statements;
- bank account details, sometimes including copies of recent bank statements;
- previous rental history;
- employment details and history; and
- references, sometimes including from an employer.

Prospective tenants will often be asked to provide documents comprising 100 points of identification and some lessors may require a National Police Clearance certificate.

Having collected this information, a lessor may have in their possession quite detailed personal information about individual tenants, with few rules applying about the purposes for which the information may be used, or how the information is to be stored, and subsequently disposed of.¹⁵

Objective

To ensure that a tenant's privacy is protected while not impacting the ability of a lessor to obtain information to make a proper assessment of the tenant's suitability.

¹⁴ An exception applies where a property manager has been appointed to lease the premises and the property manager's employer is of a sufficient size as to be captured by the *Privacy Act 1988* (Cth).

¹⁵ *The Privacy Act 1988* (Cth) does not apply to individual lessors and only applies to property managers if the annual turnover of the real estate business is \$3 million or greater.

Proposal considered

The following proposal was presented in the CRIS for feedback.

The RTA does not currently prescribe the information that can be asked of a prospective tenant or how this information is used, stored or disposed of by lessors or property managers. There are gaps in existing protections which leave tenants vulnerable to their confidential information being improperly used, stored or disposed of.

In light of this, it is proposed that the RTA be amended to prohibit certain information being required from a prospective tenant and to introduce regulation in relation to the use, storage and disposal of information such as:

- prohibiting any information provided by the prospective tenant being used for any purpose other than assessing the person's rental application;
- prohibiting the information being passed to a third party unrelated to the tenancy agreement; and
- requiring that any information received by a lessor from any applicant be held in a secure manner and when disposed of, that it be disposed of in a secure manner.

This proposal is unlikely to have a significant impact on stakeholders. Consumer Protection is proposing to proceed with this recommendation unless stakeholder feedback provides substantive evidence of unintended consequences from this course of action.

Stakeholder feedback to the CRIS

Information requested from tenants

The CRIS asked what types of information has been requested of tenants that they felt was inappropriate. This question received six responses, which are summarised in the below table:

Information sought	Reason perceived to be inappropriate
Previous bankruptcy	Bankruptcy may be due to extenuating circumstances like spouse leaving with debt on other party.
Bank statements	Contains personal information about the tenant's lifestyle and habits that are not relevant to assessing the tenant's suitability.
Old criminal records	Irrelevant to ascertain potential quality as a tenant.
Social media accounts	Irrelevant to ascertain potential quality as a tenant.

Table 1 - Information requested from tenants.

Circle Green Community Legal (Circle Green) submitted that lessors should be prohibited from asking certain questions or requesting certain information from the tenant, because this information is irrelevant to determine whether or not a tenant would be suitable. Examples provided include whether the applicant has previously taken legal action or had a dispute with a lessor, the bond history of the applicant, passport details if other forms of identification are provided, the relationships of tenants and other occupants, the personal characteristics of the tenants, the current and historical financial information of the tenant except to the extent necessary to determine whether the tenant is able to meet rent repayments.

Circle Green also recommended the RTA be amended to add additional grounds of discrimination to further protect tenants from unfair discriminatory conduct.

REIWA submitted that it is important the lessor is provided with sufficient information, such as details of employment and income, to assess the applicant's financial capacity to pay the proposed rent.

Information lessors require

The CRIS asked what information lessors must have to allow them to make an informed decision about an applicant tenant. This question received 48 responses, 29 of which were from lessors. The remainder of the responses were from property managers, stakeholder bodies and people who identified as being both a lessor and a tenant.

By far the most frequently submitted response regarding what information lessors require was proof that rent can be paid, which can be demonstrated via either evidence of employment or Centrelink payments.

The next most frequently submitted responses, in order of frequency, were:

- rental history;
- sufficient ID (e.g. 100 points);
- references from previous landlords;
- bank statements;
- disclosure of previous terminations due to non-payment of rent and other reasons or court orders; and
- police clearance certificate.

Some respondents emphasised that whatever information lessors are permitted to obtain, there needs to be strict rules around destruction or disposal of information.

REIWA supported the introduction of guidelines regarding the tenancy application process, submitting that clear guidelines would enable the lessor to make an informed assessment of the application while protecting the tenant's privacy. It also submitted that while tenancy applications should be assessed without prejudice, the lessor requires sufficient information to determine the tenant's suitability for the property. Rather than legislative amendments, REIWA favoured greater education regarding how lessors must store and dispose of personal information.

Costs

Most lessors did not foresee any increased costs as a result of the proposal, although there may be some additional administrative requirements that would impose a minor cost on the lessor.

Third parties to whom the lessor may need to pass information

The CRIS asked which third parties, if any, lessors may need to pass information to about prospective tenants. The most frequently submitted responses were as follows:

- a residential tenancy database (5 responses);
- an Australian government agency or other regulatory body such as the court, police, RSPCA or Communities if there are concerns about criminality, health and wellbeing, child safety or animal cruelty (4 responses);
- a third-party debt recovery agency for the purposes of debt recovery (4 responses); and
- giving a reference to another agent or landlord (3 responses).

Stellar Living, a community housing provider, submitted that community housing organisations (and the public housing system) need to liaise with support organisations (including government agencies) for the benefit of the tenant. Written consent is required from the tenant before any information can be disclosed.

Other jurisdictions

Recent amendments to Victoria's residential tenancy laws:

- require that a lessor or their agent can only use personal information disclosed in a rental application to assess the applicant's suitability as a renter or to comply with the *Residential Tenancies Act 1997* (Vic);¹⁶
- allow for prohibition of inappropriate questions in a rental application form by regulations;¹⁷ and
- clarify that lessors must not unlawfully discriminate when refusing to let a property to an applicant, when refusing consent to modifications, sub-letting or assignment, or issuing a notice to vacate.

Queensland and South Australia have also introduced amendments relating to rental information.

These changes prohibit landlords/agents from requesting certain information from prospective tenants or another person including information relating to legal action taken by the tenant or the tenant's history in relation to rental bonds.¹⁸

In South Australia a person who holds personal tenant information must take reasonable steps to protect the information from misuse, loss and from unauthorised access and disclosure. The information must be destroyed within 30 days of the successful tenant entering into the tenancy, or if the tenant consents, within six months. A tenant's personal information must be destroyed within three years after the tenancy has ended.¹⁹

¹⁶ *Residential Tenancies Act 1997* (Vic) s.30B.

¹⁷ Residential Tenancies Regulations 2021 (Vic) reg. 15. The questions that are currently prohibited relate to: whether a tenant has previously been involved in legal action with a lessor; the applicant's rental bond history; a statement for a credit or bank account showing daily transactions; and any information about the applicant that relates to a protected attribute under the *Equal Opportunity Act 2010* (Vic) s.6, unless the reason that the information is required is provided in writing.

¹⁸ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s.76D.
Residential Tenancies Act 1995 (SA) s.47B.

¹⁹ *Residential Tenancies Act 1995* (SA) s.76B.

Impact analysis

	Potential benefits	Potential disadvantages
<p>Proposal</p> <p>Regulate the type of information that can be requested from tenants and the use, storage and disposal of that information</p>	<p>Lessors</p> <ul style="list-style-type: none"> Increased certainty about information that may be requested. Increased clarity regarding appropriate use and disposal of tenant information. <p>Tenants</p> <ul style="list-style-type: none"> Comfort that irrelevant information cannot be requested and their information will not be used for any other purpose, will be kept secure and disposed of appropriately. <p>Government</p> <ul style="list-style-type: none"> Reduced risk of tenant information being used or disposed of inappropriately. 	<p>Lessors</p> <ul style="list-style-type: none"> Potential for small increase in administrative costs to store and dispose of sensitive information in a secure manner. <p>Tenants</p> <ul style="list-style-type: none"> Lessors may pass increased administrative costs on to tenants. <p>Government</p> <ul style="list-style-type: none"> Potential for increased disputes and compliance costs.

Table 2 - Impact analysis – Regulating the tenancy application process

Assessment against the objective

The policy objective is to ensure that a tenant’s privacy is protected while not impacting the lessor’s ability to obtain information to make a proper assessment of the tenant’s suitability.

The CRIS proposed proceeding with the recommendation to prohibit certain information being required from a prospective tenant and introduce regulations on use, storage and disposal of the information unless stakeholder feedback provided substantive evidence of unintended consequences from this course of action.

Responses to the CRIS did not provide substantive evidence of unintended consequences nor did they identify any likely significant negative impacts on stakeholders or government.

Lessors may incur some minimal administrative costs in holding and disposing of sensitive information in a secure manner. On balance, this minor cost is outweighed by the benefit to tenants of not having irrelevant information requested and improved security of the personal information provided. There are some limited circumstances, identified by stakeholders, in which tenants’ information may need to be passed on to a third party. These circumstances will be identified through further consultation with stakeholders and can be incorporated into the legislation during drafting.

National Cabinet recommendations

The National Cabinet recommendations include the following in relation to personal information:

7. Make rental applications easier and protect renters' personal information:

- (i) *Prescribe a rental application form in each jurisdiction, with required documents limited to two in each of the following categories: identity, financial ability to pay rent, suitability;*
- (ii) *Require the destruction of renters' personal information three years after a tenancy ends and three months after tenancy begins for an unsuccessful applicant;*
- (iii) *Require tenants' personal information to be provided and corrected within 30 days of a request by a tenant or prospective tenant; and*
- (iv) *Specify information not allowed to be collected from a tenant or more generally (e.g. disputes with landlords).²⁰*

Recommendation 8 - Tenancy application process

Amend the RTA to:

- limit the types of information that lessors, and their agent or a third party may seek from prospective tenants prior to the tenancy via an approved rental application form in line with National Cabinet recommendations 7(i) and 7(iv);²¹
- prohibit tenant information being used for any purpose other than assessing the rental application;
- prohibit tenant information being disclosed to a third party (except in specified circumstances);
- require any information received by a lessor or a third party be securely held and disposed of in line with National Cabinet recommendation 7(ii); and
- require tenants' personal information to be provided and corrected by the lessor within 30 days of a request by a tenant or prospective tenant in line with National Cabinet recommendation 7(iii).

Further work to be undertaken during drafting to refine the types of information that cannot be received from prospective tenants.

²⁰ The Hon Anthony Albanese MP, Prime Minister of Australia, 'Meeting of National Cabinet—Working together to deliver better housing outcomes', *Media Release*, 16 August 2023, Attachment 2.

²¹ The Hon Anthony Albanese MP, Prime Minister of Australia, 'Meeting of National Cabinet—Working together to deliver better housing outcomes', *Media Release*, 16 August 2023, Attachment 2.

2.2 Lessor disclosure (CRIS Part 3.2)

Issue

Prospective tenants do not have access to information about the lessor and the premises that would help inform decision making. The CRIS noted that in 2019, the Consumer Policy Research Centre had identified improving information disclosure to tenants, including information about the lessor and the premises, as a key policy challenge for governments.²²

Current situation

Lessors have access to a comprehensive range of information from prospective tenants. Many lessors, through their property managers, also have access to historical data about tenants in the form of tenancy databases.

However, there is limited information whereby tenants can find out about their prospective lessor or the property they are considering renting.

Some important information cannot be ascertained by tenants inspecting the premises. For example:

- the lessor's intention to sell the property in the near future. Even if the tenant is on a fixed term lease that continues beyond the sale date, the tenant may have to endure home opens and inspections before the property sells;
- if the lessor is experiencing financial hardship such that it is possible a mortgagee will take action to repossess the premises;
- whether or not the premises is insulated, which may significantly impact the comfort and running costs of the premises;
- whether the lessor has responded to requests from previous tenants to perform repairs on the premises or whether the lessor has a history of not performing repairs or maintaining the premises;
- whether the premises have previously housed a drug lab or if there has been other drug history at the premises; and
- whether there has previously been criminal activity at the premises that may leave a future tenant vulnerable.

There are currently no specific disclosure obligations in the RTA. However, other legislation does include disclosure requirements in some circumstances.

²² CRIS page 32.

The Australian Consumer Law (ACL) prohibits any person, in commerce or trade, from making representations, or alternatively failing to disclose relevant information, that is misleading or deceptive or is likely to mislead or deceive.²³ This applies to real estate agents and property managers. This provision will also apply to private lessors in most circumstances where the lease is entered into for commercial reasons such as the desire for profit, in which case the lessor will be considered as acting 'in trade or commerce'. However, if the lease was entered into due to mutual convenience (such as having a family member stay) or other non-commercial reasons, the lessor's conduct may not be 'in trade or commerce' and the ACL may not apply.

Where premises are managed by a registered property manager, the Real Estate and Business Agents and Sales Representatives Code of Conduct 2016 (WA) (the REBA Code) will apply to the leasing transaction. Clause 42 of the REBA Code requires a property manager to ascertain and verify all facts that are material to the transaction and to communicate a material fact to any person who may be affected by the material fact and yet appears to be unaware of it.

Some facts it would be reasonable for a property manager to disclose to a prospective tenant (if known) include: if the lessor intends to sell the premises in the foreseeable future, if a murder or other serious crime has occurred at the premises and if the premises are contaminated by drug residue. The REBA Code does not apply to premises leased and managed directly by a lessor.

Objective

To ensure tenants have timely access to appropriate information about the lessor and premises to inform their decision making.

²³ *Australian Consumer Law (WA)* ss.29 and 30.

Options Considered

The following options were presented in the CRIS for feedback:

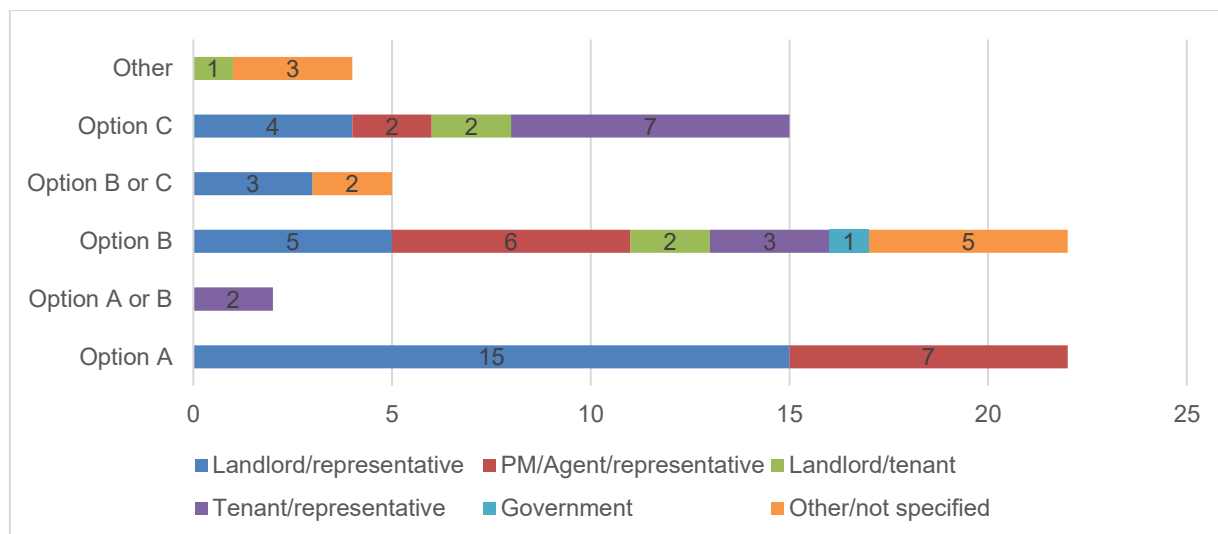
Option A	Status quo Under this option there would be no change. The ACL and the REBA Code will continue to apply.
Option B	Mandatory disclosure about the premises Amend the RTA to require a lessor to disclose to any prospective tenant information that is material to their decision to lease the premises. The items to be subject to mandatory disclosure would be developed in consultation with key stakeholders but the mandatory disclosure requirements in other jurisdictions will provide guidance.
Option C	Mandatory disclosure about the premises and database of lessor non-compliance As per Option B. In addition, as has been implemented in Victoria, Consumer Protection could establish a database to record substantiated instances of non-compliance with the RTA by lessors. This information would likely be similar to information currently available about tenants on a tenancy database. As outlined in chapter 10.2 [of the CRIS] developing a register of lessors is also being considered by this review. If this proposal to require all lessors to register or as a minimum a register of those lessors who have been found to be non-compliant through civil or prosecution action with Consumer Protection is pursued, this register could hold the information about lessor non-compliance under the RTA.

Stakeholder feedback to the CRIS

Of the 68 responses to the question on which is the preferred option, Option A was preferred by 28 per cent of respondents, Option B by 39 per cent and Option C by 19 per cent, with a number of respondents selecting both B and C or A and B. A breakdown of responses is provided in Figure 1 below:²⁴

²⁴ Some respondents submitted more than one option.

Figure 1 - Preferred option - Lessor disclosure



Many respondents who supported Option A stated that the cost of a lessor register and the compliance costs associated with Option C are too high for landlords and government and it is unfair to place an additional cost burden on lessors, the majority of whom are doing the right thing.

Respondents who favoured Option B stated that it is better for lessors to disclose information upfront, rather than deal with a tenant vacating the premises once information comes to light. It was also submitted that it is unacceptable for tenants to have to choose homes without adequate information about energy performance, comfort and likely future energy costs.

It was submitted that the benefit of a database of lessor non-compliance (as proposed in Option C) is that it would encourage lessors to comply with their obligations under the RTA and would give tenants an opportunity to know the information that is relevant to the property they are interested in leasing.

Circle Green Community Legal preferred Option C because:

- information about the premises is important because it directly impacts the tenant’s quality of life; and
- there is currently inequality between tenants and lessors regarding what information either party knows about the other before signing a lease. Creating a lessor database will increase accountability for lessors and would allow tenants to make better informed decisions when choosing a rental property.

Shelter WA supported Option B because disclosure of more information would assist the tenant in their decision making. Shelter WA also submitted that it would be helpful for the REBA Act to define what constitutes “material information”.

REIWA did not support expanding the list of matters requiring disclosure because it submitted that adequate provisions are already outlined within the ACL and REBA, which real estate professionals are aware of. It contended that private lessors, who are not aware of their obligations, are more likely to fail to disclose material information. REIWA did not support a lessor database, submitting that the potential for harm is greater than any possible benefits.

Communities supported retaining the status quo, unless there were an exemption for the Housing Authority as a lessor. This is because social housing is different in character from private housing as applicants do not apply for a specific house, nor make a decision based on the rental price relative to the features of the property. Instead, applicants are offered the first available suitable property and pay subsidised rent for that property which is calculated according to their income.

Other ways to address the issue

Of the 10 responses suggesting other options to address the issue, the most frequently submitted option was to require a landlord disclosure statement using a prescribed form. The form could include a list of all information the landlord is required to disclose prior to the tenancy.

Cost implications

The most frequently submitted potential cost implication was that Options B and C would cost the lessor money, if for example a building inspection needs to be undertaken to ascertain information about the property to be disclosed, such as whether premises contain asbestos or whether insulation is installed.

Some respondents also mentioned the cost to government of creating and maintaining a database. Some expressed concern that if landlords have to pay this cost, it will be passed on to tenants via increased rent.

Information that should be subject to mandatory disclosure

The CRIS asked what information should be disclosed to tenants at the beginning of the tenancy. Fifty respondents provided feedback, with some suggesting more than one piece of information. The responses are summarised in Figure 2 below:

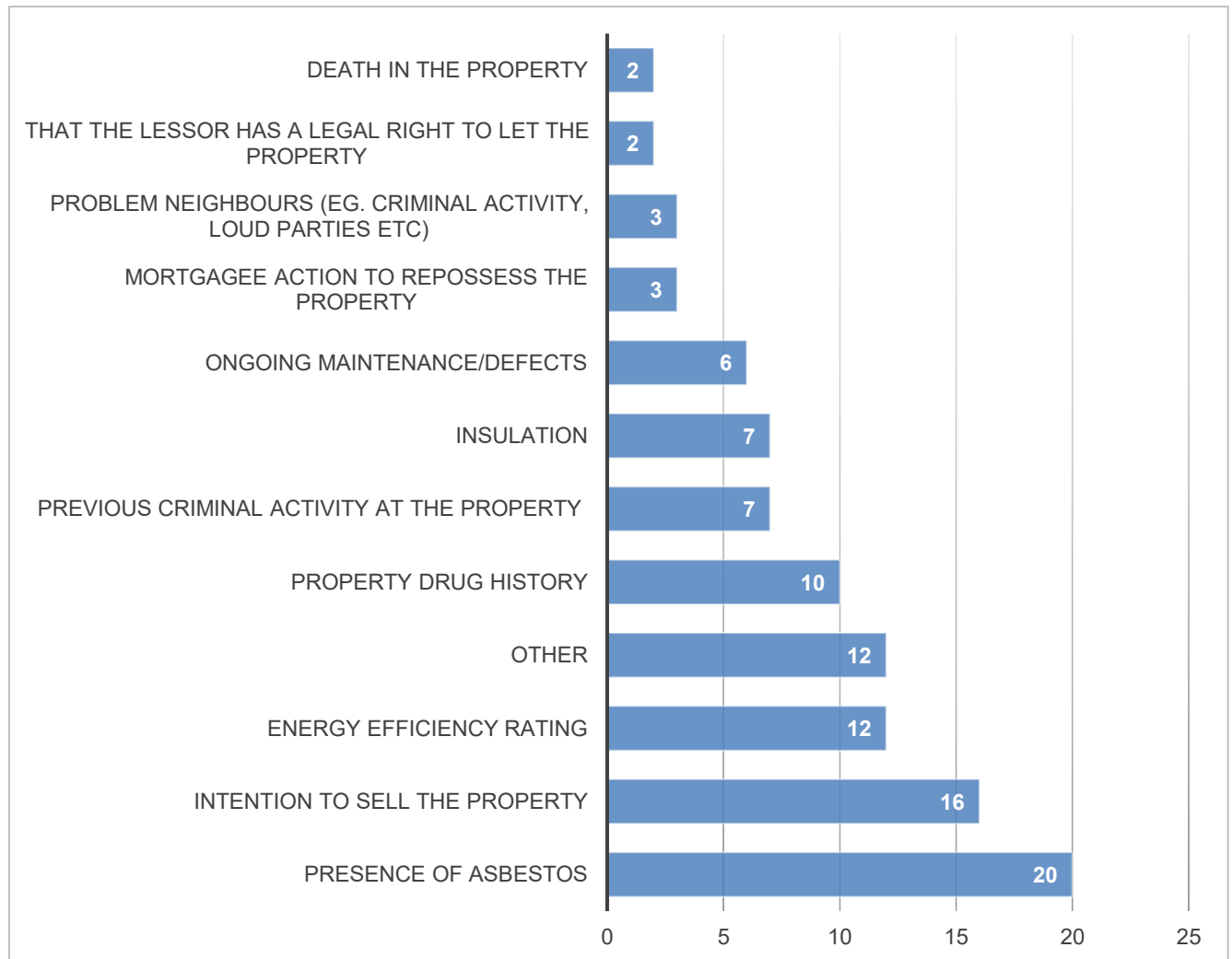


Figure 2 - Information that should be disclosed to tenant

Other jurisdictions

The disclosure requirements in other Australian jurisdictions are summarised below.

Lessor disclosure	Vic ²⁵	NSW ²⁶	SA ²⁷	ACT ²⁸
Proposal to sell the property	✓	✓	✓	
Mortgagee action to repossess the property	✓	✓		
Confirmation that the lessor has the legal right to let the property	✓			
Subject to flooding or bushfire in past 5 years		✓*		

²⁵ Residential Tenancies Act 1997 (Vic) s.30D.

²⁶ Residential Tenancies Act 2010 (NSW) s.26; Residential Tenancies Regulations 2019 (NSW) reg.8.

²⁷ Residential Tenancies Act 1995 (SA) s.47A.

²⁸ Residential Tenancies Act 1997 (ACT) s.12.

Lessor disclosure	Vic²⁵	NSW²⁶	SA²⁷	ACT²⁸
Health or safety risks not apparent on inspection		✓*		
Scene of a serious violent crime in past 5 years ²⁹	✓	✓*		
Potential drug contamination or manufacture/cultivation of drugs	✓	✓*	✓**	
Non-standard waste removal arrangements		✓*		
Limited availability of parking		✓*		
Strata scheme – major works to be carried out		✓*		
Requirement to share walkway or driveway		✓*		
Building subject to order in relation to combustible cladding		✓*		
Asbestos report or whether premises contain asbestos	✓	✓*		✓
Details of any embedded electricity network	✓		✓**	
If premises comply with the rental minimum standards	✓			✓
If the lessor has received a repair notice relating to mould or damp (in last 3 years)	✓			
If a registered place (heritage)	✓			
Date of last gas and electrical safety check and any outstanding recommendations for work	✓			
Date of most recent pool barrier compliance check	✓			
Order or notice relating to safety or building defects	✓			
Domestic building work or owners corporation dispute	✓			
Owners corporation rules	✓			
Energy efficiency information				✓
Crisis accommodation – statement about possibility of termination				✓

Table 3 - Disclosure requirements - other jurisdictions

* Section 26(1) of the *Residential Tenancies Act 2010* (NSW) provides that a landlord must not knowingly conceal a material fact of a kind prescribed by the regulations.

** Contained within clause 5 of the *Residential Tenancies (Miscellaneous) Amendment Regulations 2024* (SA). These reforms came into operation on 1 July 2024.

The remaining jurisdictions require a prospective tenant to be given a standard information sheet about their rights and obligations under the Act, but this information does not include any information about the specific premises or the lessor or their agent. See the discussion in chapter 4.1 (Minimum standards) on a proposed national framework for assessing and disclosing energy efficiency standards when renting or selling a home.

²⁹ Vic – homicide; NSW – murder, manslaughter, sexual assault or aggravated assault.

Lessor non-compliance register

In 2021, Consumer Affairs Victoria established a rental non-compliance register. The register displays details of lessors who have become the subject of a VCAT compliance or compensation order or a conviction of an offence under the *Residential Tenancies Act 1997* (Vic) since 29 March 2021.

The register lists the following information about the lessor:

- name;
- address of the rented premises that the VCAT order or the offence relates to;
- business name and business address of the agent, if the lessor has an agent;
- date of the VCAT order, conviction, or finding of guilt; and
- relevant provision of the Act.

This information remains in the register for three years.

Consumer Protection currently records details of prosecutions it makes under the RTA. This includes the name of the lessor, the sections of the RTA that have been breached and the outcome of the prosecution (e.g. the amount of the fine or costs).

Impact analysis

	Potential benefits	Potential disadvantages
Option A: Status quo	Lessors <ul style="list-style-type: none">• No change of practice required. Tenants <ul style="list-style-type: none">• None discernible. Government <ul style="list-style-type: none">• No increased compliance costs.	Lessors <ul style="list-style-type: none">• Risk of disputes due to non-disclosure.• Lack of clarity in relation to disclosure requirements. Tenants <ul style="list-style-type: none">• Tenants continue to lack access to important information prior to the tenancy. Government <ul style="list-style-type: none">• None discernible.

	Potential benefits	Potential disadvantages
Option B: Mandatory disclosure about the premises	<p>Lessors</p> <ul style="list-style-type: none"> • Greater clarity provided in relation to disclosure obligations. • Reduced likelihood of disputes. <p>Tenants</p> <ul style="list-style-type: none"> • Better access to information prior to the tenancy. • Tenants can make more informed decisions about suitability of premises to meet their needs – may result in lower costs to tenants, for example in relation to energy efficiency. <p>Government</p> <ul style="list-style-type: none"> • Potential for fewer disputes between lessors and tenants because salient information is disclosed upfront. 	<p>Lessors</p> <ul style="list-style-type: none"> • May incur costs in preparing disclosure material, for example potential costs in seeking professional advice for disclosure material, for example, a building inspection to ascertain the presence of asbestos. • Risk of penalty for non-disclosure. <p>Tenants</p> <ul style="list-style-type: none"> • Any increased cost to lessors may be passed on to tenants in the form of increased rents. <p>Government</p> <ul style="list-style-type: none"> • Potential increased compliance costs.
	Option C: Mandatory disclosure about the premises and database of lessor non-compliance	<p>Lessors</p> <ul style="list-style-type: none"> • Greater clarity provided in relation to disclosure obligations. <p>Tenants</p> <ul style="list-style-type: none"> • Database may encourage non-compliant lessors to improve compliance with the RTA. • Better access to information prior to the tenancy. • Tenants can make better informed decisions about suitability of premises to meet their needs – may result in reduced costs, for example in relation to energy efficiency. • Tenants aware of risk of non-compliance by lessor. <p>Government</p> <ul style="list-style-type: none"> • Potential for fewer disputes between lessors and tenants because salient information is disclosed upfront. • Improves available data on non-compliance.

Table 4 - Impact analysis – Lessor disclosure

Assessment against the objective

The objective is to ensure that tenants have timely access to appropriate information about the lessor and premises to inform their decision making.

Option A

Option A does not achieve the objective because tenants have limited access to information about the premises they seek to rent and the lessor they seek to rent from. This means that tenants are unable to make informed decisions about the rental property they are applying for.

Option B

Option B is recommended because it would achieve the objective and its benefits outweigh its costs.

Disclosing salient information to tenants about the premises prior to the tenancy would allow tenants to make an informed decision about whether to rent the premises. It also has the potential to prevent disputes with the lessor arising during the tenancy.

It is anticipated that any potential costs for lessors associated with preparing and disclosing required information will be minimal, so the issue of lessors passing on costs to tenants through increased rents will likely be insignificant.

Information that should be subject to mandatory disclosure will be developed in consultation with key stakeholders to balance the costs to lessors with the need for tenants to be adequately informed.

Option C

Option C would achieve the objective. However, its costs outweigh its benefits.

While Option C would have all the above-mentioned benefits of Option B with regards to disclosure of information about the premises, the tenant would also have access to information about the landlord's compliance with the RTA.

In theory, publishing a database of lessors who breach the RTA may improve compliance and provide a valuable resource for tenants to make an assessment about their prospective lessor. However, as demonstrated by the internal prosecutions register maintained by Consumer Protection, prosecutions occur rarely and more serious matters are often given priority over minor matters. This means that information about issues which might be relevant to a tenant, such as the lessor's willingness to undertake repairs or to negotiate the timing of rent inspections, would not be available. Most of the matters that Consumer Protection regularly receives complaints about relate to these "minor" conduct issues rather than serious breaches of the RTA that become the subject of prosecutions.

If the scope of the database were broadened to include complaints made against lessors rather than just successful prosecutions, while more information would be available to tenants, there would be a risk that lessors named would not be afforded the proper opportunity to respond, which offends their right to procedural fairness.

In addition, implementing a database could be costly for government, both in establishment and maintenance. This cost may be significantly reduced if a database is separately established pursuant to CRIS chapter 10.2, which considers implementing a register of lessors.³⁰ If that proposal were implemented, the two projects could be merged and the costs for each would be reduced.

On balance, a publicly available database of lessors who have breached the RTA would provide limited benefit to tenants in making an informed decision about an appropriate rental premises. This is because there are few prosecutions conducted, and most are for significant breaches of the RTA which are unlikely to provide useful information to guide tenants' decision making.

Recommendation 9 - Lessor disclosure

Amend the RTA to require a lessor to disclose to any prospective tenant information that is material to their decision to lease the premises. Further work to be undertaken during drafting to refine the information that must be disclosed. However, based on required disclosures in other jurisdictions the lessor will likely need to disclose the following:

- if the lessor has engaged an agent to sell the rental property;
- if a mortgagee has commenced proceedings to enforce the premises' mortgage;
- if the lessor is not the owner of the premises, that the lessor has the right to let the premises;
- the presence of an embedded network;
- the presence of asbestos;
- information about strata or community titles rules; and
- any other prescribed information.

³⁰ CRIS p.137.

3 RENTS BONDS AND OTHER CHARGES

3.1 Option fees (CRIS Part 4.1)

Issue

Option fees currently act as a barrier for tenants in securing a rental property, particularly in a highly competitive rental market that requires tenants to lodge multiple applications to secure a property. The review considered whether to retain or alter the current law on option fees.

Current situation

The RTA³¹ allows a lessor to be paid an option fee to enter into a tenancy agreement provided that:

- if the option to enter into the agreement is exercised, the amount is refunded or applied towards rent payable under the agreement; or
- if the option to enter into the agreement is refused, the amount is refunded within seven days of the decision to refuse the option.

Prescribed limits on the amount that may be charged for an option fee were introduced in 2013.³²

An option fee is paid as consideration for an option to enter into a tenancy agreement, and if applicable, can be used to compensate the lessor where the tenant does not exercise their option to enter into the agreement.

Historically, the purpose of option fees was to cover the lessor where there were limited opportunities to advertise properties for rent, so that a decision not to exercise an option could lead to a delay before the premises could be re-advertised, resulting in a loss for the lessor. However, the advertising of rental properties is now largely internet-based, and potential losses are to a large extent offset by the fact that premises may be re-advertised more quickly.

There is an administrative cost to handling option fees. Unsuccessful applicants must be refunded their option fees. Where a property manager handles the property, option fees must be deposited into a trust account and a receipt issued. This contributes to the costs for property management, including costs associated with auditing the trust account.

Objective

To ensure a lessor is compensated as a consequence of a prospective tenant deciding not to enter into a tenancy agreement and that such fees are not a barrier to renting.

Proposal considered

The following proposal was presented in the CRIS for feedback.

³¹ *Residential Tenancies Act 1987 (WA)* s.27.

³² The current cap is \$50 where the weekly rent under the residential tenancy agreement is \$500 or less, \$100 where the weekly rent exceeds \$500, and \$1200 where the premises is south of the 26th parallel of south latitude and the weekly rent is \$1200 or more.

It is proposed that the RTA be amended to prohibit a lessor from requiring applicants to pay an option fee. Instead, it is proposed that a lessor be able to obtain a holding fee from a tenant whose application has been assessed and who has been offered a tenancy agreement for the premises. The amendment will also prohibit a lessor who has received a holding fee from entering into a tenancy agreement with another person for the period covered by the holding fee.

This proposal is unlikely to have a significant impact on stakeholders as opposed to the alternative option of prohibiting all option and holding fees. Consumer Protection is proposing to proceed with this recommendation unless stakeholder feedback provides evidence of unintended consequences from this course of action.

As the CRIS explained, a holding fee can be used where a lessor offers a residential tenancy agreement to the applicant and the applicant asks for time before making a decision on whether to accept the agreement. The lessor and applicant will negotiate and agree on a period of time that the premises will be held available for the prospective tenant. During that time, the lessor is not allowed to offer the premises to any other applicant. If the applicant decides not to enter into the tenancy agreement or does not respond to the lessor within the agreed timeframe, the holding fee or part of it may be forfeited to the lessor. If the applicant proceeds with the tenancy agreement, the holding fee must be refunded to the tenant or credited towards the rent payable for the premises.

The key difference between a holding fee and an option fee, is that a lessor may only receive one holding fee at a time, whereas a lessor may accept an option fee from all applicants for the premises.

Stakeholder feedback to the CRIS

The majority of stakeholders agreed with the proposal as outlined in the CRIS. Of the 29 total responses, 62 per cent of respondents agreed with the proposal, 21 per cent disagreed and 17 per cent either partially agreed or made alternative suggestions.

Many respondents submitted option fees or holding fees are rarely used, so implementing the proposal will not significantly impact the market. Some respondents stated administration costs associated with collecting and returning money together with the cap on option fees means option fees are rarely used.

Key stakeholders such as Shelter WA and Communities supported the proposal in the CRIS.

REIWA submitted there is little need for either a holding fee or an option fee, but if a holding fee were implemented, the payment of the fee should be no earlier than the landlord's written acceptance of the application, and the fee should be capped at the equivalent of one week's rent.

Circle Green Community Legal agreed with the proposal to prohibit option fees, but also suggested the RTA prohibit holding fees. It submitted holding fees force an applicant into the undesirable position of committing to an agreement before properly considering it, then having to weigh up later whether to proceed with the agreement. In circumstances where they decide not to proceed, they will lose the holding fee. Circle Green suggested that if holding fees are issued, the RTA should include a clear definition of the term ‘holding fee’ and outline the purpose and processes for dealing with holding fees.

The CRIS sought feedback on the appropriate maximum amount for a holding fee. Of the 12 responses to this question, the majority of respondents (ten) suggested one week’s rent was appropriate. One respondent suggested fifty percent of one week’s rent and another suggested an amount of rent equivalent to the agreed ‘holding period’.

Other jurisdictions

Each jurisdiction has different regulations regarding holding and/or option fees. Some jurisdictions continue to allow an option fee to be collected from each applicant, while many have shifted to permitting the collection of a holding fee from only one potential applicant at a time. The table below summarises the position in other Australian jurisdictions.³³

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Option and holding fees prohibited	✓	-	✓	-	-	-	-	-
Single holding fee permitted	-	✓	-	✓	-	✓	-	-
Option fee permitted	-	-	-	-	✓	-	-	✓
Good faith payment	-	-	-	-	-	-	✓	-

Table 5 - Holding fees and options fees in Australian jurisdictions.

Legislation in New South Wales sets the maximum permitted holding fee at an amount equivalent to one weeks rent³⁴. A maximum holding fee is not specified in Tasmania and Queensland.

³³ *Residential Tenancies Act 1997* (Tas) s.18

Residential Tenancies Act 2010 (NSW) ss.23-24

Residential Tenancies Act 1999 (NT) s.24

Residential Tenancies and Rooming Accommodation Act 2008 (Qld) ss.59 and 159-162

Residential Tenancies Act 1995 (SA) s.53

Residential Tenancy Act 1997 (Tas) s.31

Residential Tenancies Act 1997 (Vic) s.50.

³⁴ *Residential Tenancies Act 2010* (NSW) s.24.

Impact analysis

	Potential benefits	Potential disadvantages
<p>Proposal</p> <p>Prohibit options fees and instead allow a landlord to obtain a holding fee from a successful applicant</p>	<p>Lessors</p> <ul style="list-style-type: none"> • Lower costs with reduced administrative burden. • Retain ability to be compensated when tenant changes mind. <p>Tenants</p> <ul style="list-style-type: none"> • Holding fee only required if the landlord is willing to enter into a tenancy agreement. • Lower costs in searching for a rental premises as multiple options fees not required. <p>Government</p> <ul style="list-style-type: none"> • No change. 	<p>Lessors</p> <ul style="list-style-type: none"> • Lost opportunity to collect option fees from all prospective tenants. <p>Tenants</p> <ul style="list-style-type: none"> • Tenants risk forfeiting holding fee if they decide not to proceed with the tenancy. Holding fee may be a higher amount than an option fee. <p>Government</p> <ul style="list-style-type: none"> • No change.

Table 6 - Impact analysis - Option fees

Assessment against the policy objective

The objective is to ensure the lessor is compensated if a tenant decides not to proceed with a tenancy and that fees used to compensate the lessor do not create a barrier to entry into the rental market for prospective tenants.

The CRIS proposed proceeding with the policy proposal as it was unlikely to have a significant impact on stakeholders unless feedback provided substantive evidence of unintended consequences. Responses to the CRIS did not identify any substantive evidence of unintended consequences.

Allowing lessors to impose a holding fee mitigates against the risk of loss in the event that a successful applicant later chooses not to proceed with a tenancy. Removing option fees ensures prospective tenants are not at a disadvantage by having to pay fees for multiple rentals without having the security of a guaranteed place at the premises.

Recommendation 10 - Option fees

Amend the RTA to prohibit a lessor from requiring an option fee from prospective tenants, but allow a lessor to obtain a holding fee from a tenant whose application has been assessed and who has been offered a tenancy agreement for the premises. If a tenant proceeds with entering into a tenancy agreement, the holding fee will be refunded or applied towards the rent payable under the agreement.

The maximum holding fee should be set at an amount that is proportionate to the number of days before the tenant enters into the tenancy agreement. The maximum holding fee is an amount equivalent to one week's rent. For example, if the tenant asks for three days to decide – the holding fee would be $\frac{3}{7}$ x weekly rent.

3.2 Amount of security bond (CRIS Part 4.2)

Issue

A security bond is a payment made in advance by a tenant to cover costs for which they may be liable at the end of the tenancy. The review considered whether to increase the maximum amount of security bond that a lessor may require from a tenant.

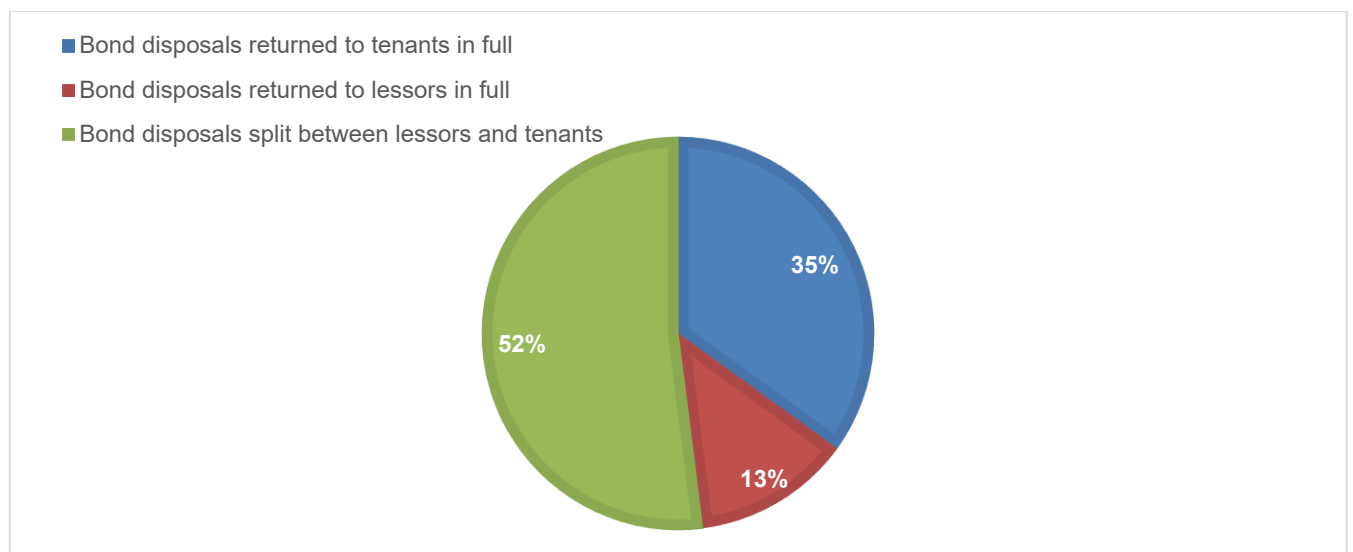
Current situation

The RTA currently allows a lessor to receive up to four weeks' rent as a security bond for most tenancies, plus an additional pet bond up to a prescribed amount. If the weekly rent for the premises is more than \$1,200 per week, the bond amount is not limited.

The limit of four weeks' rent has not changed since the RTA commenced. The last review of the RTA found that any increase in bond amounts would likely act as a further barrier to tenants entering the tenancy market, and as such, a decision was made not to increase the cap on bonds.

Bond Administrator data of the breakdown of bond disposals suggests that in the majority of instances, the current settings for security bonds are adequate to compensate the lessor for any amounts owing to them at the end of the tenancy. In 87 per cent of disposals, the bond was split between the tenant and the lessor or returned to the tenant in full.

Figure 3 - Breakdown of bond disposal in 2021



Objective

To determine a level of security bond that appropriately protects a lessor's interests in recovering compensation for damage to premises, while ensuring the security bond is not unduly burdensome on prospective tenants.

Proposal considered

The following proposal was presented in the CRIS for consideration.

The monetary limits on security bonds in Western Australia is consistent with other states and territories. Data from the Bond Administrator indicates that the current levels of security bond provide adequate compensation for the majority of lessors.

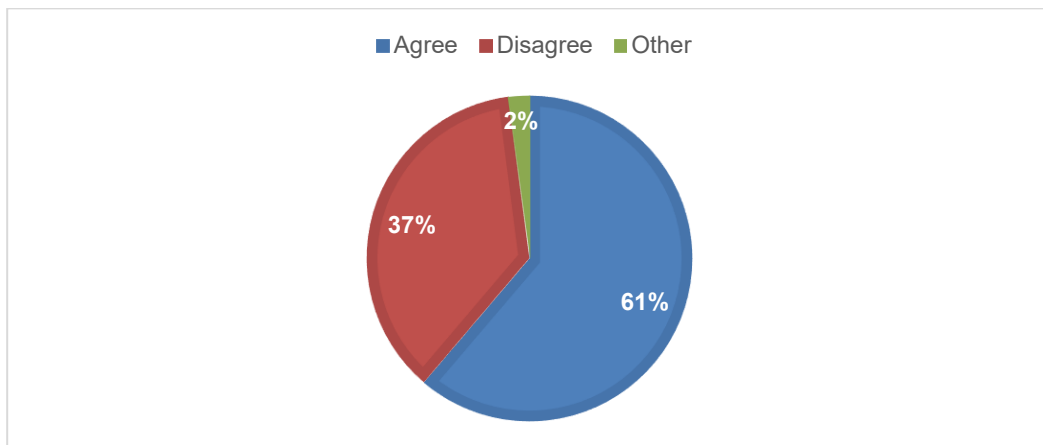
Where serious property damage has occurred that is not able to be covered by the security bond, lessors have other available measures including landlord insurance to compensate for any additional costs. This review is also considering prescribing a penalty for wilful damage in the RTA to assist lessors in seeking compensation in these circumstances.

Consumer Protection is therefore proposing to retain the current provisions in the RTA for the level of security bond unless stakeholder feedback provides substantive evidence of unintended consequences from this course of action.

Stakeholder feedback to the CRIS

The feedback to the proposal is summarised in Figure 4 below.

Figure 4 - Feedback - Should current security bond limits be retained?



Sixty-one per cent of respondents to the CRIS agreed with the proposal to retain the current provisions in the RTA setting a monetary limit on the amount of security bond payable and 37 per cent disagreed. Those respondents who disagreed were landlords and their property managers, many of whom suggested limits on bond amounts should be increased. Respondents who agreed included both tenants and landlords and their representatives. Both Circle Green Community Legal and REIWA supported the proposal to maintain the status quo.

Reasons given for agreeing with the proposal included:

- it is unreasonable to ask people to pay more than 4 weeks' rent;
- four weeks' rent is sufficient to cover most damage;
- any increase to a bond will further restrict housing options available to those on limited incomes; and
- landlord insurance is available to cover instances where the bond is insufficient.

Reasons given for disagreeing with the proposal included:

- it is not feasible for a landlord to terminate a tenancy in less than four weeks, which means that additional rent arrears can accrue;
- the policy position should be more aligned to commercial tenancies (where a bond can be up to six months' rent);
- tenants sometimes stop paying rent prior to the tenancy ending so that the full bond is used to cover rent arrears; and
- the bond is inadequate to cover potential damage to property and cleaning.

Communities noted that the Housing Authority does not require a bond for public housing tenancies, however a bond is paid in some other housing programs. It also noted that increased bond requirements would have significant funding and risk implications for Communities' Bond Assistance Loan Scheme.

A number of respondents, including REIWA, suggested the pet bond should be higher than the then prescribed amount of \$260 and that the pet bond should cover damage caused by pets in addition to fumigation costs. This issue is considered in greater detail in DRIS 1.

Other jurisdictions

Western Australia's monetary limit on security bonds is consistent with other states and territories. All jurisdictions except South Australia³⁵ limit the amount of security bond that can be required from a tenant to an amount equivalent to four weeks or one month's rent (in South Australia, the limit is four weeks where rent costs up to \$250 per week; otherwise, the limit is the equivalent of six weeks rent).

Assessment against the policy objective

The policy objective is to determine whether the current limit of four weeks' rent (for premises with a weekly rent less than \$1,200) appropriately protects a lessor's interests in recovering compensation for damage to premises and is not unduly burdensome on prospective tenants.

The CRIS proposed retaining the current provisions in the RTA setting the level of security bond, unless stakeholder feedback provided substantive evidence of unintended consequences from this course of action. Responses to the CRIS did not provide substantive evidence of unintended consequences.

³⁵ *Residential Tenancies Act 1997* (ACT) s.20
Residential Tenancies Act 2010 (NSW) s.159
Residential Tenancies Agreement 1999 (NT) s.29
Residential Tenancies and Rooming Accommodation Act 2008 (Qld) s.112
Residential Tenancies Agreement 1997 (SA) s.61
Residential Tenancy Act 1997 (TAS) s.25(4)
Residential Tenancies Act 1997 (VIC) s.31.

The current provisions in the RTA achieve the objective. Data from the Bond Administrator confirms that in most circumstances, the current amount of security bond received by lessors is enough to cover any damage at the end of a tenancy. Where serious property damage occurs that is not covered by the security bond, lessors have other options available to them, including landlord insurance. Note also that Recommendation 24 in Part 4.5 recommends imposing a penalty for wilful damage caused by the tenant.

Recommendation 11 - Amount of security bond

Maintain the status quo to retain the current provisions in the RTA relating to the level of security bond.

3.3 Bond guarantees and alternative bond products (CRIS Part 4.3)

Issue

In recent years, some private companies have sought to offer bond guarantees as an alternative to a tenant paying a security bond upfront. The review considered whether the RTA should retain its current prohibition on all bond guarantee products.

Current situation

Bond guarantees are currently unlawful in Western Australia.

A bond guarantee is where a private company provides a guarantee of a bond to a lessor, in exchange for a monthly or annual fee from a tenant. At the end of the tenancy agreement, if the lessor makes a valid claim against the bond guarantee, the company will pay the amount of the claim and then in most instances, will seek to recover this amount from the tenant. If the lessor's claim is greater than the amount covered by the guarantee, the lessor will need to take separate action against the tenant to recover that amount. This is similar to action a lessor would take to recover an amount owing that exceeds a traditional security bond.

Objective

To determine the appropriate laws to apply to the payment of security bonds.

Proposal considered

The following proposal was presented in the CRIS for feedback.

Bond guarantee products do not result in beneficial outcomes for lessors or tenants and are currently considered unlawful in all states and territories.³⁶ Although bond guarantee products may reduce upfront costs to tenants, in the longer term, tenants may be liable for greater costs than the original security bond due to providers retaining a premium. It is proposed to retain the current prohibition on bond guarantee products in the RTA.

This proposal is unlikely to have a significant impact on stakeholders. Consumer Protection is proposing to proceed with this recommendation unless stakeholder feedback provides substantive evidence of unintended consequences from this course of action.

Discussion

Providers of bond guarantees state that these arrangements allow tenants to use money which would otherwise be going towards a lump sum payment of bond, while still providing the protection of a bond to lessors. It is argued that bond guarantees reduce the cost of renting by eliminating one of the large upfront payments that tenants are currently required to make.

³⁶ Subsequent to publication of the CRIS, the ACT amended its legislation to allow for use of bond guarantee products in limited circumstances.

Bond guarantees may reduce barriers to entry into the rental markets for tenants unable to afford up-front lump sum payments; however, providers place considerable restrictions on eligibility, and there are concerns about the negative consequences of such arrangements.

Some potential issues with use of bond guarantees include:

- Tenants may end up paying more than if they had deposited their bond with the Bond Administrator. If a tenant pays a premium to a company and the lessor makes a successful claim against the guarantee, the company will in most instances seek to recover the amount from the tenant. This means that a tenant will have paid a premium plus the bond.
- Long term tenants may end up paying more than the total amount of the security bond and do not receive any of this money back at the end of a tenancy.
- Lessors may be left exposed. A tenant is required to renew their bond guarantee annually. If a tenant does not renew their bond, the tenancy will cease to be covered by the bond guarantee.
- Reduced funds in the Rental Accommodation Account (the RAA). This would have a negative impact on revenue available to fund core functions of Consumer Protection including dispute resolution, education and advocacy of the tenancy network, and compliance and administration functions associated with the RTA.

Stakeholder feedback to the CRIS

Stakeholders overwhelmingly supported retaining the current prohibition on bond guarantee products. Ninety-seven percent of respondents to the proposal in the CRIS supported retaining the prohibition. Only one respondent disagreed with the proposal.

Major stakeholders such as REIWA, Circle Green Community Legal, and Communities submitted that the current prohibition should be retained.

Other jurisdictions

The restrictions on use of bond guarantee products is consistent across Australian jurisdictions, except for the ACT.

In 2018, the ACT legislation was amended to allow for the use of a guarantee or indemnity (either in addition to, or in place of, a bond). However, a bond guarantee contract must be approved by the Commissioner. To date, no contracts have been approved under this provision.

Assessment against the policy objective

The policy objective is to determine the appropriate laws to apply to the payment of security bonds to ensure that tenants and lessors alike are adequately protected.

The CRIS proposed retaining the current prohibition on bond guarantee products in the RTA unless stakeholder feedback provided substantive evidence of unintended consequences from the course of action. Responses to the CRIS did not provide substantive evidence of unintended consequences.

The current provisions in the RTA achieve the objective. The appropriate response, given the overwhelming support for the status quo, is to continue to prohibit bond guarantee products. The negative impacts and risks of bond guarantees and alternative bond products far outweigh any benefit that could be gained by allowing them. Concerns have been raised about the fact that bond guarantee products target tenants who are already financially vulnerable. Both tenants and lessors are open to significant risk from bond guarantee products.

Recommendation 12 - Bond guarantees

Maintain the status quo. Retain the current prohibition in the RTA on bond guarantee products.

3.4 Rent control measures (CRIS Part 4.5)

Issue

The WA rental market is experiencing low vacancy rates and high rental prices. Higher rental prices increase pressure on tenants, particularly when the rent increase is significant and absorbs a larger portion of the total household income. This is also an issue in particular zones that experience “boom or bust” rental cycles.

The review considered whether the RTA should be amended to limit the size of rent increases that lessors may impose.

Current situation

The RTA does not restrict the amount of rent a lessor can impose. If the tenant believes that the rent payable is excessive, they can apply to the court to have a maximum rent set for the premises.³⁷ The court considers a number of factors in deciding whether a rent increase is excessive, including rent payable for comparable premises, the accommodation and amenities provided in the premises, the state of repair and general condition of the premises, amounts of outgoings in respect of the premises borne by the lessor and any services or chattels provided by the lessor.

The pattern of rent increases in WA has generally been cyclical according to supply and demand of rental premises. Recently, the WA rental market has experienced very low vacancy rates, well below the level required for a “balanced” rental market.³⁸ As a result, in April 2024, Perth recorded the highest rent growth of all the capital cities up 57.6 percent. Perth has also experienced the highest annual rent growth with rents up 13.6 percent year-on-year.³⁹ Increases in some regional areas have been even more significant. Recent reports indicate that rents in the north of WA have increased by an average of 16 percent per annum over the past three years.⁴⁰

In relation to tenancy enquiries received by Consumer Protection, there was a 62 percent increase in the proportion of enquiries relating to rent increases in the 12-month period from June 2023 to May 2024 compared with the average proportion in the previous three years, indicating that this is a significant issue for tenants.

A particular issue reported by tenants is the size of rent increases. Consumer Protection has heard from tenants who have had their rent increased by a single instalment of \$50 per week or more for multiple 6-month leases. Consumer Protection has also heard of single increases of up to \$200 per week. Given the low vacancy rate and difficulty finding alternative rental premises, tenants often feel that they have no option but to absorb the rent increase.

³⁷ RTA s.32 – an application may be made following a rent increase or in circumstances where there has been a significant reduction in the chattels or facilities provided with the premises.

³⁸ In 2022 the Perth metro rental vacancy rate has been around one to two per cent. In regional areas it has been even lower - sometimes below one per cent. A “balanced” vacancy rate is considered to be between 2.5 and 4.5 per cent.

³⁹ <https://www.theurbandevolver.com/articles/corelogic-rental-growth-april-2024>
<https://squareholes.com/blog/2024/06/13/median-rent-continues-to-rise-in-australia/>

⁴⁰ <https://everybodyshome.com.au/rental-surge-red-zones-revealed-as-nation-marks-homelessness-week/>

These increases in rental prices are having a significant impact on low-income tenants. According to the 2025 Anglicare Rental Affordability Snapshot, an overall increase in the number of rental listings in Western Australia has not translated into improved affordability. For example, on 15 March 2025, there were no affordable or appropriate properties available for a household on job seeker or a single person on a disability support pension and only one property available for a single parent on a minimum wage with two children.⁴¹

Previous statutory review

The 2002 statutory review of the RTA did not recommend prescribing a maximum allowable rent increase under the RTA.

The report on the 2002 review noted that the appropriateness of a rent increase depends on many factors, including the current rent paid, current market rent, and whether any improvements have been made to the premises. Imposing a prescribed allowable increase would not take into account these factors.⁴² The report suggested that a more flexible solution would be to increase tenants’ ability to apply to a court for an order that rent or a rent increase is excessive.

Objective

To provide fairness and certainty in relation to rent increases for tenants, while maintaining flexibility for lessors to make a reasonable return on their investment.

Options considered

The CRIS presented the following options for consideration.

Option A	<p>Status quo</p> <p>Under this model there is no change to the current legislative regime. Lessors will continue to be able to determine the level of rent increase provided that, in the case of fixed term tenancy agreements, the agreement sets out the actual amount of the increase or the method of calculating the increase.</p>
Option B	<p>Cap on rent increases in designated zones</p> <p>Under this option, certain zones would be designated in the legislation as high pressure rent zones. These zones will be determined by historical data and based on those regions that have shown themselves to be highly susceptible to sharp spikes in rental affordability, for example, Port Hedland and Karratha. The method of calculating rent increases in these zones would be prescribed in the regulations and would be applied at times when pressure is being exerted on rents.</p>

⁴¹ Anglicare Australia [Rental-Affordability-Snapshot-Regional-Reports.pdf](#), published 30 April 2025

⁴² Final Report: Statutory Review of *Residential Tenancies Act 1987*: August 2002, p 131.

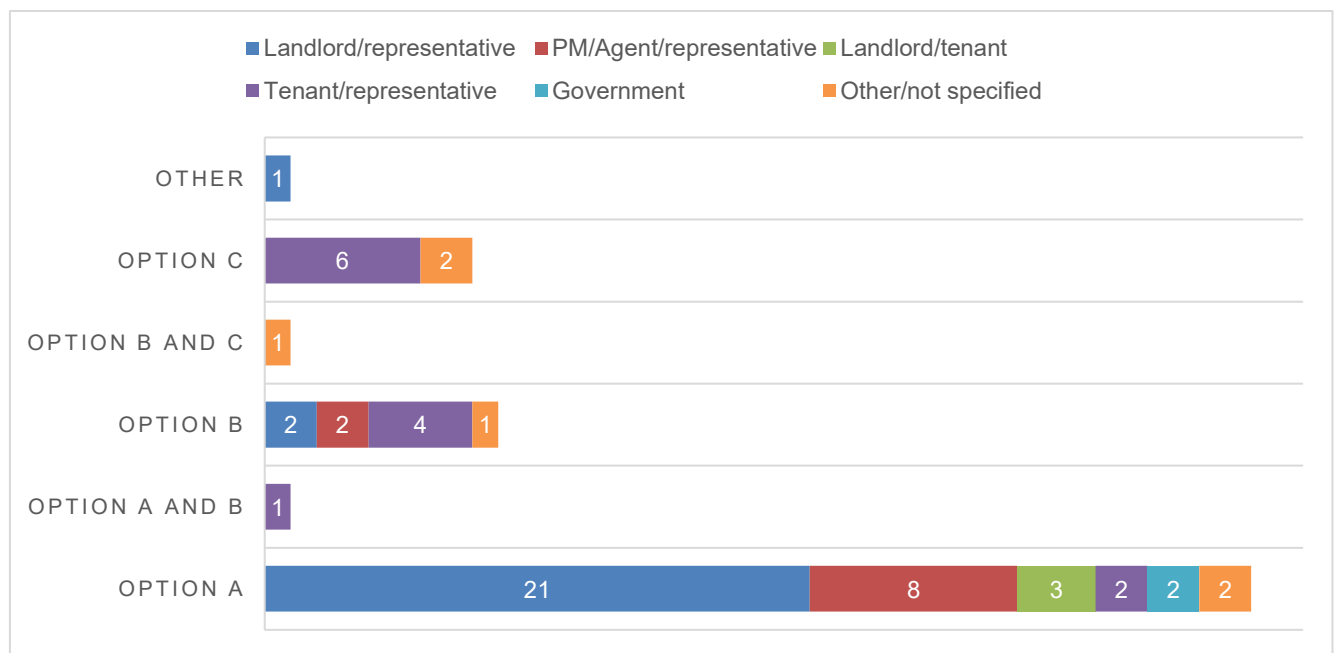
Option C Cap on rent increases for all rentals

Under this option, the legislation would place a cap on all rent increases across the State, for example, limiting rent increases to the Consumer Price Index (CPI).

Stakeholder feedback to the CRIS

Of the 58 responses to this question, 65 per cent supported Option A, 15 per cent supported Option B, 14 per cent supported Option C, and two per cent proposed an alternative option. Some respondents selected both Option A and B or Option B and C. A breakdown of responses by stakeholder type is provided below.

Figure 5 - Preferred option - rent control measures



Option A

The majority of lessors and their representatives who responded to this issue (including REIWA) did not support introducing a cap on rent increases.

Most of these respondents submitted that market forces should be able to dictate rental prices, which will reach a natural equilibrium if left alone. This equilibrium will move up and down over time, sometimes favouring tenants and sometimes favouring lessors. Many respondents also submitted that introducing rental caps will reduce lessors' return on investment and may result in investors leaving the rental market.

REIWA submitted that rent control is ineffective and will reduce investment in the rental sector. It argued that the market is cyclical and while areas such as Newman had experienced high rental prices over some periods, during other periods some mining towns had experienced record low rents, leaving lessors unable to recoup costs.

Similarly, the Property Investors Council of Australia (PICA) submitted that lessors need to have flexibility to respond to “ebbs and flows” in the market and removing that flexibility may cause lessors to disinvest from the rental market.

Option B

The majority of respondents supporting Option B were tenant representative groups. Some submitted that introducing high pressure rent zones offers “the best of both worlds” in that it protects tenants in areas that are prone to excessive rent increases, whilst maintaining the free market in other areas that do not carry the same risk. Some also submitted that implementing Option B is necessary to protect local tenants in high pressure zones from hardship and housing stress.

Shelter WA submitted that excessive rent prices in the Pilbara during the 2010 mining boom created significant housing poverty issues for those communities. The lack of affordable housing options in those communities particularly impacted women in abusive relationships because they were unable to find alternative housing options.

Option C

Option C received support mainly from tenants and their representatives.

The Make Renting Fair Alliance submitted that rent control mechanisms should be in place in WA, possibly indexed according to CPI or average wage increases. It conducted a survey of 890 renters and found that 76 per cent said that if their rent increased by 10 per cent, they would find it “very difficult” or “difficult” in their current financial situation.

Tim Clifford, former MLC representing East Metro, submitted that excessive price increases have a significant negative impact on tenants because they may require them to move house which in turn has significant financial, social and emotional costs. Frequent occurrences of relocation also impacts the local community.

Circle Green submitted that rent control measures should be introduced in WA to keep rents affordable. This is particularly important to prepare for future boom times where rents have the tendency to rise rapidly despite wages remaining stagnant. It contended that the way that a rental cap should be determined (for example, linking to CPI or wage increases) needs to be established through a public consultation process.

Other Australian jurisdictions

The ACT is the only Australian jurisdiction that directly limits the amount by which a lessor may increase the rent. In late 2019 the ACT introduced legislation providing that a rent increase is “excessive” if it is more than a prescribed amount.⁴³ The prescribed amount is currently 110 per cent of the increase in the rents component of the house group of the Consumer Price Index (CPI) for Canberra. This means that a lessor can only increase rent by 10 per cent more than the increase in the relevant CPI so if the relevant CPI increase is five per cent, rents may increase by 5.5 percent.⁴⁴

⁴³ *Residential Tenancies Act 1997* (ACT) s.68.

⁴⁴ *Residential Tenancies Regulation 1998* (ACT) reg.5A.

The lessor may increase the rent by more than the prescribed amount if they can satisfy the Tribunal⁴⁵ that the rent increase is not excessive in the circumstances. Equally, the tenant may make an application to the Tribunal that a rent increase within the prescribed threshold is excessive in the circumstances. The ACT legislation outlines the matters the Tribunal must consider in determining whether the rent increase is excessive, including the rental rate before the increase, the state of repair of the premises and the rental rates for comparable premises.⁴⁶

It is too early for meaningful data from the ACT demonstrating the impact this policy has had on investment in housing in the ACT. However, preliminary data from the Australian Bureau of Statistics indicates that rents in Canberra increased by 14 percent from the date the laws came into effect until June 2023. This was the third largest increase in rents nationally. Some academics suggest that the ACT Government's rental caps have not had an overall impact on market rents in Canberra as other factors, including population growth and property supply shortages had created pressure for rents to increase. Nevertheless, it has also been argued in media reports that the main effect of the rent cap has been to limit the potential for landlords to charge exorbitant rents during boom times.⁴⁷

Queensland introduced an amendment to its residential tenancy legislation in June 2024 aimed at stabilising the private rental market by applying the 12-month limit on rent increase frequency to the rental property rather than the tenancy. The amendments also require the tenancy agreement to state the date of the last rent increase and allow a renter to request evidence of the last rent increase⁴⁸.

All other jurisdictions in Australia have a mechanism to challenge a rent increase or excessive rent, with most applications determined by a court or tribunal.⁴⁹

In Victoria a tenant may apply to the Director of Consumer Affairs Victoria to investigate and prepare a report if a tenant is of the view that a rent increase is excessive.⁵⁰ A tenant may also make an application to the Victorian Civil and Administrative Tribunal for an order that the rent or rent increase is excessive.⁵¹ In Tasmania, the Residential Tenancy Commissioner has the power to make a determination about an unreasonable rent increase, with review or rehearing by the court.⁵²

⁴⁵ ACT Civil and Administrative Tribunal.

⁴⁶ *Residential Tenancies Act 1997* (ACT) s. 68(4).

⁴⁷ [Soaring ACT rents undercut Greens call for rent control \(afr.com\)](#)

⁴⁸ *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024* (Qld) ss. 91-94.

⁴⁹ *Residential Tenancies Act 2010* (NSW) s.44

Residential Tenancies Act 1997 (Vic) s.46-47

Residential Tenancies and Rooming Accommodation Act 2008 (Qld) s.92

Residential Tenancies Act 1995 (SA) s.56

Residential Tenancy Act 1997 (Tas) s.23

Residential Tenancies Act 1999 (NT) s.42.

⁵⁰ *Residential Tenancies Act 1997* (Vic) s.45.

⁵¹ *Ibid* s.46.

⁵² *Residential Tenancy Act 1997* (Tas) s.23.

Various criteria are included in tenancy legislation in each jurisdiction to be taken into account in considering whether a rent increase is excessive; these are largely consistent with those set out in the RTA. However, in some jurisdictions the court or tribunal can also take into account the amount of a proposed rent increase⁵³, the amount of a previous rent increase⁵⁴ or the period since the last rent increase.⁵⁵

International jurisdictions

A number of international jurisdictions apply a cap on rent increases. In some instances, this restriction applies to the entire region; in other jurisdictions it applies to what are sometimes referred to as high pressure rent zones. For example:

- British Columbia, Canada - maximum amount of rent increase is controlled by the regulations and in 2022 was set at 1.5 per cent.⁵⁶
- Ireland - rent cannot be increased above four per cent in “rent pressure rent zones”, these are “parts of the country where rents are highest and rising, and where households have the greatest difficulty finding affordable accommodation”.⁵⁷
- Germany – rents in popular residential areas may be subject to a “rent price brake”. The rent price brake will apply until 2029. It works as follows:
 - Local authorities define the areas of application due to having a “strained housing market”.
 - Landlords of premises in an applicable area cannot charge more than 10% above the standard comparable rent (determined using the rent index) for new contracts;
 - If a landlord charges more than the legal amount – the tenant is entitled to a rent reduction and a refund of any overcharged rent already paid.
 - It does not apply to newly built properties rented for the first time after 2014, modernised properties or properties rented for less than a year.

According to a report by the Economic and Social Research Institute, rent pressure zones in Ireland have been successful in limiting rent inflation and preventing steep increases in rent.⁵⁸ The report indicates that price inflation in these zones has fallen relative to other areas since the introduction of the legislation in December 2016. However, there is some evidence to suggest that lessors, when faced with strict price controls such as those imposed in the high-pressure zones, may not be as willing to invest in rental properties as they were previously.⁵⁹

⁵³ Queensland and ACT.

⁵⁴ Victoria and ACT.

⁵⁵ Victoria, NSW, Queensland and ACT.

⁵⁶ <http://www.housing.gov.bc.ca/rtb/WebTools/RentIncrease.html>

⁵⁷ <https://www.gov.ie/en/publication/85110-rent-pressure-zones/#>

⁵⁸ <https://mcmahonandco.ie/2022/04/12/esri-says-rent-pressure-zones-have-been-successful-in-limiting-rent-inflation/>

⁵⁹ <https://mcmahonandco.ie/2022/04/12/esri-says-rent-pressure-zones-have-been-successful-in-limiting-rent-inflation/>

The experience of rent control in international jurisdictions has had mixed results. Much of the empirical evidence on the effectiveness of rent control comes from large cities in the United States of America (US), where rent control regulations have been in place for decades. For example, San Francisco has had rent controls in place since 1994 on properties built before 1980, while in New York City, rent control policies have been a feature of the housing market since the 1940s.⁶⁰

The main aim of rent control policies was to prevent rents from rising, and several recent studies find that they are generally successful at lowering (or maintaining) rents for controlled housing.⁶¹ Rent controls were also found to reduce instances of tenants having to move out due to rising rents, which creates displacement.

However, there is some evidence that rent controls can have a negative effect on the overall property market. For example, over the two decades following San Francisco's 1994 rent control law, there was a 5.1 per cent increase in rental prices across the city.⁶² In addition, the rent controls seemed to influence investor behaviour – lessors substituted premises that would be subject to rent control to other types of real estate. This lowered overall housing supply.

Several studies also showed a deterioration in housing quality resulting from lessors' reduced inclination to pay for upkeep of rent-controlled housing, decreasing the value of other (even uncontrolled) properties in the area. Other socio-economic impacts of rent control include reduced housing and labour mobility and a misallocation of rental housing where tenants occupying rent-controlled premises remain reluctant to move out even when their housing or economic needs change (for example, adult children leaving home or an increase in disposable income)⁶³.

⁶⁰ <https://www.economicsobservatory.com/does-rent-control-work>

⁶¹ David P Sims, 'Out of control: What can we learn from the end of Massachusetts rent control?' (January 2007) *Journal of Urban Economics*, Vol 61, Issue 1, 129-151

David H Autor et al., 'Housing Market Spillovers: Evidence from the End of Rent Control in Cambridge, Massachusetts' (June 2014) *Journal of Political Economy*, Vol 122, Number 3

Diamond et al, 'The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco' (September 2019) *American Economic Review*, Vol. 109, Number 9, pp.3365-94.

⁶² <https://www.economicsobservatory.com/does-rent-control-work>

⁶³ *Journal of Housing Economics*, March 2024, 'Rent control effects through the lens of empirical research'.

Impact analysis

	Potential benefits	Potential disadvantages
Option A No change	Lessors <ul style="list-style-type: none"> • Able to adjust rents to reflect market conditions. • Able to maximise recoup on investment. Tenants <ul style="list-style-type: none"> • No change. Government <ul style="list-style-type: none"> • No change. 	Lessors <ul style="list-style-type: none"> • None discernible. Tenants <ul style="list-style-type: none"> • Tenants on periodic lease have no certainty about rent increases. • Tenants vulnerable to excessive rent increases in times of economic boom. • Low-income tenants may find themselves without accommodation when vacancy rates are low. Government <ul style="list-style-type: none"> • Potential for increased impost on social housing when tenants are priced out of the private rental market.
Option B Cap rent increases in high pressure rent zones	Lessors <ul style="list-style-type: none"> • Lessors in high pressure rent zones retain the ability to increase rent up to a capped amount. • Lessors in most areas retain flexibility in relation to rent increases. Tenants <ul style="list-style-type: none"> • Protects tenants in high-risk communities from potentially being priced out of the rental market. • Helps to preserve the stability of the communities in high pressure rent zones. Government <ul style="list-style-type: none"> • Reduced risk of rental unaffordability in certain “high-risk” areas. • Increases economic and social sustainability of areas impacted by economic boom into the future. 	Lessors <ul style="list-style-type: none"> • For lessors in high pressure rent zones, loss of potential revenue beyond the rental cap. • May dampen investment in rental zones impacted by capping. Tenants <ul style="list-style-type: none"> • Risk of lessors increasing rents prior to implementation of regulation. • Risk of lessors only offering short term rentals to allow for flexibility to increase rents at each lease changeover. • No protections from rental increases provided to tenants living outside the “high pressure” zones. Government <ul style="list-style-type: none"> • May dampen investment in the rental market, which may increase pressure on social housing.
Option C Cap all rent increases	Lessors <ul style="list-style-type: none"> • Retain ability to increase rent up to a capped amount (for example, CPI). 	Lessors <ul style="list-style-type: none"> • Loss of ability to increase rents to meet market conditions. • Loss of potential revenue beyond the rental cap. • May dampen investment in rental accommodation.

Potential benefits	Potential disadvantages
<p>Tenants</p> <ul style="list-style-type: none"> • Protects tenants from being priced out of the rental market. • Greater certainty to tenants about potential rent increases. <p>Government</p> <ul style="list-style-type: none"> • Reduced risk of rental unaffordability. • Increases economic and social sustainability of areas impacted by economic boom into the future. 	<p>Tenants</p> <ul style="list-style-type: none"> • Risk of lessors artificially increasing rents prior to implementation of regulation. • Risk of lessors offering only short term rentals to allow for flexibility to increase rents at each lease changeover. <p>Government</p> <ul style="list-style-type: none"> • May dampen investment in the rental market which may increase pressure on social housing.

Table 7 - Impact analysis - Rent control measures

Assessment against the objective

The objective is to provide fairness and certainty in relation to rent increases for tenants, while maintaining the flexibility for lessors to make reasonable returns on their investment.

Option A

Option A partially achieves the objective. It gives lessors total flexibility to set rents as high as the market allows. In times of high demand, this means that they can increase rent prices and benefit from increased returns.

However, Option A provides no certainty to tenants about the amount their rent may increase by. Rent may increase by any amount (unless limited by the terms of a fixed term tenancy agreement). This means that during times of high demand and low supply, vulnerable tenants can find themselves unfairly priced out of the market. This situation is exacerbated for tenants living in high pressure rent zones that experience “boom and bust” cycles.

The RTA includes a mechanism permitting a tenant to challenge a rent increase in the Magistrates Court.⁶⁴ However, there is no certainty that an order would be made in the tenant’s favour and many tenants may be reluctant to take action for fear that their lease may be terminated.

Option B

Option B partially achieves the objective. Implementing Option B has the following advantages:

- allows lessors flexibility to set rents according to market forces in most areas;
- protects tenants living in high pressure rent zones from excessive rent increases during periods of high demand; and

⁶⁴ RTA s.32.

- may improve stability and continuity in communities which are subject to “boom and bust” cycles.

However, implementing Option B has the following disadvantages:

- lessors have less flexibility to manage their assets in high pressure rent zones;
- risk that lessors will offer short term tenancies to allow flexibility to change tenants and increase rental prices at the beginning of each new tenancy;
- risk that investment in the housing sector will be dampened. This may result in fewer available rental properties and put additional pressure on social housing stock;
- unknown consequential impacts for the broader housing sector; and
- protections against rent increases are only afforded to those tenants able to secure a tenancy in a high pressure rent zone; tenants not in controlled rent zones are not protected from excessive rent increases.

There is also difficulty with determining how and when “high pressure” rent zones would apply, how would restrictions be enforced and what impact these zones may have on any industry that forms a significant component of the WA economy.

Ultimately introducing a cap on rent increases is not recommended due to the significant market intervention that this would represent and the unknown consequences that such an intervention would have on the housing market. These issues are discussed in more detail below.

Option C

Option C partially achieves the objective.

Option C provides the greatest protection for tenants by putting limits on the amount that their rent can be increased, regardless of their circumstances. This allows tenants to budget for future rent increases and removes the risk that a “hot” rental market will leave tenants priced out of the rental market, whether they live in the Perth metropolitan area or in a mining community.

However, introducing a cap on rent increases reduces lessors’ flexibility to manage their asset and adjust rents according to market forces. This would reduce the returns that lessors are able to make on their investment and could dampen investment in rental homes.

Economists are generally of the view that rent controls have a negative impact on the housing market. In a 1990 poll of 464 economists 93 per cent of respondents agreed, either completely or with provisos, that “a ceiling on rents reduces the quantity and quality of housing available.”⁶⁵

⁶⁵ Richard M. Alson, J. R. Kearl, and Michael B. Vaughan, “Is There a Consensus Among Economists in the 1990’s?” *American Economic Review* 82, no. 2 (1992): 203–209.

However, some commentators have argued that rent control has been ineffective due to issues with the particular rent control mechanisms that have been tested and more nuanced policies may be more effective.

The issue of rent control was addressed in Victoria's review of its residential tenancy legislation in 2016. Victoria did not propose introducing rent controls because:

While rent price controls exist in certain markets overseas (for example, Germany), these markets are fundamentally different to Victoria, both in terms the nature of landlords in the market (larger institutional investors that can better manage risks) and easier pathways for landlords to evict tenants who are not meeting their obligations.

Because of this, rent price controls should not be viewed purely in the context of the review of the RTA. They form part of the broader debate on affordability and would need to be viewed holistically in the context of future directions in government housing policy across the entire housing market.⁶⁶

Based on the feedback provided to the CRIS, a similarly cautious approach is recommended for WA. There are many factors that affect affordability of rental premises in WA and the impact that a market intervention such as rent control would have on the rental sector is unknown. WA is already experiencing extremely low rental vacancy rates, partly due to limited housing stock. Any measures that may contribute to a further reduction in rental housing stock should be approached with caution.

Nevertheless, it is recommended that additional measures should be put in place to make it easier for a tenant to challenge a rent increase such as, increasing the timeframe within which a tenant can challenge a rent increase and requiring additional factors to be taken into account by the Magistrate's Court in determining if a rent increase is excessive. These amendments would be consistent with requirements in some other jurisdictions.

Several jurisdictions allow for disputes regarding excessive rent increases to be dealt with by the relevant tribunal or Commissioner rather than a court. In the future consideration may be given to whether disputes regarding excessive rent increases should be prescribed as a matter for which the Commissioner for Consumer Protection can make a decision as part of the new Determination process in Part III of the RTA. The viability of this option can be assessed once the new determination process has been operational for at least twelve months.

Recommendation 13 - Rent control measures

Maintain the status quo so that rent cap measures are not introduced at this time. Lessors can continue to determine the level of rent increase provided that, in the case of fixed term tenancy agreements, the agreement sets out the actual amount of the increase or the method of calculating the increase.

⁶⁶ Heading for Home, Residential Tenancies Act Review, Options Discussion Paper, Victoria State Government, page 79. (<https://engage.vic.gov.au/fairersaferhousing>)

Recommendation 14 - Challenging a rent increase

Amend the RTA to:

- increase the timeframe within which a tenant can make an application to the Magistrates Court for an order that the rent payable is excessive, from 30 days to 60 days; and
- expand the factors to be taken into consideration by the Magistrate's Court in making a determination as to excessive rent to include:
 - the rental rate for the premises before the proposed increase;
 - the period since the last rent increase;
 - the value of any work performed by the tenant or any improvements carried out by the tenant; and
 - any changes in the condition of the rented premises or facilities since the commencement of the residential tenancy agreement.

3.5 Charges for utilities (CRIS Part 4.6)

Issue

The cost of supplying utilities to a rental premises generally comprises supply charges (a cost for providing service to the premises), consumption charges (based on the amount used) and administration costs.

Different requirements apply in relation to the payment of costs for utilities depending on the type of utility, whether the account is in the name of the lessor or the tenant and whether the premises is separately metered.

The review considered whether the RTA fairly allocates the responsibility for the costs of supply and consumption of utilities between the lessor and the tenant.

Current situation

Generally, an account for a utility, such as electricity or gas, will be in the name of the tenant. However, there are some circumstances where the account will be in the lessor's name, for example, where there is only one master meter to the premises and individual premises are not sub-metered or where a lessor has installed solar panels and receives a rebate.

Section 49A of the RTA states that if an account for a utility such as electricity or gas is in the name of the lessor or a strata company, the tenant can only be required to pay charges in relation to the consumption of the utility and only in the following circumstances:

- where the premises are separately metered; or
- if the premises are not separately metered, if the tenancy agreement includes an alternative method for calculating the charge to be paid by the tenant.

This means that if the utility account is in the lessor's name, the lessor must pay any supply charge and other administrative charges on the account, not the tenant. By contrast, if the utility account is in the tenant's name, the tenant will pay the supply and other charges in addition to consumption costs.

Section 48 of the RTA provides that a lessor is responsible for payment of a rate, tax or charge imposed for the supply of water or sewerage services, except for a charge for water consumed. A lessor is therefore always responsible for supply charges in relation to water services, but a tenant may be required to pay for consumption. If a water bill is in the landlord's name, section 49A will apply.

Solar panels and solar installations

As noted above, a lessor may opt to retain a utility account in their own name where the lessor has installed solar panels on the premises. In some circumstances this is because the electricity account must be in the lessor's name so that the lessor can receive a payment for energy exported to the grid under a scheme such as the Renewable Energy Buyback Scheme (REBS) or Distributed Energy Buyback Scheme (DEBS).⁶⁷

Consumer Protection understands that some lessors, in retaining the ability to receive REBS or DEBS payments, do not pass these savings on to the tenants. Rather, they require the tenant to pay for the gross cost of the electricity consumption. One issue that flows from this is whether the tenant should be the beneficiary of such rebates or payments or whether the lessor should remain entitled to benefit from the payments as a means of offsetting the capital cost of installing the solar panels.

Another issue that has been raised is whether a lessor should be allowed to pass on some of the capital cost of solar panel installation to the tenants, who will benefit from the solar power generated by the system.

Objective

To ensure the RTA fairly allocates responsibility for the costs of supply and consumption of public utilities.

Options considered

The following options were considered in the CRIS:

Option A	Status quo Under this model there is no change to the current legislative regime. Irrespective of whether the premises are separately metered or not, where the utility account is in the lessor's name, tenants will only be required to pay for consumption of the utilities. In these instances, the lessor will continue to pay other additional charges including those for supply and administration of the utility account.
Option B	Amend the RTA to provide that a tenant will only be required to pay for utility costs if the premises are separately metered Under this option, if the utility account is in the name of the lessor, the cost of supply and consumption could only be passed on to the tenant if the premises are separately metered. If the premises are not separately metered, the lessor would be required to pay the full cost of utilities.

⁶⁷ A previous scheme, referred to as the Feed-in Tariff no longer applies. Further detail on buy-back schemes is available at www.wa.gov.au/organisation/energy-policy-wa/energy-buyback-schemes

Option C

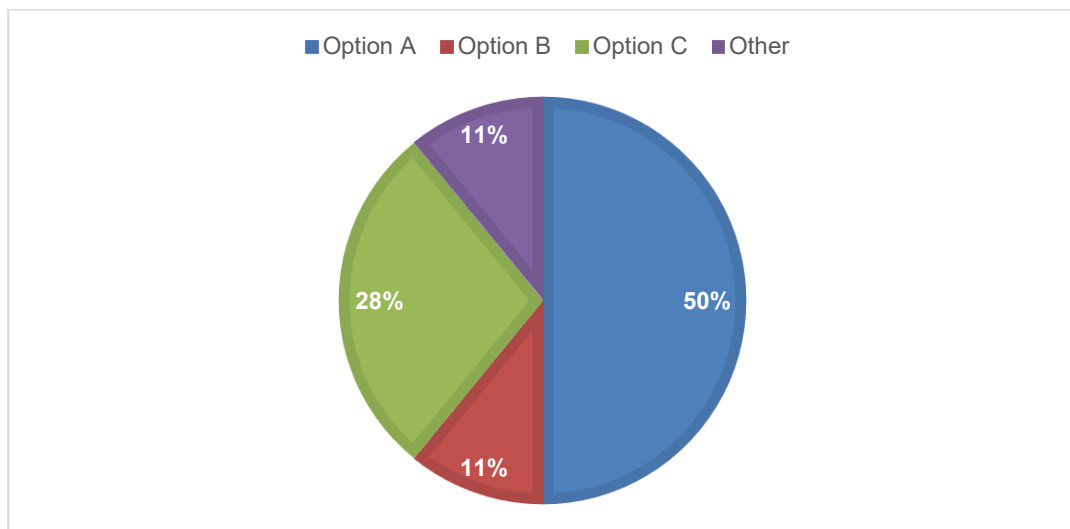
Amend the RTA to provide that a lessor must not require a tenant to pay charges other than charges payable by the lessor for the utilities supplied to the premises

Under this option, if the utility account is in the name of the lessor, the lessor could pass on to the tenant the supply and consumption charges shown on the master account, but not any other charges, for example, the cost of photocopying the account.

Stakeholder feedback to the CRIS

Of the 44 respondents to this question, 50 per cent supported Option A, 11 per cent supported Option B, 28 per cent supported Option C, and 11 per cent suggested an alternative option or did not express a preference.⁶⁸

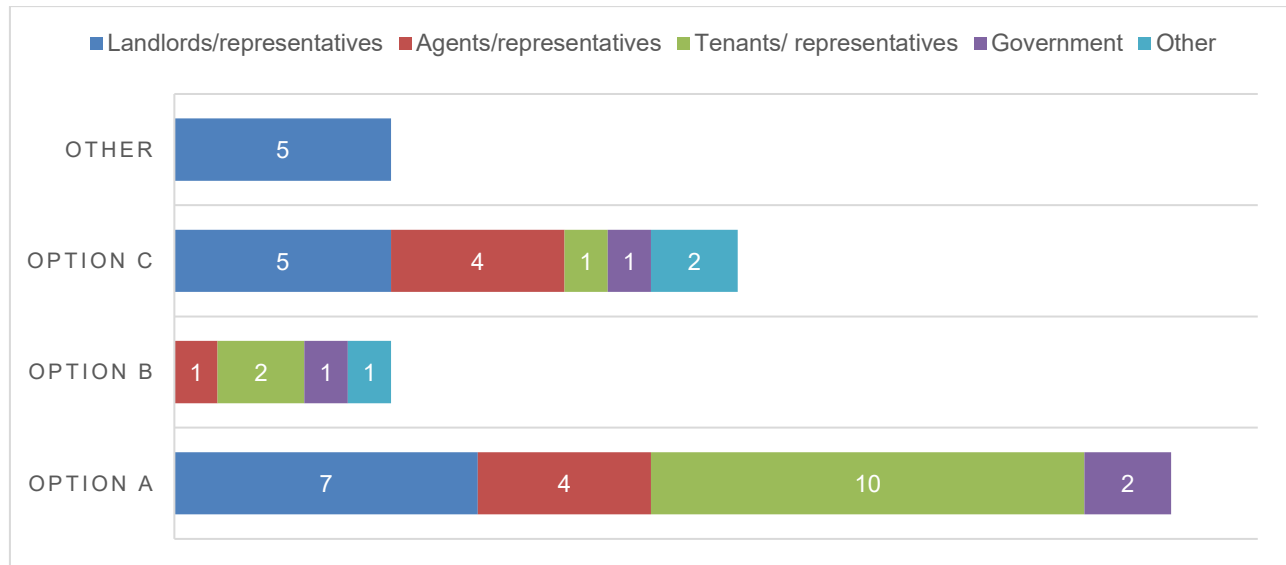
Figure 6 - Preferred option - Charges for utilities



Responses were split across different interest groups. Property stakeholder groups such as PICA and REIWA supported Option C (allowing the lessor to pass on supply and consumption charges), whereas a number of individual landlords and property managers or agents expressed support for Option A (status quo). Although only three tenants responded to this question, all supported maintaining the status quo. Disability advocate groups and Shelter WA supported Option A, while Circle Green supported Option B. Other community legal services groups supported Option A.

⁶⁸ Some respondents supported more than one option.

Figure 7 - Charges for utilities - Reponses by respondent type



Most respondents thought that it is reasonable for tenants to pay consumption costs for utilities.

A number of respondents who supported Option A submitted that the existing system works well and reduces the risk that tenants will be charged unjustified costs. Others suggested that, in circumstances where the landlord has opted to retain the account in their name, it is reasonable to require the tenant to pay consumption charges only.

WACOSS⁶⁹ noted that tenants may be disadvantaged in circumstances where they are not the ‘customer’ as they may have difficulty accessing payment arrangements, rebates or hardship payments. Requiring tenants to pay charges other than consumption in these circumstances could impose an additional cost burden that they are not able to pay.

One respondent stated that charges for supply and administrative costs are generally stable and can therefore be taken into account in setting the rent for premises, unlike consumption costs which fluctuate depending on the season and energy needs of a tenant.

One respondent raised concerns that the method of calculating a usage charge for unmetered premises may operate unfairly under the current provisions and suggested that Option B or C would be preferable.

Some respondents did not support Option B as it would limit the capacity of landlords to recover consumption costs for premises that are not separately metered, potentially leading to an increase in rents. Communities submitted that it is cost prohibitive to install separate meters at some premises.

One respondent suggested that if tenants are not required to pay for consumption, there is no incentive for tenants to limit use and wastage may occur.

⁶⁹ Western Australian Council of Social Services.

Some tenant representative groups raised concerns about the potential increase in costs for some tenants under Option B, as tenants would be required to pay supply costs in addition to consumption costs.

REIWA and PICA supported Option C and were of the view that landlords should be able to pass on both supply and consumption costs to tenants.

Solar panels

With regards to installation of solar panels, a number of respondents submitted that solar panels benefit tenants by way of reduced bills and it is reasonable to allow lessors to retain a buyback payment or rebate in order to recoup their capital outlay.

One tenant advocate suggested that if landlords are required to pass solar rebates or payments on to tenants, there is a risk that rents will be increased to take this change into account. This rent increase will apply for the whole year, whereas the benefit from the solar panels will fluctuate, potentially making the premises less affordable for tenants.

One lessor respondent suggested that lessors should be entitled to choose how payments from solar panels are to be used, for example, by retaining the payment in order to cover costs of installation and maintenance of the solar system or to use as an incentive to attract tenants.

Other jurisdictions

Legislation in most jurisdictions contains provisions regarding the lessor and tenant responsibilities for paying utilities. Residential tenancy laws in South Australia and Tasmania are silent in relation to the tenant's obligation to pay for utilities where the account is in the lessor's name. The approach of the remaining jurisdictions is set out in the table below.

Tenant and lessor responsibility for utility charges	
ACT ⁷⁰	The lessor is responsible for the cost of all utilities for which there is not a separate metering device to accurately determine the amounts consumed during the tenancy. The tenant is responsible for all charges associated with the consumption of utilities supplied to the premises, including gas, electricity, water, and telephone.
NSW ⁷¹	If the premises are separately metered, the tenant must pay all charges for the supply of the utility to the tenant. If the premises are not separately metered, the lessor must pay all charges for the supply of the utility to the tenant.
NT ⁷²	A lessor must not require a tenant to pay charges other than charges payable by the lessor for electricity, gas or water supplied to the premises.
QLD ⁷³	If the premises are not separately metered, a tenant can be required to pay an amount for utilities only if the agreement stipulates this and includes a method for calculating how the master account will be apportioned.

⁷⁰ Residential Tenancies Act 1997 (ACT), schedule 1, clauses 42 and 46.

⁷¹ Residential Tenancies Act 2010 (NSW), ss. 38, 39 and 40.

⁷² Residential Tenancies Act 1999 (NT), s. 117.

⁷³ Residential Tenancies and Rooming Accommodation Act 2008 (Qld), s.165.

Tenant and lessor responsibility for utility charges	
	If the tenant is required to pay any amount, the lessor is required to give the tenant a copy of the document issued by the relevant supply authority showing the amount charged. The lessor must provide this copy within 4 weeks of receiving the document. If the lessor fails to provide the document, the tenant is not required to make payment.
VIC ⁷⁴	<p>If the premises are separately metered, the tenant must pay all charges for the supply of the utility.</p> <p>If the premises are not separately metered, the lessor must pay all charges for the supply of the utility.</p> <p>A landlord and tenant may enter an agreement under which the tenant is liable for an amount in relation to the costs and charges for the installation of a solar energy system under the Solar Homes Program for the rented premises.</p>
WA	<p>The tenant must pay only for the charges related to the consumption of the utility⁷⁵. If the premises are separately metered, the tenant must be provided with a copy of the meter reading and charge per unit of consumption.</p> <p>If the premises are not separately metered, the lessor and tenant must have agreed in writing to an alternative method of calculating the charge for consumption.</p>

Table 8 - Tenant and lessor responsibility for utility charges - Australian jurisdictions

Impact analysis

	Potential benefits	Potential disadvantages
Option A	Lessors	Lessors
No change	<ul style="list-style-type: none"> Lessors permitted to recoup charges for consumption of utilities for both metered and unmetered properties (provided method of calculation agreed). 	<ul style="list-style-type: none"> Lessors not permitted to recover supply charges and administrative charges imposed by utilities providers.
	Tenants	Tenants
	<ul style="list-style-type: none"> Tenants will only be charged for consumption of utilities. Consumption must be metered or method of calculation previously agreed. 	<ul style="list-style-type: none"> Risk of excessive charges for utilities if the agreed method does not allocate consumption costs fairly. Risk that tenants not able to access subsidies or support if account not in their name.
	Government	Government
	<ul style="list-style-type: none"> No change. 	<ul style="list-style-type: none"> No change.

⁷⁴ Residential Tenancies Act 1997 (VIC), ss.52, 53 and 53AA.

⁷⁵ Where the utility is the supply of electricity the tenant must pay consumption charges and supply charges if the electricity service is in the tenant's name. If the electricity service is in the landlord's name, the tenant is only required to pay charges relating to their consumption.

	Potential benefits	Potential disadvantages
Option B Tenant will only be required to pay for utility costs if the premises are separately metered	<p>Lessors</p> <ul style="list-style-type: none"> Lessors permitted pass on both consumption and supply charges where premises are separately metered. <p>Tenants</p> <ul style="list-style-type: none"> Tenants in premises that are not separately metered will not be required to pay utilities costs. <p>Government</p> <ul style="list-style-type: none"> None discernible. 	<p>Lessors</p> <ul style="list-style-type: none"> Increased cost liability for lessors if the premises are not separately metered. <p>Tenants</p> <ul style="list-style-type: none"> Increased costs liability for tenants in separately metered premises (both consumption and supply charges). Rents may increase in unmetered properties. Risk that tenants not able to access subsidies or support if account not in their name. <p>Government</p> <ul style="list-style-type: none"> None discernible.
Option C Lessor may require a tenant to pay charges payable by the lessor for the utilities supplied to the premises, but no other fees	<p>Lessors</p> <ul style="list-style-type: none"> Allows lessors to pass on all costs that a tenant would otherwise pay if the utility account was in their name. <p>Tenants</p> <ul style="list-style-type: none"> Not required to incur costs for ancillary charges such as administration fees. <p>Government</p> <ul style="list-style-type: none"> None discernible. 	<p>Lessors</p> <ul style="list-style-type: none"> None discernible. <p>Tenants</p> <ul style="list-style-type: none"> Increased cost liability for tenants. Risk that tenants not able to access subsidies or support if account not in their name. <p>Government</p> <ul style="list-style-type: none"> None discernible.

Table 9 - Impact analysis - Charges for utilities

Assessment against the objective

The objective is to ensure that the RTA fairly allocates responsibility for the costs of the supply and consumption of public utilities.

Option A

Option A partly meets the objective. Tenants will only be required to pay the cost of consumption of utilities and only if the premises are separately metered, or the charge is calculated according to a method previously agreed to in writing by the lessor and the tenant. Landlords will be responsible for other costs in relation to utilities, such as supply charges and administrative fees. However, these fees are generally stable and landlords can take these costs into account when setting rents. Tenants may not be in a position to access payment arrangements, rebates or hardship assistance if the account is not in their name, however this may be balanced out by the fact that they are not liable for costs other than consumption. Option A was preferred by the highest proportion of respondents to the CRIS, indicating that there is limited support for change.

Option B

Option B partly meets the objective. Allocation of utilities costs varies depending on whether the premises are metered. If premises are metered, tenants will be responsible for all costs. Tenants may not be in a position to access payment arrangements, rebates or hardship assistance if the account is not in their name. In unmetered premises, the landlord does not have a mechanism for recovery of utilities charges and may be exposed to significant costs if consumption is high. There is a risk that rents will be increased in unmetered premises to mitigate this risk. Option B may result in inequity across different property types (metered or unmetered).

Option C

Option C partly meets the objective. Lessors will be permitted to pass on all charges payable by the lessor for utilities supplied to the premises. This reduces the lessor's potential liability in relation to the premises, but will increase costs for tenants (to include fees other than consumption). By limiting fees to only those charged to the lessor by the utility provider, Option C reduces the risk that tenants will be charged ancillary costs. Tenants may not be in a position to access payment arrangements, rebates or hardship assistance if the account is not in their name and may therefore be disadvantaged.

Having assessed each option against on the objective, on balance, Option A is recommended.

Recommendation 15 - Utilities costs

Maintain the status quo to retain the current RTA provisions relating to allocation of costs relating to public utilities services (supply and consumption).

Recommendation 16 - Solar panels

Maintain the status quo in relation to solar panels so that landlords and tenants should be free to reach agreement including:

- how any rebates or payments for energy exported to the network should be allocated; and
- whether a tenant agrees to contribute towards the installation of solar panels.

Recommendation 17 - Clarify obligation regarding utilities

The standard residential tenancy agreement form should be updated to clarify obligations of landlords and tenants in relation to payment of utilities and any solar rebates.

3.6 Rates and other charges (CRIS Part 4.7)

Issue

Some industry stakeholders have expressed a view that if tenants are going to lease premises for longer, they should be required to pay for expenses such as council rates, water rates and strata fees. The rationale for this argument is that they would have to pay these charges if they owned the premises, and therefore the lessor is subsidising the tenant's living arrangements.

Current situation

The RTA currently requires a lessor to pay all rates, taxes and charges in respect of the premises under the following laws⁷⁶:

- *Local Government Act 1995* (WA);
- *Land Tax Act 2002* (WA); and
- *Water Agencies (Powers) Act 1984* (WA) (other than for water consumed).

The RTA also provides that contributions payable by the lessor under the *Strata Titles Act 1985* (WA) or *Community Titles Act 2018* (WA) cannot be passed on to a tenant.

It is important to note that currently a lessor can claim all these property related taxes and charges as a tax deduction against any income earned from the rental business. If a lessor were to require a tenant to pay these rates and charges, it is unlikely that the lessor would be entitled to claim the deduction in those circumstances.

Objective

To ensure the RTA fairly allocates or apportions responsibility for land ownership expenses.

Proposal considered

The following proposal was presented in the CRIS for consideration.

All Australian jurisdictions prohibit a lessor from passing on rates and charges to the tenant, regardless of the length of the tenancy agreement. Lessors can currently claim all of these property related taxes and charges as a tax deduction against any income earned from the rental business. Given the above, it is not proposed to amend the RTA to allow a lessor to pass any rates and charges for the premises on to the tenant.

This proposal maintains the status quo. Consumer Protection is proposing to proceed with this recommendation unless stakeholder feedback provides substantive evidence of unintended consequences from this course of action.

⁷⁶ RTA s.48.

Stakeholder feedback to the CRIS

The proposal in the CRIS was very strongly supported, with 92 percent of respondents agreeing with the proposal to maintain the status quo.

Respondents who support maintaining the status quo highlighted the fact that rates and taxes are costs associated with owning an investment property and the lessor benefits by leasing the property out, these costs should therefore continue to be paid by the lessor. These respondents also stated that rates, taxes and other charges are usually taken into account in setting the rent payable. Concerns were also raised about whether tenants would be able to afford to pay rates, taxes and other charges in addition to rent.

Of the respondents who did not support the status quo, some suggested that tenants benefit from services provided, for example by local government, and should therefore contribute to payment of rates and taxes.

Other jurisdictions

All Australian jurisdictions prohibit a lessor from passing on most rates and charges applicable to the premises to the tenant, even in longer term tenancy arrangements.⁷⁷

Assessment against the policy objective

The objective is to ensure the RTA fairly allocates or apportions responsibility for land ownership expenses.

Consumer Protection proposed maintaining the status quo unless stakeholder feedback provided substantive evidence of unintended consequences from this course of action. Responses to the CRIS did not identify any unintended consequences.

Maintaining the status quo achieves the objective, as the evidence shows that there is no need to change arrangements and allow ownership costs to be passed on to the tenant. Lessors can currently claim all of these property-related taxes and charges as a tax deduction against any income earned from the rental business.

Recommendation 18 - Rates and other charges

Maintain the status quo so that the RTA prohibits a lessor from passing to the tenant any rates, statutory charges or contributions under strata or community titles legislation for the premises.

⁷⁷ *Residential Tenancies Act 1997 (ACT)* s.8 and Schedule 1 clauses 42-44
Residential Tenancies Act 2010 (NSW) s.40
Residential Tenancies Agreement 1999 (NT) s.117
Residential Tenancies and Rooming Accommodation Act 2008 (QLD) s.163
Residential Tenancies Agreement 1997 (SA) s.73
Residential Tenancy Act 1997 (Tas) s.17
Residential Tenancies Act 1997 (Vic) s.53.

4 THE PREMISES

4.1 Minimum standards (CRIS Part 5.1)

Issue

The review considered whether there is a need to amend the law to ensure premises offered for rent in Western Australia are fit for purpose and meet certain minimum standards.

Concerns have been raised about whether rental premises meet standards for habitation and are structurally sound. Issues have also been raised in relation to premises that do not meet basic energy efficiency standards causing additional expense and hardship for low-income tenants.

Current situation

The RTA currently includes requirements relevant to the standard of rental premises:

- the lessor must maintain the premises in a reasonable state of repair having regard to its age and character and must conduct any repairs within a reasonable period after the need for repair arises;⁷⁸
- the lessor must comply with all requirements in respect of buildings, health and safety under any other written laws that apply to the premises;⁷⁹ and
- the lessor must provide and maintain prescribed security on the premises.⁸⁰

There are also some requirements relating to minimum standards of rental premises in other legislation. For example:

- Building Regulations 2012 (WA) - requires a lessor to have compliant smoke alarms installed in the premises before premises are made available for rent;
- Electricity Regulations 1947 (WA) - requires a lessor to have at least two residual current devices (RCDs) installed on the rental premises protecting all power and lighting circuits; and
- *Health (Miscellaneous Provisions) Act 1911 (WA)* - requires all residential premises to have sanitary conveniences, as well as bathroom, laundry and cooking facilities.

Despite these requirements, Consumer Protection frequently receives calls from tenants expressing concerns about living in uninhabitable premises. The CRIS included case studies describing tenants residing in premises which were infested with mould, had live electrical wires hanging from the ceilings, and lacked a functioning toilet.

It appears more explicit requirements may be needed to ensure premises offered for rent meet basic standards.

⁷⁸ RTA s.42(2)(b).

⁷⁹ RTA s.42(2)(c).

⁸⁰ RTA s.45.

The Department of Health is currently considering updating the minimum standards required under the *Health (Miscellaneous Provisions) Act 1911* (WA). In its report summarising the consultation received in response to the proposals, the Department recommended amending that Act to include the following minimum requirements for habitable buildings:⁸¹

- structurally sound and in good repair and condition;
- have fittings and fixtures maintained in safe, sanitary, good working order;
- comply with the National Construction Code, including for the provision of facilities; and
- have an adequate supply of hot and cold water.

It also recommended preventing overcrowding by prescribing a minimum cubic air space per room and requiring a minimum standard of ventilation. The implementation of these reforms is still subject to a regulatory impact assessment process.

Impact of poor housing on health

There is evidence to suggest that poor housing standards, such as excessive cold, heat or mould, can contribute to poor health outcomes for residents. This is particularly problematic for renters, who have limited ability to modify the premises to address issues such as mould or ventilation that affects the health of occupants.

According to data collected by the Healthy Homes for Renters group, every year 10,000 Australians die due to cold, and heatwaves are responsible for more deaths than all other extreme weather events combined. There is also some evidence to suggest that mould and damp may contribute to childhood asthma and respiratory infections.⁸²

Objective

To ensure rental premises are fit for purpose and comply with minimum standards relating to safety, health and community expectations in relation to amenity.

Options Considered

The following options were presented in the CRIS for feedback.

Option A	Status quo Under this model there is no change to the current legislative regime.
Option B	Amend the RTA so that minimum standards for rental premises, and the process for monitoring and enforcing those minimum standards, can be prescribed.

⁸¹ Consultation Summary Report – Managing housing health risks in Western Australia – March 2020 Department of Health (WA) https://ww2.health.wa.gov.au/-/media/Corp/Documents/Improving-health/Public-health-act/Regulation-review/Consultation-summary-report_Managing-housing-health-risks-in-WA.pdf

⁸²<https://static1.squarespace.com/static/602f0d14c4c0a77efc25e152/t/6076552863385c3133303beb/1618367785391/Sources+-+homepage+figures.pdf>

Under this option, the RTA would be amended to allow the regulations to prescribe minimum standards that premises are required to meet and also prescribe processes for monitoring and enforcing these standards. If minimum standards are prescribed, these would be developed in consultation with key stakeholders.

Stakeholder feedback to the CRIS

A majority (76 per cent) of respondents supported introducing minimum standards (Option B). Twenty-six per cent supported no change (Option A).

Option A

The majority of the 25 responses supporting no change were lessors, property managers or real estate agents and their representatives. These respondents questioned the benefit of introducing minimum standards and raised concerns about minimum standards resulting in additional red tape, rent increases and lessors leaving the rental market due to increased costs.

Several respondents, although in favour of Option A, indicated their support was limited to standards on basic health, safety and security matters. These respondents did not support introducing minimum standards that went beyond these matters including, for example, energy efficiency standards.

REIWA and PICA also did not support minimum standards extending to energy efficiency and argued that adequate safeguards are already in place. REIWA suggested implementing onerous minimum standards would create inequity because standards considered acceptable for housing vary depending on whether the property is owner-occupied or rented. REIWA believed this inequity will act as a barrier to lessors offering their properties for rent.

Option B

The majority of the 73 responses expressing support for introducing minimum standards were tenants and their representatives. However, a number of lessors or property managers/real estate agents also supported the proposal.

Respondents who supported introducing minimum standards expressed concerns about vulnerable tenants living in uninhabitable premises, with little or no power to demand that standards be met.

Circle Green Community Legal supported introducing minimum standards based on the principle that tenants deserve to live in safe and healthy homes. Circle Green's view is that minimum standards should be applied to private rentals as well as social housing.

Shelter WA, Renting Alliance WA, Anglicare, WACOSS, Carers WA, People with Disabilities WA and a number of community legal centres (regional and metropolitan) strongly supported the introduction of minimum standards with a number expressing strong support for the inclusion of energy efficiency and climate appropriate standards.

For example, WACOSS noted that home energy inefficiency is a key driver of utility stress and energy poverty for low-income households. Shelter WA noted that the impact of climate change is magnified for renters if their housing is not energy efficient given that tenants living in social housing are disproportionately affected by increases in power and utility bills.

Adequate monitoring and enforcement were seen by stakeholders as critical to the success of imposing minimum standards. It was also noted that low standard housing disproportionately impacts low-income tenants who most need the support and that minimum standards would better protect this sector of the population.

A number of private lessors supported the introduction of minimum standards noting that they kept their properties in good order and believed that issues should be fixed as they arise.

Government agencies

The Department of Water and Environmental Regulation supported reforms that promote improved water efficiency and energy use. This included introducing minimum standards for compliant plumbing and drainage, and energy efficiency.

The Department of Planning Lands and Heritage supported introducing minimum standards on the basis that it would improve the quality of available rental premises and ensure a minimum standard for health and safety.

Communities submitted that introducing minimum standards is more suitable for private rental situations than government housing programs. Communities indicated it may support the introduction of minimum standards subject to considering the standards proposed. Communities also noted that it may need to seek an exemption if the proposed minimum standards would be too costly to implement as this could potentially impact its capacity to provide public housing to those in need.

What minimum standards should be included?

The CRIS asked respondents to identify what the minimum standards should cover. The following lists the range of standards identified by stakeholders:

- structurally sound and weatherproof;
- working plumbing and electrical systems, including hot and cold water;
- free from damp and mould;
- adequate security;
- adequate room dimensions;
- adequate ventilation;
- adequate lighting;
- adequate waste disposal facilities;
- adequate cooking, washing and laundry facilities;

- free from vermin and pests;
- ceiling insulation;
- window coverings in all living and bathroom areas;
- fixed heaters, ceiling fans or suitable cooling devices installed in main living areas;
- flyscreens;
- RCD and smoke alarms;
- minimum standards of energy efficiency; and
- standards addressing the needs of people with a disability, for example, access to and within the property.

Several respondents suggested that rather than introducing specific standards, broad minimum standards could be introduced, for example, requiring that premises are safe, in terms of both structure and electricity and that the plumbing is functioning properly.

Other jurisdictions

Most other jurisdictions prescribe minimum standards as summarised below.

	NSW	QLD	SA	TAS	VIC
Do minimum standards apply to social housing?	✓	✓	✓	✓	✓
Structurally sound	✓	✓	✓	✓	✓
Cleanliness	✓	✓	✓	✓	✓
Adequate light	✓	✓	✓	✓	✓
Ventilation	✓	✓	✓	✓	✓
Insulation	x	✓	x	x	x
Protection from damp and flooding	✓	✓	✓	✓	✓
Electricity and gas supply	✓	x	✓	✓	✓
Compliant plumbing and drainage	✓	✓	✓	x	x
Supply of hot and cold water for drinking, washing and cleaning	✓	✓	✓	✓	✓
Private bathroom facilities	✓	✓	✓	✓	✓
Dimensions of the rooms	x	x	✓	x	x

	NSW	QLD	SA	TAS	VIC
Laundry and cooking facilities	x	✓	✓	✓	✓
Energy efficiency	x	x	✓ ⁸³	x	✓
Free from vermin	x	✓	✓	x	x
Access to and within premises	x	x	✓	x	✓
Fire safety (i.e. working smoke alarms)	✓	✓	✓	✓	x
Heating device in main room	x	x	x	✓	✓
Window coverings	x	✓	x	✓	✓

Table 10 - Minimum standards Australian jurisdictions

From 1 July 2024, South Australia implemented reforms to its rental laws⁸⁴ including a requirement that a landlord must ensure the property complies with minimum housing standards⁸⁵, including the matters outlined in Table 10 and the following requirements:

- the property must be maintained so as not to present a fire hazard;
- must be free from material or substances that pose a serious risk or harm to the health of occupants (e.g. disturbed or damaged asbestos);
- each internal wall and ceiling must be constructed from rigid material;
- ceiling height must be compliant with relevant law; and
- stairs must be compliant with relevant law.

South Australia also introduced a requirement for new or replacement appliance, fittings or fixtures in rental properties to meet prescribed energy efficiency and water saving standards.⁸⁶

⁸³ Applies to new or replacement appliances, fixtures or fittings.

⁸⁴ *Residential Tenancies Act 1995* (SA) s.67A .

⁸⁵ Prescribed under the *Housing Improvement Act 2016* (SA)

⁸⁶ *Residential Tenancies Act 1995* (SA) s.68A.

The ACT legislation currently requires that a property is fit for habitation and in a reasonable state of repair and reasonably secure.⁸⁷ The ACT legislation has recently been amended to provide that premises must comply with prescribed minimum housing standards.⁸⁸ A minimum housing standard has been prescribed for ceiling insulation.⁸⁹ Between 1 April 2023 and 30 November 2026, landlords in the ACT will have nine months from when a new lease is signed for the property to comply with the standard. This will allow landlords adequate time to make the required changes in their properties and will stagger upgrades to avoid a demand spike on insulation and insulation installers.⁹⁰

In the Northern Territory a landlord must not enter into a tenancy agreement unless the premises are habitable and meet health and safety requirements specified under other legislation.⁹¹

On 26 November 2024, Victoria introduced new minimum standards for renters via the *Residential Tenancies and Residential Tenancies (Rooming House Standards) Amendment (Minimum Energy Efficiency and Safety Standards) Regulations 2024* (the Vic Regulations). The amendments prescribe a new heating standard for rooming houses, and a new safety standard for blind cord anchors to apply to all rental properties. The Vic Regulations allow for a staged commencement of each standard to allow sufficient time for compliance.⁹²

In relation to energy efficiency standards, all State and Territory governments are currently undertaking a collaborative project to create and enforce a home energy ratings disclosure framework. The framework sets out a national approach to assessing and disclosing the energy efficiency of homes when selling or renting a home. It is proposed that the framework and disclosure scheme will be phased in from 2025.⁹³

Impact analysis

	Potential benefits	Potential disadvantages
Option A No change	<p>Lessors</p> <ul style="list-style-type: none"> No potential increased costs. <p>Tenants</p> <ul style="list-style-type: none"> No potential increased costs. 	<p>Lessors</p> <ul style="list-style-type: none"> None discernible. <p>Tenants</p> <ul style="list-style-type: none"> Tenants remain vulnerable to sub-standard housing impacting their health and wellbeing. Risk of “retaliatory” actions such as rent increases and evictions if tenants report poor housing standards.

⁸⁷ *Residential Tenancies Act 1997* (ACT) schedule 1 clause 54.
⁸⁸ *Residential Tenancies Act 1997* (ACT) s.19A – s.19C – minimum standards may be prescribed in relation physical accessibility, energy efficiency, safety and security, sanitation and amenity.
⁸⁹ Residential Tenancies Regulations 1998 (ACT) Part 3.
⁹⁰ [Minimum housing standard for ceiling insulation in rental properties - ACT Government](#)
⁹¹ *Residential Tenancies Act 1999* (NT) s.47.
⁹² [Minimum Standards for Rental Properties and Rooming Houses | Engage Victoria](#)
⁹³ [National Framework for Disclosure of Residential Energy Efficiency Information](#)

	Potential benefits	Potential disadvantages
	<p>Government</p> <ul style="list-style-type: none"> • No change. 	<p>Government</p> <ul style="list-style-type: none"> • Non-compliance with current laws will continue – risk that substandard rental premises will continue to be leased with downstream impacts on the public health system.
Option B Introduction of minimum standards	<p>Lessors</p> <ul style="list-style-type: none"> • Provides a level playing field whereby all lessors are required to provide premises that meet minimum standards. • Reduced risk of legal action as a result of injuries/health problems arising from poor housing standards. • Increased awareness of obligations under the RTA. <p>Tenants</p> <ul style="list-style-type: none"> • Improve quality of available rental homes. • Clear guidelines may minimise disputes. • Better health outcomes. <p>Government</p> <ul style="list-style-type: none"> • Provides certainty that tenants are housed in premises that meet minimum standards expected by the community. • Increased compliance with health and safety standards – reducing downstream impacts on the public health system. 	<p>Lessors</p> <ul style="list-style-type: none"> • Potential additional costs to comply with minimum standards, both initially and for ongoing maintenance. <p>Tenants</p> <ul style="list-style-type: none"> • Potential rent increases due to increased costs for lessors in complying with minimum standards. • Concerns about ‘retaliatory action’ if concerns about non-compliance are actioned i.e. lease termination on no grounds or rent increased above household’s ability to pay. <p>Government</p> <ul style="list-style-type: none"> • Potential additional costs associated with ensuring compliance.

Table 11 - Impact analysis - Minimum standards

Assessment against the objective

The objective is to ensure that rental premises are fit for purpose and comply with minimum standards relating to safety, health and community expectations in relation to amenity.

Option A

Option A does not achieve the objective. There is a risk that some tenants, particularly those who are vulnerable, may continue to rent premises that do not meet basic standards expected by the community. While the RTA and other legislation include some standards in relation to premises, it appears more explicit requirements may be necessary.

Option B

The introduction of minimum standards will address issues raised and meet the objective. Minimum standards for rental premises will ensure rental premises are healthy, safe, functional and secure and will provide clarity for lessors and tenants about their rights and obligations.

Implementing Option B is likely to:

- improve outcomes for (often vulnerable) tenants living in sub-standard housing;
- clarify lessor obligations in terms of requirements to ensure premises are liveable and fit for purpose;
- increase costs for some lessors in complying with minimum standards;
- provide a level playing field for lessors, many of whom already ensure the standard of rental premises meet community expectations; and
- increase costs to government in administering and enforcing minimum standards but decrease costs via reduced demand for public health services.

The proposal to introduce minimum standards is consistent with the approach taken in a number of other Australian jurisdictions.

Some stakeholders expressed concern that the proposed reforms would result in declining investor confidence and reduce housing stock in the residential tenancy sector. Queensland recently introduced a package of reforms including minimum housing standards.⁹⁴ In assessing the likely impact of reforms, Queensland commissioned Deloitte to undertake an economic analysis of their reform package.⁹⁵ Deloitte found that imposing minimum standards would have a negligible impact on the costs to investors of owning a property – between \$8 to \$99 per investment property per year.⁹⁶

While the number of rental properties vary between Queensland and WA, there are sufficient similarities between the Queensland and WA rental markets to suggest that the economic impact on the Western Australian residential tenancy sector is also likely to be negligible.

⁹⁴ *Queensland Housing Legislation Amendment Act 2021* (Qld).

⁹⁵ Deloitte Access Economics (July 2021) 'updated economic analysis of Queensland residential renting reforms', accessed from [Economic Analysis of Queensland Residential Renting Reforms \(chde.qld.gov.au\)](https://www.chde.qld.gov.au) p.3.

⁹⁶ *Ibid* 42.

National Cabinet Recommendation

The National Cabinet recommendations include the following in relation to minimum standards:

9. Phase in minimum quality standards for rental properties (e.g. stovetop in good working order, hot and cold running water).

Recommendation 19 - Minimum standards

Amend the RTA to:

- Require lessors to ensure that premises comply with minimum standards.
- Include a list of minimum standards drawing on existing WA building, health and safety laws that apply to premises (referenced in section 42(2) of the RTA) and any additional minimum standards that apply in a majority of Australian states and territories.

For example:

- structurally sound and weather proof;
 - cleanliness;
 - adequate lighting and ventilation;
 - protection from damp, flooding and mould;
 - electricity and gas supply;
 - plumbing and drainage;
 - supply of hot and cold water for drinking, washing and cleaning;
 - private bathroom facilities;
 - laundry and cooking facilities in good working order;
 - free from vermin;
 - access to and within premises;
 - fire safety (i.e. working smoke alarms); and
 - energy efficiency.
- Include a penalty for failure to comply with the minimum standards.
 - Make provision for regulations to prescribe additional minimum standards and requirements for minimum standards.
 - Require landlords to maintain the premises so that do not fall below the minimum standards during the term of the tenancy.

Further work will be undertaken during drafting to refine the list of minimum standards.

4.2 Ongoing maintenance and repairs (CRIS part 5.4)

Issue

Consumer Protection frequently receives complaints from tenants and property managers about lessors who are unable or unwilling to undertake necessary repairs to the rental premises. Complaints are also received about lessors and property managers who simply do not respond to requests for repairs and maintenance or terminate a tenancy agreement if the tenant asks for repairs.⁹⁷

The review considered how to ensure that lessors fulfil their obligations under the RTA to ensure repairs are undertaken including by responding to requests for repairs in a timely manner.

Current situation

Under the RTA, a lessor must maintain the premises in a reasonable state of repair having regard to its age and character and must conduct any repairs within a reasonable period after the need for repair arises.⁹⁸ In relation to a request for urgent or essential repairs, lessors must respond within 24 or 48 hours depending on the nature of the repair issue.⁹⁹

Under the RTA a tenant has the following options to remedy a situation where a lessor has not attended to repairs:

- In relation to a request for urgent repairs, where a lessor cannot be contacted or has not made the necessary arrangements for an urgent repair within the required timeframe, a tenant can arrange the repairs to the minimum extent necessary and the lessor must reimburse the tenant as soon as practicable.¹⁰⁰
- If the lessor fails to comply with their obligation to maintain and repair, the tenant may make an application to the Magistrates Court in relation to the breach. The court has the power to make a broad range of orders including that:
 - the lessor carry out repairs or maintenance;
 - the lessor reimburse the tenant for repairs;
 - the lessor pay compensation to the tenant for loss or injury caused by the breach; and
 - rent be paid directly to the Magistrates Court until any required maintenance or repair work has been carried out or compensation to the tenant has been determined.¹⁰¹
- If the Magistrates Court makes an order that the lessor reimburse the tenant for expenses incurred in carrying out urgent repairs, the court may also make an order requiring the lessor to pay a 'tenant compensation bond' to the Bond Administrator,

⁹⁷ From June 2022 to May 2024, Consumer Protection received almost 2,000 calls from tenants regarding lessors not performing maintenance on the premises. This accounts for approximately seven per cent of the calls received from tenants during that period.

⁹⁸ RTA s.42.

⁹⁹ RTA s.43.

¹⁰⁰ RTA s.43(3).

¹⁰¹ RTA s.15.

in order to cover any future tenant compensation orders that might be made against the lessor.¹⁰²

- A tenant can seek an order from the Magistrate’s Court for termination of a tenancy due to breach of the maintenance and repair obligations.¹⁰³

While these provisions give tenants some options to ensure repairs happen, they have limitations. For example, a tenant may be unable to afford to pay for urgent repairs upfront and then wait for reimbursement by the lessor.

Going to court is often costly and time consuming and some tenants may choose to live with the disrepair rather than pursue a matter. Some surveys have found that tenants are afraid to ask for repairs in case the lessor takes action to terminate their tenancy agreement or increase their rent. It is too early to work out whether the retaliatory action provisions of the RTA will impact tenants’ current reluctance to go to court to enforce their rights in relation to lessors who do not comply with maintenance and repair obligations.

No orders have been made by the court to date under the tenant compensation bond provision¹⁰⁴, indicating that the provision may be unknown to tenants or they are unwilling or unable to pursue it as an option given the low vacancy rate.

Objective

To ensure that lessors perform maintenance and repair obligations in a timely manner.

Options considered

The following options were presented in the CRIS for feedback:

Option A	Status quo
	Under this model, there would be no change to the current legislative regime. Lessors would continue to have obligations to undertake urgent and essential repairs within prescribed timeframes and all other repairs within a reasonable period. If a lessor failed to undertake repairs, a tenant would continue to be able to make arrangements for those repairs and seek compensation from the lessor, or alternatively apply to the court for an order that the lessor perform the repairs.

¹⁰² RTA s.59D.

¹⁰³ RTA s.75.

¹⁰⁴ RTA s.59D.

Option B Require all lessors to lodge a lessor bond with the Bond Administrator

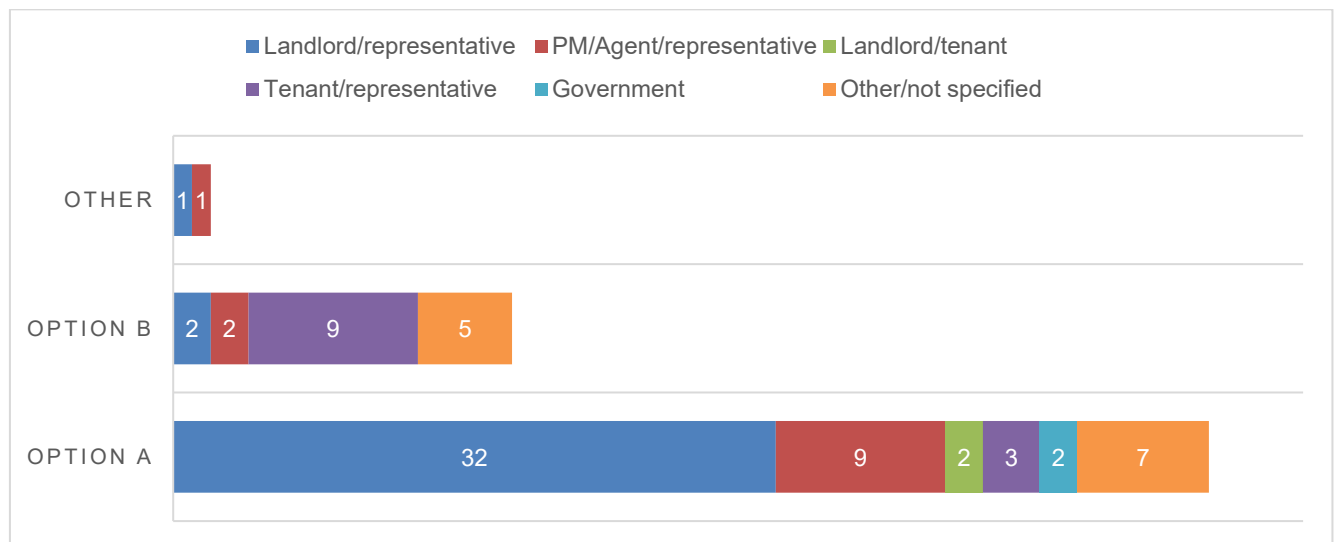
As per above, lessors will continue to have obligations to undertake urgent and essential repairs within prescribed timeframes and all other repairs within a reasonable period, however, if the lessor fails to comply with their repair obligations, rather than the tenant having to pay for the repairs upfront, the tenant could make an application to the Bond Administrator for the repairs to be paid from the bond. Similar to the security bond required of tenants at the start of a tenancy agreement, the lessor bond would operate to ensure that lessors meet their duties and obligations under the residential tenancy agreement for repairs and maintenance.

The amount of the security bond would be prescribed in the legislation. The amount would be determined in consultation with stakeholders. It is possible that different amounts will apply where a lessor owns multiple properties.

Stakeholder feedback to the CRIS

Of the 75 responses to the CRIS in relation to this issue, 73 per cent supported Option A, 24 per cent supported Option B, and 3 per cent supported an alternative option.

Figure 8 - Preferred option - Maintenance and repair obligations



Option A

The majority of responses in relation to this issue were received from lessors, property managers or agents and their representatives, who generally supported Option A.

While lessors acknowledged that they have a responsibility to maintain premises, a number raised concerns about the financial impact of a lessor bond, particularly for lessors who own a number of rental properties. Some suggested that a requirement to pay a lessor bond could impact cash flow for lessors and limit their ability to carry out maintenance of the rental premises. Some submitted that a lessor bond would operate as a disincentive for investment in rental properties.

Concerns were also raised about the increased administrative burden of a lessor bond requirement and potential for an increased number of disputes.

A number of respondents submitted that current RTA provisions with regards to maintenance and repair are adequate.

REIWA supported Option A and submitted that introducing a lessor bond:

- would create additional costs for all lessors due to the actions of a small minority;
- will not address the bigger issues of non-compliance with maintenance and repair requirements and will only increase costs and administrative burdens for the lessors already doing the right thing; and
- will add no additional value to tenants if they rent a property through a real estate agent as agents generally hold up to one month's rent in trust before being paid to the lessor.

Communities submitted that while a lessor bond would ensure there are some available funds for repairs and maintenance where the lessor is not meeting their repair obligations, it ties up funds of all lessors, including those who will do the 'right thing' anyway. This approach would penalise model landlords for the behaviour of others and may detrimentally impact investment in rental housing. In addition, some lessors may decline to undertake requested repairs with the knowledge that the tenant can organise the repairs themselves with the cost coming out of the lessor bond.

Some respondents suggested that a requirement to pay a lessor bond would not necessarily address issues around lessors failing to comply with maintenance obligations. One respondent stated "having a bond does not materially change the significant hurdles a tenant would face in getting repairs and maintenance done. The hurdle is not usually the liquidity of the lessor – it is instead the attitude and imbalance of power between lessor and tenant that means that tenants often choose not to even pursue their rights in this regard at all."¹⁰⁵

Option B

Those stakeholders who supported Option B highlighted the vulnerable position of some tenants under current arrangements, particularly tenants on low-incomes. It was suggested that introduction of a lessor bond will provide certainty that funds are available at the time repair is needed, limiting the impact that a lessor's financial position has on their ability to carry out repairs.

It was noted that while Option B would increase upfront costs to lessors, it would also give both lessors and tenants certainty over the lessor's ability to pay for maintenance and repairs.

Some respondents submitted that tenants often accept sub-standard conditions for long periods while waiting for repairs.

¹⁰⁵ Submission from Li Aoning, tenancy lawyer.

Tim Clifford, former MLC for the East Metropolitan Region, submitted that going to court to enforce maintenance obligations is extremely onerous for tenants, and even if the tenant is successful, the court process is lengthy and the tenant may be forced to live in inappropriate housing for a significant amount of time.

Alternatives suggested

Other suggestions from respondents for addressing issues with regards to maintenance obligations include:

- improving clarity around repair obligations, for example, by imposing a timeframe on the requirement to undertake non-urgent repairs;
- providing both landlords and tenants with education on their rights and responsibilities;
- expanding the definition of ‘urgent repairs’; and
- streamlining the dispute resolution process.

Other jurisdictions

Lessor bonds are not required in other Australian jurisdictions.

Similar to WA, tenancy legislation in all other jurisdictions imposes maintenance and repair obligations on the lessor, including an obligation to undertake urgent repairs in a timely manner.

With regards to urgent repairs, a number of jurisdictions include an extensive list of matters that fall within the scope of “urgent” or “emergency repairs”.¹⁰⁶

All jurisdictions include a mechanism for tenants to organise urgent repairs and seek reimbursement from the lessor. In some jurisdictions:

- a timeframe is set for reimbursement, for example seven days¹⁰⁷ or 14 days¹⁰⁸; or
- there is a limit on the amount a tenant can seek as reimbursement for urgent repairs.¹⁰⁹

With regards to non-urgent repairs, some jurisdictions include specific processes by which a tenant can seek an order for repairs to be undertaken, including requirements for tenants to give notice about maintenance or repairs required and timeframes within which a lessor must respond.

¹⁰⁶ Those jurisdictions include New South Wales, Victoria, Queensland, Australian Capital Territory and Northern Territory.

¹⁰⁷ Victoria and Queensland.

¹⁰⁸ New South Wales and Tasmania.

¹⁰⁹ Victoria, New South Wales, Queensland, Australian Capital Territory and Northern Territory.

In Victoria, a tenant can apply to the Director¹¹⁰ to investigate whether the lessor is in breach of the duty to ensure that the premises are maintained in good repair. The Director may investigate, negotiate with the lessor about maintenance required, issue a report and direct that work be done.¹¹¹ A tenant may also apply to the Tribunal for orders requiring work to be done, compensation or permitting the tenant to pay rent into the Special Rent Account until maintenance work has been completed.¹¹² Similar provisions apply in New South Wales, where the NSW Commissioner for Fair Trading may investigate whether a landlord has breached the obligation to maintain and repair premises and make a rectification order.¹¹³ In Tasmania a tenant may apply to the Commissioner for an order that the lessor carry out or arrange for the carrying out of repairs.¹¹⁴

Impact analysis

	Potential benefits	Potential disadvantages
Option A No change	Lessors <ul style="list-style-type: none"> No additional costs. Tenants <ul style="list-style-type: none"> No change. Government <ul style="list-style-type: none"> No change. 	Lessors <ul style="list-style-type: none"> Risk that funds will not be available. Tenants <ul style="list-style-type: none"> Unlikely to be any change to the way some lessors respond to requests for repairs, leaving some tenants living in sub-standard premises, particularly during times of low vacancy rates when tenants are fearful of asserting their rights. Low-income tenants likely to remain particularly vulnerable as they are unlikely to be able to afford to pay for repairs in the first instance or to go to court to have the lessor fulfil their obligations. Government <ul style="list-style-type: none"> No change.

¹¹⁰ A position similar to the Commissioner under the RTA.
¹¹¹ Residential Tenancies Act 1997 (Vic) s.74.
¹¹² Residential Tenancies Act 1997 (Vic) ss.76 and 77.
¹¹³ Residential Tenancies Act 2010 (NSW) s.65C.
¹¹⁴ Residential Tenancy Act 1997 (Tas) s.36A.

	Potential benefits	Potential disadvantages
Option B All lessors to lodge a bond with the Bond Administrator	Lessors <ul style="list-style-type: none"> Lessors will have certainty that they can meet their repair obligations under the RTA as funds are set aside ahead of time. Tenants <ul style="list-style-type: none"> Reduced risk that repairs and maintenance will not be undertaken. Repairs and maintenance bond can be accessed to compensate lessor if repairs are required. Government <ul style="list-style-type: none"> Potential for disputes and action pursued in the courts to be minimised. 	Lessors <ul style="list-style-type: none"> Increased cost for all lessors in having to deposit a repair bond with the Bond Administrator. Tenants <ul style="list-style-type: none"> Potential for increased rents. Government <ul style="list-style-type: none"> Potential significant cost to government in receiving and holding bonds with the Bond Administrator and dealing with applications for release of bond monies.

Table 12 - Impact analysis - Maintenance and repair

Assessment against the objective

Option A

Option A partially achieves the objective of ensuring that lessors comply with maintenance and repair obligations. The current RTA provisions impose a clear obligation on lessors to maintain and repair the premises and various mechanisms for enforcement of those obligations by tenants.

However, feedback from some stakeholders suggests that the current provisions are ineffective, with some landlords failing to comply with maintenance and repair obligations. Notwithstanding that the RTA contains mechanisms for tenants to enforce these obligations, a number of respondents claim that these mechanisms are too costly and onerous for tenants. There is also some evidence to suggest that in times of low vacancy rates tenants are reluctant to request repairs and maintenance due to fears of eviction and difficulty finding another affordable rental home.

Option B

Option B may partly achieve the objective, by ensuring that funds are readily available for repairs in some circumstances. However, stakeholder feedback suggests that introduction of a lessor bond would not be effective in achieving the objective of ensuring lessors perform maintenance and repairs in a timely manner.

Payment of a lessor bond would ensure that funds are available in circumstances where a lessor fails to comply with maintenance and repair obligations and would address circumstances where a tenant is unable to afford to pay for repairs and seek reimbursement from the lessor. However, introduction of a lessor bond would increase up-front costs for landlords and could potentially tie up funds that should be spent on improving the premises. There is a risk that landlords will not take action to undertake repairs in the knowledge that a tenant can make an application to the Bond Administrator for release of funds to pay for the repairs. This shifts the onus onto the tenant in relation to maintenance and repair obligations.

A lessor bond scheme would also impose significant administrative costs on government to establish and operate the scheme and determine claims. On balance it would appear that Option B would not be effective in achieving the objective.

Alternative proposals

A number of stakeholders suggested alternative proposals that may be more effective in achieving the objective including:

- improving clarity around repair obligations, for example, by imposing a timeframe on the requirement to undertake non-urgent repairs;
- expanding the definition of 'urgent repairs' to provide clarity as to what matters should be covered by this class of work;
- providing both landlords and tenants with education on their rights and responsibilities; and
- streamlining dispute resolution processes by for example making maintenance and repair disputes a matter for determination by the Commissioner for Consumer Protection under new Part III of the RTA. This proposal would be further assessed after the new determination process is established and operational.

Recommendation 20 - Repairs and maintenance

Amend the RTA to clarify lessor obligations in relation to maintenance and repair by:

- amending the definition of urgent repairs to include a list of matters, consistent with other jurisdictions such as:
 - burst water service or other essential service not working;
 - blocked or broken toilet system;
 - gas or electricity not working or a gas leak or electrical fault;
 - serious roof leak or serious damage caused by flood, fire or storm; and
 - any security- related fault or damage.
- including a requirement for a lessor to carry out non-urgent repairs within a prescribed timeframe, once a tenant has notified the lessor of the need for those repairs.

Further work will be undertaken during drafting to refine the list of urgent repairs. Clear guidance and education should be developed for both landlords and tenants about maintenance and repair obligations and relevant processes.

4.3 Drug testing of the premises (CRIS part 5.5)

Issue

From time to time, rental properties may be contaminated with illicit drug substances (particularly where premises have been used to manufacture methamphetamine). The review considered whether mandatory testing of rental premises prior to each tenancy should be required.

Current situation

Lessors are currently required to comply with all requirements of health and safety laws in relation to rental properties. If it is known that the premises have been contaminated with drug residue, it is the lessor's responsibility to demonstrate that either:

- the premises have been decontaminated; or
- remediation is not necessary because the level of contamination was so low.

The Department of Health (DoH) has released guidance on identifying and managing drug contamination of rental premises titled *Illegal Drug Activity in Homes: Managing Risk (the Guidance)*.¹¹⁵ The Guidance outlines management responses, including that:

- there is no need for mandatory testing of premises;
- testing should take place where the risk of contamination is identified;
- there should be routine precautionary cleaning between tenancies and regular property inspections and risk mitigation strategies;
- remediation is recommended where there is evidence of contamination (with the level of remediation required being dependent on the level of the risk of the contamination); and
- testing and remediation should be undertaken by accredited providers.

Consumer Protection provided input to DoH in development of the Guidance.

Objective

To identify an appropriate risk-based regulatory response to testing rental properties for illicit substances.

¹¹⁵ <https://ww2.health.wa.gov.au/Health-for/Licensing-and-industry/Illicit-drug-contamination>

Proposal considered

The following proposal was presented in the CRIS for consideration.

It is not proposed to amend the RTA to require mandatory testing for drug residue during or between tenancies. Rather, it is proposed that lessors, property managers and tenants be educated to follow the DoH Guidance.

The DoH Guidance clarifies the obligations and responsibilities of lessors and property managers in managing potential risks arising from drug contamination. Providing further education for lessors and property managers in following the DoH Guidance rather than via amendments to the RTA is a risk based response.

As outlined in the DoH Guidance, lessors and property managers have existing duties to disclose material facts about a property and ensure that health and safety standards are met. This proposal is unlikely to have a significant impact on stakeholders

The question of whether there should be mandatory disclosure by a lessor of previous drug activity at the premises is considered in Part Recommendation 8 - of this paper.

Stakeholder feedback to the CRIS

Most respondents to the CRIS (76 per cent) supported maintaining the status quo and educating lessors to follow the DoH Guidance. Those who supported the proposal noted that mandatory testing would impose cost, time delays and administrative burdens on lessors. It was suggested that these additional costs can only be justified in circumstances where there are reasonable grounds for suspecting drug contamination.

Eighteen per cent of respondents disagreed with the proposal. Some commented that there should be more emphasis on tenant responsibility while in the property, and that the former tenant should be required to pay the cost of decontamination of the premises.

Six per cent of respondents neither agreed nor disagreed with the proposal, and instead suggested alternative options such as requiring disclosure, but not remediation of drug activity and requiring that the tenant take responsibility for issues with the premises, including drug residue.

Other jurisdictions

Generally, each Australian jurisdiction's public health laws provide for a framework of roles and responsibilities to remediate premises that are, or are suspected, to be contaminated with drug residue.

In New South Wales, a lessor or lessor's agent must not knowingly conceal from tenants who enter into a lease that premises have been used for the purposes of the manufacture or cultivation of prohibited drugs or prohibited plants within the last two years.¹¹⁶

¹¹⁶ *Residential Tenancies Act 2010* (NSW) s.26.
Residential Tenancies Regulations 2019 (NSW) reg.8.

New Zealand has introduced amendments to its residential tenancies legislation to prevent lessors from leasing a property to a tenant if it is known to be contaminated with substances based on tests carried out in accordance with regulations, and if the property has not been properly decontaminated.

Assessment against the policy objective

The CRIS proposal achieves the policy objective because it appropriately strikes a balance between ensuring safety of premises and limiting regulatory burden. Most respondents to the CRIS believe mandatory drug testing would be unduly onerous and is not necessary to address the issue. Educating tenants, lessors, and property managers to follow DoH Guidance should go some way towards improving the safety of premises.

The benefit of using the DoH Guidance is that it has been developed in consultation with other government departments, including Consumer Protection, and provides for a risk-based approach to the issues. The DoH Guidance also provides greater flexibility to respond if circumstances change.

Recommendation 21 - Drug testing of premises

Maintain the status quo so that mandatory testing during or between tenancies is not required.

It is recommended that lessors, property managers and tenants be provided with education and assistance in following the guidance on drug contamination developed by DoH.

As outlined in current DoH Guidance, lessors and property managers have existing duties to disclose material facts about a property and ensure that health and safety standards are met. Testing is recommended only in circumstances where contamination is suspected.

4.4 Swimming pool fence certification (CRIS part 5.6)

Issue

In some instances, rental premises are leased without swimming pool fences conforming to required safety standards. There are also some instances where repairs to swimming pool enclosures are not undertaken in a prompt manner. These failures can have catastrophic consequences. Lessors and tenants are both responsible for ensuring that any fence or barrier restricting access to a private swimming pool is maintained and operating effectively. The review considered how compliance with pool fencing laws in rental premises could be improved.

Current situation

The Building Regulations 2012 (WA)¹¹⁷ (Building Regulations) provide the regulatory framework for the construction and maintenance of safety barriers for private swimming pools. Owners and occupiers must ensure that a suitable enclosure is provided around a private swimming pool (which includes spa pools and portable pools) that have a depth of water of more than 300mm.¹¹⁸ These requirements do not apply in some regional areas.¹¹⁹

Recent amendments to the Building Regulations¹²⁰ remove the need for a building permit for the installation of most fences used as a safety barrier. Instead, the local government is required to inspect the pool within 30 days of installation to ensure the fence is compliant. The homeowner is required to contact the local government to organise the initial inspection. Mandatory inspections of pool barriers must be carried out by local governments at maximum four-yearly intervals.¹²¹ This requirement does not apply in some regional areas.¹²² Local governments keep a register of private swimming pools that are subject to the requirements of the Building Regulations. This assists in keeping a record of mandatory periodic inspections of safety barriers.

The lessor will be provided with a copy of an inspection report by the local government authority. A copy of a report can generally be obtained from the local government authority on request. Tenants, as occupiers of premises, who become aware that a safety barrier is not working effectively have the responsibility to contact the lessor or property manager immediately to arrange repairs. As these repairs are considered urgent under the RTA, tenants may authorise the repairs where the property manager or lessor has not responded within 48 hours.¹²³ Tenants can be left in a vulnerable position if they report concerns about a pool barrier, but no action is taken towards rectification within a reasonable period of time.

¹¹⁷ Building Regulations Part 8, Division 2.

¹¹⁸ Building Regulations reg.50.

¹¹⁹ Building Regulations reg.49 – provides that Part 8, Division 2 only applies in respect of specified local government districts.

¹²⁰ Building Amendment Regulations 2023 reg.53.

¹²¹ Building Regulations reg.53.

¹²² Building Regulations reg.49.

¹²³ RTA s.43 – urgent repairs include repairs that are necessary to avoid exposing a person to the risk of injury.

The *Ombudsman Report 2017: Investigation into ways to prevent or reduce deaths of children by drowning*¹²⁴ made the following recommendation:

*The Department of Mines, Industry Regulation and Safety considers the introduction of requirements for property managers and private landlords to provide, in the most cost-effective way and resulting in the least regulatory burden, a copy of the most recent inspection form confirming that the swimming pool barrier was found to be compliant, to the potential tenant at the time of entering into a lease agreement.*¹²⁵

In its decision paper in response to the Ombudsman Report, the Building and Energy Division within DEMIRS stated that it 'will develop guidance for local governments in relation to supplying the most recent safety barrier inspection report to property managers and landlords on request'.¹²⁶

Objective

To improve compliance with pool fencing laws in rental premises.

Proposal considered

The following proposal was presented in the CRIS for feedback.

To prevent tenants being at risk and to ensure that properties are only leased if they have a compliant pool safety barrier, it is proposed to amend the RTA to require a lessor to provide a tenant with a swimming pool barrier certificate of compliance at the commencement of the tenancy.

Where a pool safety barrier certificate of compliance expires during a tenancy and is found to be non-compliant on re-inspection, lessors and property managers must ensure action is taken to ensure compliance to protect the safety of tenants. As currently provided for under the RTA, tenants may authorise repairs to pool safety barriers where the lessor or property manager has not responded within 48 hours.

This proposal is unlikely to have a significant impact on stakeholders. Consumer Protection proposes to proceed with this recommendation unless stakeholder feedback provides substantive evidence of unintended consequences from this course of action.

Stakeholder feedback to the CRIS

The proposal requiring lessors or property managers to provide evidence of certification for swimming pool fences was largely supported by stakeholders, particularly in light of concerns about the safety of children when pools are not adequately fenced. Eighty-one per cent of respondents to the CRIS agreed with the proposal, and twelve per cent suggested alternative proposals that were in line with the concept of swimming pool fences being regulated.

¹²⁴ [Ombudsman Report 2017: Investigation into ways to prevent or reduce deaths of children by drowning -23-](#) November-2017.pdf.

¹²⁵ Ibid Recommendation 4, page 82.

¹²⁶ [Swimming Pool and Safety Barrier Control Decision Paper April 2021](#), see page 70.

Circle Green Community Legal, REIWA, Department of Communities, Department of Planning Lands and Heritage, and tenant and disability advocates all supported the CRIS proposal. Key issues highlighted by these respondents were the need to ensure that swimming pool barriers are compliant with relevant requirements and that any defects are rectified quickly.

Some stakeholders, including the WA Local Government Association, suggested that greater clarity will be required as to what is meant by a certificate of compliance and whether the existing requirement for inspection every four years by local government would satisfy this requirement.

It was also noted that the current pool barrier inspection requirements do not apply in all parts of the state. In some locations a certificate of inspection provided by the local government will not be available. It might therefore be difficult for a lessor to obtain an appropriate certificate.

The respondents who did not support the proposal were landlords who raised concerns about the cost and administrative burden of providing a certificate of compliance. Some respondents suggested that this issue is best dealt with by local government, rather than in tenancy legislation.

A common view was that tenants should be responsible for the costs of swimming pool fence compliance when the pool in question was a portable one, installed by the tenant.

It was also noted that tenant education may be needed to ensure safety, even beyond certification and compliance checks.¹²⁷

Other jurisdictions

States and territories have different requirements for property owners that seek to lease a property with a pool. Queensland and New South Wales both impose requirements on property owners to ensure a valid pool fence safety certificate is in place prior to the commencement of a tenancy agreement.

In Queensland, property owners are required to register residential pools with the Queensland Building and Construction Commission. The register is easily accessible by the community and can be utilised by tenants to ensure a prospective rental property complies with the standard of pool safety requirements.

In New South Wales, lessors are required to register their pool with the NSW Swimming Pool Register. Lessors must provide a copy of the certificate of compliance to tenants at the time of entering into the residential tenancy agreement. The Register can be utilised by prospective tenants to ensure that rental properties with pools are compliant.

¹²⁷ For example, there have been incidences of tenants stacking furniture close to a pool gate, which has enabled children to climb over the fence.

Impact analysis

	Potential benefits	Potential disadvantages
<p>Proposal</p> <p>Require lessor to provide tenant with copy of pool barrier inspection certificate and take action to ensure that barrier compliant</p>	<p>Lessors</p> <ul style="list-style-type: none"> • Makes property more attractive to prospective tenants. • In most cases an inspection certificate will be available via the existing local government inspection regime – additional costs will be minimal. • Lower likelihood of maintenance needs arising during a tenancy. <p>Tenants</p> <ul style="list-style-type: none"> • Tenants (especially those with children) are assured of improved safety. <p>Government</p> <ul style="list-style-type: none"> • No change. 	<p>Lessors</p> <ul style="list-style-type: none"> • In some instances there may be costs of inspections. These are considered to be minimal. <p>Tenants</p> <ul style="list-style-type: none"> • Lessors may try to pass on the cost of certificates and inspections through rent increases. • Inspections are required every four years, a tenant may need to take additional steps to ensure a pool barrier is compliant in the event the inspection has not been recently undertaken. <p>Government</p> <ul style="list-style-type: none"> • Small increased administrative burden and cost of issuing certificates and ensuring compliance.

Table 13 - Impact analysis - Swimming pool certification

Assessment against the policy objective

The objective is to ensure that compliance with pool fence safety laws is improved in rental premises.

The proposal was not expected to have a significant impact on stakeholders and the CRIS stated that Consumer Protection proposed proceeding with the recommendation unless stakeholder feedback provided substantive evidence of unintended consequences from the course of action.

Responses to the CRIS did not identify any likely significant negative impacts on stakeholders or government of the proposal.

The proposal as outlined in the CRIS achieves the policy objective. There is evidence to show a regulatory gap in the compliance of some rental properties with a swimming pool. Introducing a requirement for a lessor to produce a swimming pool barrier compliance certificate at the commencement of the tenancy, along with requiring lessors and property managers to ensure compliance when a pool safety barrier is found to be non-compliant on re-inspection, will assist in addressing this regulatory gap.

Other considerations

Inspections of pool safety barriers are undertaken every four years. There is a risk that a pool safety barrier may become non-compliant in the intervening period, for example, if a fence latch breaks. It will therefore be important to provide advice and information to tenants about the need to undertake regular safety checks themselves and about how to seek further advice on whether a barrier is compliant.

In the event that premises are in a local government area where the mandatory inspection requirements do not apply, the tenant should be provided with advice to this effect and information on how to ensure a pool barrier operates effectively.

A number of submissions noted that the actions of tenants sometimes reduce the effectiveness of a pool barrier, for example, by propping open a gate or placing garden furniture close to a barrier. It may also be appropriate to require a lessor to provide tenants with standard information on maintaining a pool barrier and general pool safety prior to entry into a lease agreement. This is consistent with the Building Regulations which impose obligations on both the owner and the occupier in relation to pool barriers.¹²⁸

Recommendation 22 - Pool barrier compliance and information

Amend the RTA to require a lessor to provide a tenant with:

- Information about pool barrier compliance in the form of:
 - a copy of the most recent swimming pool barrier inspection report (or confirmation of compliance from the relevant local government) in relation to the premises; or
 - if the premises are located in an area for which pool barrier inspections are not required, prescribed information outlining this fact.
- Standard information in relation to pool barrier maintenance and general pool safety.

Consumer Protection will work with the Building and Energy division and local governments to determine what documentary evidence should be provided.

¹²⁸ Building Regulations 2012 (WA) reg. 50.

Recommendation 23 - Pool barrier repairs

Amend the RTA to clarify that a landlord is obliged to undertake repairs on an urgent basis should a swimming pool barrier be non-compliant with relevant requirements. The tenant will retain the ability to authorise urgent repairs where the lessor or property manager has not responded within 48 hours.

Recommendation 24 - Portable pools

It is proposed that the obligations in relation to portable pools be clarified, including that if a tenant intends to erect a portable pool, the tenant must:

- obtain the lessor's consent;
- obtain a building permit from the relevant local government authority (where required); and
- erect and pay for a compliant pool barrier (where required).

4.5 Wilful damage of the premises (CRIS part 5.7)

Issue

Whether the RTA should be amended to include an offence for causing wilful damage to the premises.

Current situation

In Western Australia, where a tenant is found to have intentionally or recklessly caused damage to the rental premises or is likely to do so, lessors may apply to the Magistrates Court to terminate the residential tenancy agreement.¹²⁹ Some stakeholders have expressed concern that further damage can occur while court action is underway.

The RTA does not provide a penalty for the wilful damage of premises by tenants. Although there is a penalty for wilful damage in the *Criminal Code (WA)*¹³⁰, lessors have previously informed Consumer Protection that it is difficult to obtain a prosecution for this offence in relation to the actions of tenants.

Objective

To ensure the RTA appropriately balances the rights and responsibilities of lessors and tenants.

Proposal considered

The following proposal was presented in the CRIS for feedback.

It is proposed to amend the RTA to create an offence of wilful damage to the premises.

Stakeholder feedback to the CRIS

Of the 40 respondents to the CRIS on this issue, 82 per cent supported the proposal, 15 per cent did not support the proposal, and three per cent were unclear or undecided. Of the respondents who supported the proposal, 67 per cent were lessors, real estate agents, property managers or stakeholder bodies representing those groups.

Of those who opposed the proposal, some raised concerns about risks of penalty for victims of family violence and others suggested an amendment was not required as there are already remedies in place in the event that damage to property occurs.

Other jurisdictions

Most Australian jurisdictions include a specific provision giving the landlord the right to seek an order for termination of a lease on the ground that a tenant has caused or is likely to cause serious damage to premises.¹³¹ However, no jurisdiction includes an offence in its tenancy legislation for causing wilful damage to premises.

¹²⁹ RTA s.73.

¹³⁰ s.444 provides penalties for criminal damage where any person wilfully and unlawfully destroys or damages property; s.443 states that where a person does an act or omission intending to destroy or damage property or knowing or believing that the act or omission is likely to result in the destruction of or damage to property that person is regarded as having wilfully destroyed or damaged property.

¹³¹ *Residential Tenancies Act 1997 (ACT)* s.51

In South Australia, a lessor or co-tenant may make an application to the Tribunal for a restraining order if satisfied that the tenant or a person permitted on the premises by the tenant may cause serious damage to property or personal injury. Contravention of a restraining order is an offence with a maximum penalty of imprisonment for one year.¹³²

Assessment against the objectives

This proposal partly achieves the objective as it may deter tenants from causing wilful property damage. However, given that offences already exist under the Criminal Code it is unlikely that an offence in the RTA will have additional weight as a deterrent. In addition, prosecution for an offence does not necessarily result in payment of compensation to the lessor to remedy the damage.

The proposal was not expected to have a significant impact on stakeholders. However, given the points raised above about the utility of including an offence for wilful damage in the RTA, together with the concerns raised by some stakeholders about risks of penalty for victims of family violence, it is suggested, that on balance the risks of implementing the proposal would likely outweigh any benefits.

Recommendation 25 - Wilful damage of the premises

Maintain the status quo and not include an offence of wilful damage to the premises in the RTA.

Residential Tenancies Act 2010 (NSW) s.90

Residential Tenancies Agreement 1999 (NT) s.97

Residential Tenancies and Rooming Accommodation Act 2008 (Qld) s.290A

Residential Tenancies Agreement 1997 (SA) s.87

Residential Tenancies Act 1997 (Vic) s.91ZI

¹³² *Residential Tenancies Agreement 1997 (SA) s.112*

5 TERMINATION OF TENANCY AGREEMENTS

5.1 Termination for repeated breaches (CRIS part 5.7)

Issue

Some stakeholders have raised concerns about the difficulty of dealing with repeated breaches of the RTA, for example, the tenant who is repeatedly late in paying rent, but pays their arrears before termination action can be taken, or the lessor who repeatedly breaches the tenant's right to quiet enjoyment or who does not comply with obligations to maintain the premises.

The review considered whether the RTA should include a mechanism for dealing with repeated breaches of tenancy agreements.

Current situation

The RTA currently provides that a lessor may give notice terminating a tenancy agreement if the tenant has breached the agreement and the breach has not been remedied. If the breach relates to something other than the requirement to pay rent the lessor must give the tenant a notice specifying the breach at least 14 days before a termination notice can be issued. Similarly, in relation to a failure to pay rent, a tenant is provided with a time period during which rent can be paid before termination action can be taken (this varies depending on the type of notice given by the lessor).¹³³

This gives a tenant the opportunity to remedy a breach within the relevant notice period and avoid termination of a lease.

A tenant may make an application to the court for termination of a tenancy agreement in the event of breach by the landlord.¹³⁴ A tenant may also terminate a periodic tenancy agreement by giving 21 days' notice.¹³⁵

Objective

To ensure the RTA appropriately balances the rights and responsibilities of lessors and tenants.

Proposal considered

The following proposal was presented in the CRIS for feedback.

Consumer Protection has received previous stakeholder feedback that it can be difficult under existing provisions of the RTA to adequately address repeated breaches of the tenancy agreement.

It is proposed to amend the RTA to allow a lessor or tenant to commence termination proceedings where the other has committed repeated serious breaches of the agreement or the Act within a twelve-month period.

¹³³ RTA s.62.

¹³⁴ RTA s.75.

¹³⁵ RTA s.68.

For termination of the tenancy agreement by either the tenant or lessor, the number of strikes within a 12-month period would be determined through further consultation with stakeholders and consideration of similar models in other states and territories. For example, Queensland provides for termination of the tenancy agreement where a repeated breach occurs for the third time in a 12-month period. Safeguards would be developed to ensure that tenancy agreements could not be terminated for a trivial breach.

Stakeholder feedback to the CRIS

Of the 32 responses to the CRIS on this issue, 81 per cent supported this proposal, 16 percent did not support the proposal, and three percent were unclear or undecided.

The majority of respondents who supported the proposal were lessors, real estate agents, property managers and their representatives (including REIWA). Reasons for support include the financial and administrative burden on lessors from repeated breaches.

Some tenant representatives¹³⁶ did not support the proposal, with one respondent suggesting that the introduction of a strikes system may disproportionately provide lessors with greater power in evicting tenants, while receiving minimal use by tenants.

Circle Green Community Legal indicated it did not support the proposal but might change its position if other changes to the RTA are made such as incorporating sufficient safeguards to prevent abuse of the mechanism.

A number of other respondents also highlighted the need to include safeguards to ensure that tenancies are not terminated for trivial breaches.

Other jurisdictions

In Queensland, either the lessor or the tenant can apply directly to the Queensland Civil and Administrative Tribunal (QCAT) for termination of a tenancy where a breach of specified provisions has occurred for the third time within a 12 month period.¹³⁷ Safeguards are in place to ensure that tenancy agreements are not terminated for trivial breaches including a list of the provisions of the Act that the lessor may rely upon for termination for repeated breaches.

Victoria has introduced a 'strike' system in relation to breaches. For non-payment of rent a lessor can give a tenant 14 days' notice to vacate when the tenant owes 14 days' rent or more. If the tenant pays the rent owed within the notice period, the notice to vacate has no effect. For the fifth and subsequent times, the notice to vacate is valid regardless of whether the tenant pays the rent owed within the notice period.¹³⁸ For breach of a duty provision by a tenant, if the tenant has previously breached the same provision on two occasions and been served with a breach notice on those occasions, the lessor may give the tenant a notice to vacate without another breach notice.¹³⁹

¹³⁶ Peel Community Legal Services; Gosnells Community Legal Centre.

¹³⁷ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) ss.299 and 315.

¹³⁸ *Residential Tenancies Act 1997* (Vic) s.91ZM.

¹³⁹ *Residential Tenancies Act 1997* (Vic) s.91ZP.

If the tenant does not vacate, the lessor can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a possession order to evict the tenant.¹⁴⁰ In deciding whether to make a possession order, the VCAT must consider whether doing so is reasonable and proportionate.¹⁴¹ An equivalent provision allows a tenant to terminate a lease for successive breaches by the lessor.¹⁴²

Impact analysis

	Benefits	Disadvantages
<p>Proposal considered Amend the RTA to allow for termination by either party for repeated breaches</p>	<p>Lessors</p> <ul style="list-style-type: none"> Greater ability to evict a tenant after a series of repeated breaches within a twelve-month period. <p>Tenants</p> <ul style="list-style-type: none"> Greater ability to end a tenancy in the event that the lessor breaches the lease repeatedly. <p>Government</p> <ul style="list-style-type: none"> No change. 	<p>Lessors</p> <ul style="list-style-type: none"> Higher risk of termination by tenant for repeated breaches. <p>Tenants</p> <ul style="list-style-type: none"> Higher risk of eviction for repeated breaches. <p>Government</p> <ul style="list-style-type: none"> Cost impost of administrative process of evicting tenants for repeated breaches of the tenancy agreement.

Table 14 - Impact analysis - Termination for repeated breaches

Assessment against the objectives

This proposal achieves the objective as it addresses the fact that under the RTA, it can be difficult to adequately address repeated breaches of the tenancy agreement.

The proposal was not expected to have a significant impact on stakeholders and the CRIS proposed proceeding with the recommendation unless stakeholder feedback provided substantive evidence of unintended consequences from the course of action. Responses to the CRIS did not provide substantive evidence of unintended consequences.

The requirement to demonstrate repeated breaches provides tenants with some leniency and an opportunity to preserve the tenancy in the event of a breach, while also allowing lessors to regain possession of their premises if a pattern of repeated breaches emerges. Similarly, tenants will be given the right to take action for repeated breaches by a lessor. In order to address issues raised by some stakeholders regarding misuse of the provision, safeguards will be built into the process.

¹⁴⁰ Residential Tenancies Act 1997 (Vic) s.322.
¹⁴¹ Residential Tenancies Act 1997 (Vic) ss.330 and 330A.
¹⁴² Residential Tenancies Act 1997 (Vic) s.91ZF.

Recommendation 26 - Termination for repeated breaches

Amend the RTA to:

- Allow a lessor or tenant to terminate on the ground that the other has engaged in repeated and serious breaches of the agreement or the Act.
- Include a mechanism for evidence of breaches to be obtained and presented to the Court – for example via community/neighbourhood impact statements.
- Include safeguards to prevent misuse of the provision. It is proposed that the safeguards will limit the application of this termination right by requiring that:
 - there must be two prior breaches of the same provision;
 - the breach must be serious in nature and not a trivial matter;
 - the breaches must occur within the same 12-month period; and
 - the Court to consider a number of factors before making a possession order including the impact of termination on the tenant and the impact of the breaches on the landlord, other residents and neighbours.
- Further work will be undertaken during drafting to determine the details of these provisions.

5.2 Eligibility related grounds of termination (CRIS part 6.1)

Issue

The review considered whether the RTA should include specific provisions to allow termination of a tenancy agreement in the following circumstances:

- the tenant is no longer employed in the position that entitles them to the tenancy; or
- the tenant is no longer eligible for supported accommodation (for example, ceases to be eligible for social housing).

Current situation

Currently, the only termination provision in the RTA specific to eligibility relates to termination of a social housing tenancy agreement on grounds that the tenant is no longer eligible for social housing premises.¹⁴³ As this termination provision only relates to housing managed by the Housing Authority; there is currently no provision for termination from community housing, or other government housing programs, where the tenant ceases to meet eligibility requirements.¹⁴⁴

Objective

To ensure the RTA appropriately balances the needs of lessors and tenants in relation to termination of eligibility-related tenancies.

Proposal considered

The following proposal was presented in the CRIS for feedback.

It is proposed to amend the RTA to allow a lessor to terminate the tenancy agreement if the tenant is no longer employed by the lessor or, in relation to social housing tenancy agreements, the tenant ceases to satisfy the eligibility criteria for the tenancy.

This proposal is unlikely to have a significant impact on stakeholders. Consumer Protection is proposing to proceed with this recommendation unless stakeholder feedback provides substantive evidence of unintended consequences from this course of action.

Stakeholder feedback to the CRIS

Of the 39 responses to the CRIS on this issue, 82 per cent supported the proposal and 18 per cent disagreed with it.

Some respondents raised concerns that tenants whose rental property is provided by their employer will be placed in a vulnerable position if their tenancy is terminated, especially in rural areas where accommodation is scarce and family commitments such as children at school make it difficult to move quickly.

¹⁴³ RTA s.71C.

¹⁴⁴ This is because no other social housing providers are currently prescribed under RTA s.71A.

Communities supported the proposal to allow the lessor to terminate the tenancy agreement where the tenant is no longer eligible for social housing and noted that there is already provision under the RTA for eligibility-based termination by the Housing Authority. Communities recommended that eligibility-based termination be expanded to include termination by community housing organisations.

Communities supported allowing termination due to employment-related eligibility, indicating that this provision would be used in place of section 64 (without grounds terminations) in Government Regional Officer Housing (GROH) where the tenant has left government employment and the property is required to house a replacement worker. Communities also suggested that new employment grounds should be broad enough to cover employment situations other than when the tenant is employed by the lessor. For example, in some cases the Housing Authority contracts external providers to provide employees in areas where rental premises are in high demand, such as mining towns. In those circumstances, where the tenant is no longer employed by the external provider, their tenancy may need to be terminated to allow for another employee to move in.

Circle Green Community Legal recommended that a tenant be given no less than 30 days' notice to vacate the premises, with potentially longer notice periods on a sliding scale for long term tenancies or where the tenant is particularly vulnerable (such as when a tenant is residing in an area that is experiencing extremely low rental vacancy rates).

Both People with Disabilities WA and National Disability Services noted that where the eligibility criteria is met by the person with a disability, the eligibility status of a resident carer or companion of the person with a disability should not be relevant when the lessor is considering whether termination on the grounds of eligibility is appropriate.

Some stakeholders in the community housing sector favoured a 12-month notice period to allow tenants who become ineligible for community housing due to increased income the opportunity to establish a stable period of employment before losing the security of community housing.

Of the ten respondents to the question of whether a lessor should issue a notice of termination, or whether a court order should be required to terminate the tenancy, all selected the option of the lessor issuing a notice of termination.

Preferred notice periods were shorter for lessors and agents and longer for tenants and stakeholder representative bodies.

Two stakeholder representative bodies requested that the RTA be amended to allow termination of a tenancy for student accommodation where the tenant is no longer a student.¹⁴⁵ However, some respondents raised concerns about including students within this class of grounds for termination given the vulnerable nature of this cohort of tenants.

¹⁴⁵ Note - students were not included in the CRIS proposal.

Other jurisdictions

Australian jurisdictions have different approaches to the termination of employment and other eligibility-related agreements. These are summarised below.

Termination ground	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
No longer employed - where tenancy linked to employment	✓ ¹⁴⁶	-	✓ ¹⁴⁷	✓ ¹⁴⁸	-	-	-	-
No longer eligible for social housing or supported accommodation	✓ ¹⁴⁹	✓ ¹⁵⁰	-	✓ ¹⁵¹	✓ ¹⁵²	✓ ¹⁵³	✓ ¹⁵⁴	✓ ¹⁵⁵

Table 15 - Termination on eligibility grounds - Australian jurisdictions

Queensland's *Housing Legislation Amendment Act 2021* also provides for termination of a tenancy on grounds a person is no longer eligible for student accommodation (i.e. the person ceases to be a student).¹⁵⁶ The ACT legislation also allows for termination of a tenancy agreement between a university and an academic or student if the person ceases to be an academic or student of the university.¹⁵⁷

¹⁴⁶ *Residential Tenancies Act 1997* (ACT) s.53.

¹⁴⁷ *Residential Tenancies Agreement 1999* (NT) s.91.

¹⁴⁸ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s.288.

¹⁴⁹ A current review of the ACT legislation is examining whether to include 'loss of eligibility for accommodation assistance' as a ground for termination. See https://hdp-au-prod-app-act-yoursay-files.s3.ap-southeast-2.amazonaws.com/2316/2985/1252/Consultation_Paper_-_Residential_tenancy_reforms.pdf

¹⁵⁰ *Residential Tenancies Act 2010* (NSW) s.143.

¹⁵¹ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) ss.289 and 290.

¹⁵² *Residential Tenancies Agreement 1997* (SA) s.82 - registered community housing provider may terminate the residential tenancy on the ground that the tenant has ceased to be a member of the registered community housing provider; or the tenant no longer satisfies conditions specified in the agreement as essential to the continuation of the tenancy.

¹⁵³ *Residential Tenancy Act 1997* (Tas) s.42.

¹⁵⁴ *Residential Tenancies Act 1997* (Vic) s.91ZZE.

¹⁵⁵ RTA ss. 71C and 71H. Social housing only includes premises provided by the Housing Authority and excludes other types of community housing.

¹⁵⁶ *Residential Tenancies and Rooming Accommodation Act 2008* (QLD). s.58 inserts new s.290F.

¹⁵⁷ *Residential Tenancies Act 1997* (ACT) s.53.

Impact analysis

	Benefits	Disadvantages
<p>Proposal</p> <p>Allow a lessor to terminate the tenancy agreement if the tenant is:</p> <ul style="list-style-type: none"> • no longer employed by the lessor; or • ceases to meet eligibility criteria for social housing 	<p>Lessors</p> <ul style="list-style-type: none"> • Ability to terminate tenancies when the tenant no longer fulfils the condition that gave rise to the tenancy. • Employers - retain the ability to provide properties to employees (e.g. a worker in a remote situation). • Increased ability to distribute community housing as appropriate. 	<p>Lessors</p> <ul style="list-style-type: none"> • None discernible.
	<p>Tenants</p> <ul style="list-style-type: none"> • Eligible incoming tenants can be placed in accommodation more quickly. 	<p>Tenants</p> <ul style="list-style-type: none"> • Reduced security of tenure in some circumstances. • Employment-based tenants may have to vacate housing if they lose their employment and risk not being able to secure alternative accommodation. • Risk that social housing tenants will lose their housing and not be in a position to secure an alternative property.
	<p>Government</p> <ul style="list-style-type: none"> • Less strain on social housing waitlist if community housing is only tenanted by those who remain eligible. 	<p>Government</p> <ul style="list-style-type: none"> • None discernible.

Table 16 - Impact analysis - Eligibility related grounds for termination

Assessment against the policy objective

The objective is to ensure that the RTA appropriately balances a tenant's right to security of tenure with a lessor's need for flexibility in dealing with their asset.

The proposal was not expected to have a significant impact on stakeholders and the CRIS stated that Consumer Protection proposed proceeding with the recommendation unless stakeholder feedback provided substantive evidence of unintended consequences from the course of action.

Responses to the CRIS did not identify any substantive evidence of unintended consequences.

The proposal achieves the policy objective by ensuring that lessors are able to terminate a tenancy when the tenant is no longer eligible for the accommodation. Tenants will be provided with some security by ensuring that notice periods are appropriate. This proposal is also in the interests of new tenants who are eligible for a tenancy, as it ensure properties are released and available for those who fit the criteria.

Recommendation 27 - Eligibility related grounds for termination

Amend the RTA to include the following additional grounds for termination:

- if the tenancy is provided as a condition of employment - where the tenant is no longer employed by the lessor or no longer meets employment related conditions;
- if the tenancy is covered by the RTA and is subject to a condition that the person is a student or academic at an education institution – the tenant ceases to be a student or academic; and
- if the tenancy is community housing (e.g. affordable housing for people on low to moderate income with a housing need offered by a community housing organisation) – the tenant ceases to meet certain eligibility requirements (e.g. the eligibility grounds that are currently only available to the Housing Authority such as in section 75C).

Appropriate notice periods and criteria for termination will be determined in consultation with stakeholders.

5.3 Sale of the rental premises (CRIS part 6.2)

Issue

A lessor can terminate a periodic tenancy agreement if the lessor has entered into a contract of sale for the premises. The review considered whether the current provisions of the RTA appropriately balance the interests of tenants and lessors and if the notice periods are reasonable.

Current situation

Currently, under section 63 of the RTA, a lessor may terminate a periodic tenancy if the lessor has entered into a contract of sale of the premises and vacant possession is a condition of the sale. The notice period for the tenant to vacate the premises is 30 days. A fixed term tenancy agreement cannot be terminated on this ground.

For termination without grounds, the current notice period for termination by the lessor is 60 days.¹⁵⁸

Objective

To ensure the RTA appropriately balances a tenant's right to security of tenure with a lessor's need to have flexibility in dealing with their asset.

Options considered

The CRIS presented the following options for consideration.

Option A	Status quo No change to the current legislative regime. Lessors will continue to be entitled to terminate a periodic agreement with 30 days' notice to the tenant if a contract has been entered into to sell the premises and vacant possession is a condition of the sale.
Option B	Increase the notice period to 60 days A lessor will continue to be able to terminate a periodic agreement only on the grounds that the premises have been sold and that vacant possession is a condition of the sale. However, the notice period to be given to a tenant would be not less than 60 days' notice. No termination of fixed term agreements would continue.

¹⁵⁸ RTA s.64.

Option C **Amend the RTA to prohibit a lessor from terminating the tenancy agreement unless the purchaser requires the premises for their own residence or intends to change the use of the premises.**

This option is modelled on the legislation in Alberta and British Columbia. A lessor may issue a notice of termination to an existing tenant on the grounds that the premises have been sold, but only if a purchaser intends to use the premises for their own residence or the residence of a family member, or if the purchaser intends to change the use of the premises. For example, converting the premises from residential premises to a retail outlet or a small business office.

Evidence in the form of a declaration of the purchaser, or evidence of application to the local council for a change of purpose rating, may be required to accompany the notice of termination. The period of notice would be determined in consultation with stakeholders.

Stakeholder feedback to the CRIS

Of the 42 responses to the CRIS in relation to this issue 59 percent supported maintaining the status quo (Option A). Thirty four percent of respondents supported extending the notice period to 60 days (Option B). Option C received only limited support from 17 percent of respondents. Three respondents thought that either Option A or Option B would be appropriate, and one respondent suggested both Options B and C should be implemented.

Category	Option A	Option B	Option C	Option A or B	Option B and C
Lessor	11	2	1	1	
Agent or property manager	7	1		1	
Lessor or agent representative	2				
Tenant		1	2		
Tenant representative	1	1	3		
Other	1	5		1	1
Total	22	10	6	3	1

Table 17 - Preferred option - Termination on sale of the rented premises

Option A was the preferred option for most lessors and property managers as this provides lessors and the new owners of premises with flexibility to deal with their property. Some respondents, including PICA, expressed concern that an extension of the notice period to 60 days would result in delays to property settlements, which is usually 30 to 90 days. This may make rental properties unattractive for some purchasers.

One real estate agent highlighted that if the lessor intends to sell the premises the tenant will have advance notice because the RTA requires that notice must be given before premises can be shown to prospective purchasers.¹⁵⁹ REIWA's view is that the current provisions work well and do not require change. Communities also supported retaining the status quo and the notice period of 30 days.

Option B was supported by tenants and their representatives and some lessors. A number of these respondents suggested that the current 30-day notice period does not give a tenant enough time to secure a new tenancy and that 60 days is a more reasonable period. Disability advocates stated that the need for a longer termination period is particularly important for people with disabilities.¹⁶⁰

Circle Green supported Option C as it provides greater security of tenure and suggested that if a purchaser intends to rent the property out, there is no reason why the existing tenancy should not continue. Peel Community Legal Services, Gosnells Community Legal Centre and a number of tenants also supported Option C.

Those who opposed Option C suggested that it is not consistent with the principles of private property rights¹⁶¹ and could unfairly prejudice or increase risks for purchasers of property who will have no choice in relation to the tenants.¹⁶² Concerns were also raised that reducing flexibility to deal with property could reduce the number of rental properties available.¹⁶³

Other jurisdictions

The majority of Australian states and territories prohibit the termination of a fixed term tenancy agreement on the ground the premises have been sold but do permit termination of periodic tenancies. The relevant notice periods are set out in the table below. The residential tenancy legislation in the Northern Territory is silent on termination of the tenancy agreement for sale of the premises.

	Notice period required
ACT ¹⁶⁴	8 weeks' notice.
SA ¹⁶⁵ , TAS ¹⁶⁶ , VIC ¹⁶⁷	60 days' notice.
QLD ¹⁶⁸	4 weeks' notice.
NSW ¹⁶⁹ , WA	30 days' notice.

Table 18 - State and territory notice periods for sale of premises

¹⁵⁹ Sentinel Real Estate Corporation submission.

¹⁶⁰ People with Disabilities WA submission.

¹⁶¹ DPLH submission.

¹⁶² Uniting WA submission; Communities submission.

¹⁶³ Curtin University School of Economics (James Amity) submission.

¹⁶⁴ *Residential Tenancies Act 1997* (ACT) - Schedule 1 clause 96(1)(d).

¹⁶⁵ *Residential Tenancies Act 1995* (SA) s.81.

¹⁶⁶ *Residential Tenancy Act 1997* (TAS) s.47.

¹⁶⁷ *Residential Tenancies Act 1997* (VIC) s.259A.

¹⁶⁸ *Residential Tenancies and Rooming Accommodation Act 2008* (QLD) ss. 286 and 329(f).

¹⁶⁹ *Residential Tenancies Act 2010* (NSW) s.86.

In the Canadian provinces of Alberta and British Columbia a lessor is only permitted to terminate a tenancy agreement when a premises is being sold if the purchaser of the premises is intending to use the premises for their own purposes or to change the use from residential tenancy to something else.

Impact analysis

	Potential benefits	Potential disadvantages
<p>Option A No change.</p>	<p>Lessors</p> <ul style="list-style-type: none"> Lessors retain flexibility to terminate periodic tenancies when selling a property. Shorter notice period allows for earlier settlement date for sale. <p>Tenants</p> <ul style="list-style-type: none"> No change. <p>Government</p> <ul style="list-style-type: none"> No change. 	<p>Lessors</p> <ul style="list-style-type: none"> No change. <p>Tenants</p> <ul style="list-style-type: none"> Shorter notice if required to move. <p>Government</p> <ul style="list-style-type: none"> None discernible.
<p>Option B Increase notice period to 60 days' notice.</p>	<p>Lessors</p> <ul style="list-style-type: none"> Lessors retain flexibility to terminate periodic tenancies when selling a property. <p>Tenants</p> <ul style="list-style-type: none"> More time for tenants to find alternative accommodation. <p>Government</p> <ul style="list-style-type: none"> No change. 	<p>Lessors</p> <ul style="list-style-type: none"> May impact on settlement date for sale of the premises. <p>Tenants</p> <ul style="list-style-type: none"> No improvement of security of tenure for tenants. <p>Government</p> <ul style="list-style-type: none"> None discernible.
<p>Option C Tenancy agreement may only be terminated if the purchaser requires the premises for their own use or intends to change the purpose of the premises.</p>	<p>Lessors</p> <ul style="list-style-type: none"> Lessors retain the ability to terminate unless intent is to continue to rent as a residential tenancy for non-family members. <p>Tenants</p> <ul style="list-style-type: none"> Likely to substantially improve security of tenure for some tenants. <p>Government</p> <ul style="list-style-type: none"> None discernible. 	<p>Lessors</p> <ul style="list-style-type: none"> Sale of rental premises may be impacted – buyers may not want to take on existing tenants or may prefer that the premises is vacant. Potential risk to incoming owner as no opportunity to assess suitability of tenant. Decrease in flexibility relative to status quo or extension of notice period. <p>Tenants</p> <ul style="list-style-type: none"> None discernible. <p>Government</p> <ul style="list-style-type: none"> None discernible.

Table 19 - Impact analysis - termination on sale of the rental premises

Assessment against the objective

The objective is to ensure the RTA appropriately balances a tenant's right to security of tenure with a lessor's need for flexibility in dealing with their asset.

Option A

Option A partly meets the objective. Lessors have a high degree of flexibility in dealing with their asset. The 30-day notice period for termination allows greater flexibility in setting a settlement date and reduces the risk of delay in settlement. Property purchasers will not be bound by existing tenancies, unless they choose to continue.

Tenants on fixed term leases retain security of tenure. However, tenants with periodic leases may still have their tenancies terminated with a relatively short notice period.

Option B

Option B partly meets the objective. Lessors will retain a relatively high degree of flexibility in dealing with their asset. Property purchasers will not be bound by existing tenancies, unless they choose to continue.

The 60-day notice period allows for termination of a tenancy but would need to be taken into account in setting a settlement date. There may be some risk of delays in settlement. However, given that the usual settlement period is between 30 and 90 days, this impact is likely to be minimal especially as the purchase occurs and a settlement date negotiated in full knowledge of when the premises will be vacated. A 60-day notice period is also consistent with notice periods that apply to other grounds for termination.

Tenants on fixed term leases retain security of tenure. Tenants with periodic leases may still have their tenancies terminated but will have more time to find alternative premises.

Option C

Option C does not meet the objective of balancing the rights of lessors and tenants. Incoming purchasers will have significantly less flexibility in dealing with their asset and will be bound by existing lease agreements, unless they intend to live in the property or use the property for a different purpose. This restricts the purchaser's ability to manage their asset as they see fit. For example, a purchaser would not be given the opportunity to choose whether to lease the property or to whom.

In addition, there is a risk that the sale of the property may be impacted where a prospective purchaser does not wish to lease the property.

Tenants on fixed term leases retain security of tenure for the duration of the fixed term. Tenants with periodic leases will have improved security of tenure except in circumstances where the purchaser intends to move into the property or use it for another purpose. Therefore, a tenant's ongoing tenure will wholly depend on the incoming purchaser's intended use of the property.

On balance, the impact that Option C would have on the ability of lessors to manage their assets outweighs the benefits that it would have to tenants' security of tenure.

Recommendation 28 - Sale of the rental premises

Retain the right for a lessor to terminate a periodic tenancy on the ground that the premises are to be sold with vacant possession but amend the RTA to increase the notice period for termination to a minimum of 60 days.

5.4 Mortgagee repossession of the rental premises (CRIS part 6.3)

Issue

The review considered whether the rights of tenants when a mortgagee repossesses a premises are appropriate.

Current situation

Currently under the RTA, a residential tenancy agreement ends when a mortgagee takes possession of the premises pursuant to a mortgage. A 2013 amendment to the RTA requires that the tenant be given a minimum of 30 days' notice to vacate, during this time, the tenant is not required to pay rent to the mortgagee. These provisions apply to both fixed term and periodic tenancies.

Objective

To ensure the RTA protects the interests of a tenant in circumstances where a mortgagee is taking possession of the premises, without unduly restricting the lending practices of financial institutions in relation to investment properties.

Proposal considered

The following proposal was presented in the CRIS for feedback.

To improve tenants' security of tenure in circumstances where a mortgagee takes possession of the premises, it is proposed to amend the RTA to provide that a tenancy agreement does not automatically terminate on possession of the premises where the mortgagee has expressly or impliedly consented to the premises being leased. Possession of the premises can only occur after an order is made by the Supreme Court.

In these circumstances, the mortgagee would be able to avail themselves of the other grounds for termination of the lease under the RTA, including any provisions relating to the termination of the tenancy agreement where the premises are to be sold.

This proposal is unlikely to have a significant impact on stakeholders. Consumer Protection is proposing to proceed with this recommendation unless stakeholder feedback provides substantive evidence of unintended consequences from this course of action.

Stakeholder feedback to the CRIS

A total of 27 respondents answered the question of whether or not they support the proposal. Of that group, 70 per cent agreed with the proposal and 30 per cent disagreed. Key stakeholder bodies that supported the proposal included REIWA, Gosnells Community Legal Centre and Shelter WA.

REIWA noted that where the lender takes possession of the property and no property manager is appointed, the lender would need to take on the responsibilities of a landlord. Therefore, REIWA recommended that lenders be required to engage a property manager to ensure tenants continue to receive the required service.

Gosnells Community Legal Centre noted that tenants are greatly distressed by the prospect of eviction on grounds that are not their fault.

Communities did not support the proposal because the Housing Authority's lending entity, Keystart, is not a tenancy manager and would have to engage a real estate agency to manage the tenancy.

Common reasons for not supporting the proposal were:

- there would be unintended financial consequences for the mortgagee, such as those incurred through having to act as lessor;
- the proposal may have an impact on the price of mortgage finance, as lenders will try to protect themselves from additional costs; and
- in situations where a tenant's rental arrears have contributed to repossession, allowing the tenant to stay in the house while the lessor loses title would be unjust.

Other jurisdictions and legislation

In most Australian jurisdictions,¹⁷⁰ a mortgagee has the right to terminate a tenancy agreement if it becomes entitled to possession of premises pursuant to a mortgage by way of a court order. However, residential tenancy legislation in Queensland and Victoria¹⁷¹ provides that the right to terminate does not apply if the mortgagee expressly or impliedly gave consent for the premises to be leased. In such circumstances, the mortgagee becomes the lessor.

In the Northern Territory, a tenancy is not automatically terminated when a mortgagee possesses the premises. For periodic tenancies, the mortgagee can terminate by giving the usual notice period. For fixed term tenancies the mortgagee can only terminate the tenancy by an order of the Tribunal or through the usual residential tenancy provisions (for example, at the end of the fixed term, or if the tenant is in default). An order may not be made to terminate a tenancy agreement that is for a period of less than 12 months.¹⁷²

General property law may also impact on the rights of mortgagees.

The Residential *Parks (Long-stay Tenants) Act 2006* (WA) has recently been amended to provide that long-stay agreements no longer automatically terminate on mortgagee possession, instead a mortgagee is required to take on the obligations of the park operator under any long-stay agreements.¹⁷³

¹⁷⁰ ACT does not include specific provisions about mortgagee repossession.

¹⁷¹ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s.317.
Residential Tenancies Act 1997 (Vic) s.91ZZK.

¹⁷² *Residential Tenancies Act 1999* (NT) s.107.

¹⁷³ *Residential Parks (Long-stay Tenants) Amendment Act 2020* (WA).

Impact analysis

	Benefits	Disadvantages
<p>Proposal Amend the RTA to remove automatic termination of tenancies where a mortgagee has expressly or impliedly consented to the premises being leased</p>	<p>Lessors</p> <ul style="list-style-type: none"> • None discernible. <p>Tenants</p> <ul style="list-style-type: none"> • Improved security of tenure where the rental premises is repossessed and the mortgagee expressly/impliedly agrees to the premises being leased. <p>Government</p> <ul style="list-style-type: none"> • None discernible. <p>Mortgagees</p> <ul style="list-style-type: none"> • None discernible. 	<p>Lessors</p> <ul style="list-style-type: none"> • Potentially an increased cost of finance because lenders seek to protect themselves from risk. <p>Tenants</p> <ul style="list-style-type: none"> • Tenants remain exposed to eviction where the mortgagee has not expressly or impliedly consented to premises being leased. <p>Government</p> <ul style="list-style-type: none"> • None discernible. <p>Mortgagees</p> <ul style="list-style-type: none"> • The mortgagee may need to assume the responsibilities of a lessor. • The mortgagee may need to apply to the Supreme Court for an order of possession.

Table 20 - Impact analysis - Mortgagee repossession of the rental premises

Assessment against the policy objective

The policy objective is to ensure the RTA protects the interests of a tenant in circumstances where a mortgagee is taking possession of the premises without unduly restricting the lending practices of financial institutions in relation to investment properties.

The CRIS proposed proceeding with the policy proposal, as it was unlikely to have a significant impact on stakeholders, unless feedback provided substantive evidence of unintended consequences. Responses to the CRIS did not identify substantive evidence of likely unintended consequences.

The proposal achieves the objective by protecting the interests of some tenants who would otherwise face eviction for a matter beyond their control.

The following protections for mortgagees ensure that lenders retain enough flexibility so as avoid a negative impact on the investment market:

- mortgagees will still be able to avail themselves of other grounds for termination – including sale of the premises;
- the lease will not be preserved unless the mortgagee has expressly or impliedly consented to the premises being leased.

It is anticipated that the benefit to tenants of improved security of tenure outweighs any potential costs to mortgagees and lessors.

Recommendation 29- Mortgagee possession

Amend the RTA to provide that a tenancy agreement does not automatically terminate on possession of the premises where the mortgagee has expressly or impliedly consented to the premises being leased.

5.5 Termination of the tenancy agreement by the tenant (CRIS part 6.4)

Issue

Currently under the RTA, a tenant may terminate a periodic tenancy agreement by giving the lessor 21 days' notice.¹⁷⁴ However, fixed term tenancy agreements cannot be terminated before the end of the term except in limited circumstances.

The review considered whether the RTA should be amended to provide additional mechanisms for tenants to terminate fixed term tenancy agreements and how to protect the interests of lessors in the event of early termination.

Current situation

Currently in Western Australia, a tenant cannot terminate a fixed term tenancy agreement under the RTA except:

- where the fixed term has ended and the tenant has given notice of intention not to renew the agreement;¹⁷⁵
- in circumstances of family violence;¹⁷⁶
- where the agreement is frustrated;¹⁷⁷
- by application to the court on grounds of breach of the agreement by the lessor;¹⁷⁸
- by application to the court on grounds of hardship to the tenant, in this instance compensation may be payable to the lessor;¹⁷⁹ and
- by abandoning the premises (break lease) and possibly paying compensation to the lessor.¹⁸⁰

Tenants and tenant stakeholders have expressed concern that tenants in fixed term tenancy agreements are sometimes unable to terminate the agreement if their circumstances change, for example in order to move into social housing or aged care, or if they have lost their employment.

Early termination of a tenancy can cost and inconvenience lessors' who are required to re-let the premises. Tenants will usually be required to continue to pay rent until the premises are re-let and pay other reasonable compensation to the lessor.

¹⁷⁴ RTA s.68.

¹⁷⁵ RTA s.70A.

¹⁷⁶ RTA s.71AB.

¹⁷⁷ RTA s.69.

¹⁷⁸ RTA s.75.

¹⁷⁹ RTA s.74.

¹⁸⁰ RTA s.78.

Objective

To ensure the RTA appropriately balances the interests of tenants who need to terminate a fixed term tenancy agreement in certain circumstances with the rights of lessors to certainty of contract.

Options considered

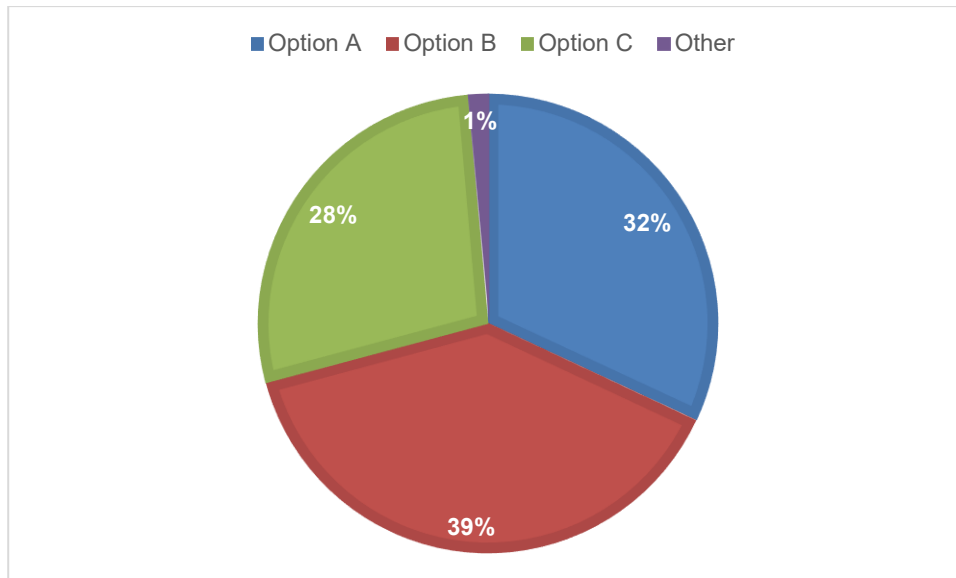
The following options were considered in the CRIS.

Option A	Status quo Under this model there is no change to the current legislative regime.
Option B	Amend the RTA to allow tenants to terminate a fixed tenancy agreement in specified circumstances Under this option, a tenant would be allowed to terminate a fixed term tenancy agreement in certain prescribed circumstances without incurring break lease fees, including: <ul style="list-style-type: none">• the tenant requires care in an aged care facility and has accepted an offer of a place in such a facility;• the tenant has been offered a place in social housing, community housing or other supported accommodation; or• the lessor has placed the house on the market for sale and is proposing to conduct home open inspections, and the proposed sale was not disclosed to the tenant prior to entering into the tenancy agreement. Consideration could also be given to prescribing other grounds for termination, such as the tenant has suffered a substantial decrease in income due to loss of employment or illness, or the tenant is required to relocate for employment. It is intended that this amendment, if pursued, would not affect current provisions in the RTA allowing a tenant to terminate their interest in a tenancy agreement on the grounds they have been a victim of family and domestic violence, or by court order on the grounds they would suffer undue hardship.
Option C	Amend the RTA to allow a residential tenancy agreement to include a break lease clause This option would allow a tenant to break a fixed term tenancy agreement in any circumstances, provided a pre-determined break lease fee amount was paid to the lessor.

Stakeholder feedback to the CRIS

Of the 72 responses to the question of which option was preferable, 32 per cent of respondents supported Option A, 39 per cent of respondents supported Option B and 39 per cent supported Option C. One respondent did not support any of the options and some stakeholders suggested combining Options B and C.

Figure 9 - Preferred option - Termination by the tenant



Option A

Option A was supported by lessors, real estate agents/property managers and their representatives, including REIWA. Lessors highlighted the time and costs involved in finding a new tenant for premises and stressed the need for certainty in relation to the lease term.

REIWA raised concerns about certain classes of tenant being able to break a lease without penalty and suggested that those classes of tenant (for example the elderly or those on a waiting list for social housing) would be viewed as high-risk by lessors, which may make securing a rental property more difficult. REIWA argued that the current provision allowing for termination by the courts on the ground of undue hardship is a more equitable method than singling out groups for exemptions.

Option B

Option B was supported by tenants and their representatives (including disability advocates) on the basis that it allows for termination in circumstances that are often unforeseen by tenants. Some lessors also supported Option B and noted that flexibility to terminate is appropriate in some limited circumstances.

WACOSS supported Option B and stated that the current RTA provisions do not provide enough flexibility to allow for termination at times of personal or financial stress. WACOSS also suggested that potential break lease costs can deter tenants from entering into longer leases. Other respondents also raised this concern.¹⁸¹

In relation to circumstances where the tenant has been offered a place in social housing, community housing or other supported accommodation, it was noted that tenants need to be able to accept a place as waiting lists are often very long.

¹⁸¹ For example, Tim Clifford, former MLC - Member for East Metropolitan Region.

The Mental Health Commission supported Option B and suggested further consultation should be undertaken in relation to the circumstances in which termination should be permitted. The Commission thought that including incarceration, long-term hospital stays, and admission to high support accommodation should also be considered.

Other suggested reasons for termination provided by respondents included:

- serious illness;
- death of a household member;
- relocation for employment;
- a need to access disability care or support;
- loss or reduction in income; and
- visa expiry.

Respondents suggested that a sufficient notice period should apply under Option B, with varying views as to the length of that notice period, from 21 days up to 60 days. The majority of respondents thought that there was no need for a court order. However, some respondents suggested supporting evidence should be provided.

Option C

Option C was supported by several tenant representatives, as well as a number of lessors and real estate agents/property managers. These respondents thought that a predetermined break lease fee provided some flexibility to allow tenants to terminate, coupled with certainty about the amount of compensation payable to the lessor for that early termination.

Lessors who supported Option C stated that it was reasonable for a tenant to pay the costs involved in re-leasing the property. Costs incurred by lessors include agent fees, advertising costs and loss of rent during any period of vacancy.

With regards to the structure of a break lease fee, PICA suggested that fees need to reflect the loss incurred by the lessor and be sufficiently high to deter misuse. Respondents submitted a range of suggestions as to the amount, ranging from two weeks rent to six weeks rent. Some respondents suggested a staggered approach, with break lease fees based on the remaining amount of the tenancy term (a higher fee being payable if a longer period of the tenancy remains).

WACOSS and Anglicare suggested that break lease fees should be waived in circumstances of hardship.

A number of stakeholders suggested combining Options B and C, so that tenants who have genuine reasons for terminating (as listed) would not be held financially liable for breaking a lease, but in other circumstances, tenants may terminate a lease on payment of the relevant break lease fee.

Other jurisdictions

The approach of the states and territories in Australia in relation to tenants terminating a fixed term tenancy agreement prior to its end date are set out in the table below.

	ACT	NSW	NT	QLD	SA	TAS	VIC
Lessor has breached tenancy agreement	✓	✓	-	✓	✓	✓	-
Premises has become uninhabitable	✓	-	✓	-	-	-	-
The lessor has caused or threatened serious damage or injury	✓	-	-	✓	-	-	-
A co-tenant has caused or threatened serious damage or harm	-	-	-	✓	-	-	-
Lessor made false and misleading statement to induce the tenant	✓	-	-	-	-	-	-
The tenant is being posted out of State	✓	-	-	-	-	-	-
Tenant would suffer hardship	✓	-	✓	✓	-	-	-
To move into social housing premises	-	✓	✓	-	-	-	✓
To move into aged or specialist care	-	✓	-	-	-	-	✓
Tenant needs temporary crisis accommodation	-	-	-	-	-	-	✓
Lessor is going to sell the premises but did not state this prior to the agreement	-	✓	-	-	✓	-	✓
Lessor does not carry out repairs	-	-	-	-	-	✓	-

Table 21 - Termination by the tenant - Australian jurisdictions

In addition to the above grounds allowing a tenant to terminate a fixed-term tenancy agreement without having to pay compensation to the lessor, both the ACT and NSW provide for the inclusion in a tenancy agreement of a 'break lease' clause. A break lease clause sets out the precise compensation (break fee) that is payable to a lessor if a tenant breaks a fixed-term agreement. This is in contrast to the current requirement of the RTA that a tenant must pay the rent until such time as the premises is re-let and all other reasonable compensation to the lessor.¹⁸²

In the ACT the permitted break fee is as follows:¹⁸³

- if the fixed term is 3 years or less:
 - 6 weeks rent if less than half of the fixed term has expired; or
 - 4 weeks rent in any other case; or

¹⁸² RTA s.78 - entitles the lessor to compensation for loss where the tenant abandons the premises.

¹⁸³ *Residential Tenancies Act 1997* (ACT) s.8; *Residential Tenancies Regulation 2019* (NSW) – Schedule 1 - standard form agreement, clause 51.

- if the fixed term is more than 3 years — the amount agreed between the lessor and tenant.

A break fee will not be payable if the tenant terminates for a reason permitted under the Act. The ACT clause also provides that if the premises are re-let within a defined period the amount payable by the tenant is reduced.

In NSW the break fee payable by a tenant on abandonment of premises for a fixed term agreement of not more than three years is:¹⁸⁴

- four weeks rent if less than 25 percent of the fixed term has expired;
- three weeks rent if between 25 percent and 50 percent of the fixed term has expired;
- two weeks rent if between 50 percent and 75 percent of the fixed term has expired; and
- one week's rent if 75 percent or more of the fixed term has expired.

Impact analysis

	Potential Benefits	Potential Disadvantages
Option A Status quo	Lessors <ul style="list-style-type: none"> • Retain the right to seek compensation from the tenant for all losses incurred as a result of early termination of the tenancy (rent and other costs). • Low risk of loss due to early termination of fixed term lease. Tenants <ul style="list-style-type: none"> • No change. Government <ul style="list-style-type: none"> • No change. 	Lessors <ul style="list-style-type: none"> • None discernible. Tenants <ul style="list-style-type: none"> • No extra flexibility to terminate a fixed term tenancy agreement where their circumstances change. Government <ul style="list-style-type: none"> • Burden on the Magistrates Court to determine compensation for lessors in the event a tenant breaks a lease.
Option B Amend the RTA to allow tenants to terminate a fixed tenancy agreement in specified circumstances	Lessors <ul style="list-style-type: none"> • Retain the right to seek compensation for loss in most circumstances where the tenant breaks the lease. Tenants <ul style="list-style-type: none"> • Ability to terminate the lease without penalty in specified circumstances. • Greater flexibility to respond to changed circumstances. 	Lessors <ul style="list-style-type: none"> • Risk of incurring costs in re-letting premises in some additional circumstances. Tenants <ul style="list-style-type: none"> • Some tenants who have difficulty meeting rental obligations will continue to be ineligible to terminate their lease early.

¹⁸⁴ *Residential Tenancies Act 2010* (NSW) s.107; Residential Tenancies Regulation 2019 (NSW) – Schedule 1 - standard form agreement, clause 51.

	Potential Benefits	Potential Disadvantages
	<p>Government</p> <ul style="list-style-type: none"> • Potential for reduced number of disputes in the Magistrates Court. 	<p>Government</p> <ul style="list-style-type: none"> • Ongoing costs in Magistrates Court for determining matters outside the scope of changes.
<p>Option C</p> <p>Amend the RTA to allow a residential tenancy agreement to include a break lease clause</p>	<p>Lessors</p> <ul style="list-style-type: none"> • Certainty regarding the amount of compensation payable in the event that a tenant ends the lease. <p>Tenants</p> <ul style="list-style-type: none"> • Greater flexibility to terminate the lease. • Certainty as to cost for termination of lease. Can assess affordability before entering into fixed term agreement or making decision to break the lease. <p>Government</p> <ul style="list-style-type: none"> • Potential for reduced number of disputes in the Magistrates Court. 	<p>Lessors</p> <ul style="list-style-type: none"> • Set break lease fee may not cover all losses incurred by a lessor – for example, lost rent during period of vacancy. <p>Tenants</p> <ul style="list-style-type: none"> • A tenant who may currently be able to avoid a fee when they leave a tenancy early¹⁸⁵ will be required to pay a break lease fee. • Break lease fee may be a difficult cost to manage for some tenants. <p>Government</p> <ul style="list-style-type: none"> • Cost in setting and reviewing break lease fee.

Table 22 - Impact analysis - Termination by the tenant

Assessment against the objective

The objective is to ensure the RTA appropriately balances the interests of tenants who need to terminate a fixed term tenancy agreement in certain circumstances with the rights of lessors to certainty of contract.

Option A

Partly achieves the objective. Lessors retain certainty of contract, but tenants do not have improved flexibility to terminate a fixed term lease without cost in the event that their personal circumstances change.

Option B

Partly achieves the objective in that it provides flexibility to some vulnerable tenants (such as those who need to go into social or disability housing or aged care). However, Option B will not cover all circumstances in which a tenant may need to terminate a lease before the end of a fixed term.

Under Option B, lessors will experience reduced certainty of contract. There is the potential for lessors to incur significant costs in the event the lease is terminated, and they have no right to compensation.

¹⁸⁵ For example, either via agreement with the lessor or via a successful hardship application.

Option C

Partly achieves the objective in that tenants have greater flexibility to terminate a fixed term tenancy agreement, and landlords are somewhat compensated for the loss if the tenant breaks the contract.

Both the lessor and tenant will know upfront how much the tenant will be liable to pay on early termination. This allows a tenant to assess the affordability of the break lease fee before either entering into a fixed-term lease or making a decision to break the lease and accept alternative accommodation.

However, some vulnerable tenants may be required to pay to break a lease in circumstances where this may result in hardship, for example, a person who is moving into social housing or aged care. Also, in some circumstances the pre-determined break lease fee may not be adequate to cover all losses incurred by a lessor.

Combination of Options B and C

As noted above, a number of stakeholders suggested combining Options B and C so that tenants who have genuine reasons for terminating (as listed) would not be held financially liable for breaking a lease, but in other circumstances, tenants may terminate a lease by paying the relevant break lease fee.

A combination of Options B and C achieves the objective more effectively than any of the options on their own. Combining B and C has the following benefits:

- maintains flexibility for the tenant and ensures that tenants who have genuine reasons for terminating are not unfairly penalised;
- in circumstances other than those provided, lessors will be compensated for early termination of the lease; and
- both the lessor and tenant will know upfront how much the tenant will be liable to pay on early termination, creating clarity for both parties.

National Cabinet recommendations

The National Cabinet recommendations include the following in relation to break lease fees:

6. Limit break lease fees for fixed term agreements to a maximum prescribed amount which declines according to how much of the lease has expired (e.g. a maximum of four weeks' rent if less than 25 per cent of the fixed term has expired).

Recommendation 30 - Termination of tenancy agreement by the tenant

Amend the RTA to permit a tenant to terminate a fixed term tenancy agreement in certain limited circumstances without incurring break fees, including, where:

- the tenant requires care in an aged care facility and has accepted an offer of a place in such a facility;
- the tenant has been offered a place in social housing, community housing or other supported accommodation;
- the lessor has placed the house on the market for sale and is proposing to conduct home open inspections, and the proposed sale was not disclosed to the tenant prior to entering into the tenancy agreement; or
- other circumstances to be prescribed in the regulations.

Recommendation 31 - Break lease clauses

Amend the RTA to include a standard break lease clause in residential tenancy agreements.

Break fees will be limited for fixed term agreements to a maximum amount prescribed in regulations which reduces in accordance with the period remaining on the lease when the lease is terminated.

6 BOARDING AND LODGING (CRIS part 8)

Issue

Western Australia, unlike some other Australian jurisdictions, does not have specific statutory regulation of the boarding and lodging sector. In 2016 a Consultation Regulatory Impact Statement was released by the former Department of Commerce (2016 CRIS) inviting feedback from the sector on how the boarding and lodging sector should be regulated.¹⁸⁶

Feedback from stakeholders to the 2016 CRIS overwhelmingly supported regulating the boarding and lodging sector, by introducing overarching occupancy principles and amending the RTA to apply particular provisions to the sector that would, subject to consultation, be appropriately modified to reflect the requirements of the sector. Stakeholders viewed the boarding and lodging sector as inadequately defined and regulated which causes confusion among lessors and boarders/lodgers about their rights and responsibilities. In some cases, this confusion resulted in boarders and lodgers tolerating poor living conditions and lack of privacy because they were uncertain about what their rights should be.

The current consultation considered what form regulation of the boarding and lodging sector should take.

Boarding and lodging sector

Boarding and lodging arrangements can cover a wide range of types of accommodation. The 2016 CRIS outlined the distinction between boarding and lodging and other types of tenancy arrangement and stated:

- A boarder generally stays at another person's house or property paying rent with meals supplied by the lessor. Boarders also receive services such as meals, laundry and cleaning.
- A lodger generally stays at another person's house and pays rent but is usually not supplied with meals or other services.
- Boarders and lodgers do not have a right to 'exclusive possession' of the premises or part of the premises (such as their bedroom) and are classed as licensees rather than lessees. Boarding and lodging are not currently regulated by the RTA.
- The term 'rooming house' is sometimes used in legislation in other jurisdictions. There is some variation across other jurisdictions as to the definition of the term and how it is applied.

¹⁸⁶ *Boarders and Lodgers C-RIS – September 2016*, Department of Commerce, Consumer Protection (<https://www.commerce.wa.gov.au/publications/boarders-and-lodgers-consultation-regulatory-impact-statement>).

The 2016 CRIS identified three main types of boarding house which were large boarding houses, suburban homes/apartments with shared facilities and hotels/motels where residents are permitted to stay for extended periods. Other common examples of boarding arrangements may include backpacker hostels, serviced apartments, crisis accommodation and student accommodation services.

The role of boarding houses has changed over time. Boarding houses are now seen as a form of lower-cost accommodation and source of emergency housing for a range of people, who are generally unable to access other private rental accommodation or social housing. This may be due to an inability to afford rental costs, a lack of references, a preference for shared accommodation, or a need for additional support services.

Some boarding houses provide support services for the homeless, or those with mental illness or a drug history. However, students (particularly international students), seasonal workers, backpackers, fly in/fly out workers and retirees may also use boarding arrangements, as do those who choose this style of housing for reasons such as low establishment costs and flexibility.

Data issued by the Australian Bureau of Statistics (ABS) from the 2011 census indicates that the number of persons staying in “boarding houses” in WA was 1,337.¹⁸⁷ By 2016, it was estimated that this figure had dropped to 991.¹⁸⁸ The 2021 census indicates that the number of people living in boarding houses in Western Australia was 631.¹⁸⁹

Despite an apparent decrease in numbers of people living in boarding houses in Western Australia, between 2016 and 2021 the ABS data showed there was a 26.5% increase in people living in boarding houses nationally.¹⁹⁰

There is no new ABS data for people living in boarding houses for the period from 2021 to the present. Boarding house arrangements are often grouped with homelessness data by the ABS and other research bodies due to their transient nature.¹⁹¹

¹⁸⁷ Australian Bureau of Statistics, 2011 Census of Population and Housing: Estimating Homelessness, 2049.0, p.26.

¹⁸⁸ Australian Bureau of Statistics, 2016 Census of Population and Housing: Estimating Homelessness, 2049.0 (State and territory of usual residence, all persons [Census of Population and Housing: Estimating Homelessness, 2016 | Australian Bureau of Statistics](#))

¹⁸⁹ Australian Bureau of Statistics, 2021 Census of Population and Housing: Estimating Homelessness, 2049.0 (State and territory of usual residence, all persons [Estimating Homelessness: Census, 2021 | Australian Bureau of Statistics](#))

¹⁹⁰ Australian Bureau of Statistics, 2021 Census of Population and Housing: Estimating Homelessness, 2049.0 (Homeless operational groups [Estimating Homelessness: Census, 2021 | Australian Bureau of Statistics](#)). This increase was noted by the Australian Bureau of Statistics as being partly associated with improvements in data quality through greater use of administrative data.

¹⁹¹ Australian Bureau of Statistics, 2016 Census of Population and Housing: Estimating Homelessness, 2049.0 (State and territory of usual residence, all persons [Census of Population and Housing: Estimating Homelessness, 2016 | Australian Bureau of Statistics](#)); also, Pawson, H., Parsell, C., Clarke, A., Moore, J., Hartley, C., Aminpour, F. and Eagles, K. (2024) Australian Homelessness Monitor 2024; Sydney: UNSW City Futures Research Centre <https://cityfutures.be.unsw.edu.au/>, 89, note 25.

Difficulties with accurately recording the number of people living in boarding houses is widely acknowledged, especially in 2021 when the pandemic created additional challenges because state and territory governments were working with service providers to provide homeless people with housing. Therefore, 2021 figures may not reflect current realities in which rising rents, costs of living and a lack of supply is pushing people on lower incomes into transient housing arrangements.

Regulation of boarding and lodging in WA

The RTA currently does not apply where the tenant is a boarder or lodger.¹⁹² The RTA does not define ‘boarder’ or ‘lodger’, which results in a lack of clarity about the application of the RTA.

The rights and obligations of boarders or lodgers and their landlords in WA are regulated under common law.

Lodging houses of six or more residents are currently regulated through the *Health (Miscellaneous Provisions) Act 1911 (WA)*, but these provisions are health regulations and do not place a heavy emphasis on resident and provider rights and obligations.

2016 Review

The 2016 review proposed the following options for regulation of the boarding and lodging sector:

- Option 1 – status quo;
- Option 2 – introduce modified tenancy regulation under the RTA tailored for the boarding sector;
- Option 3 – implement a set of overarching occupancy principles, parties would be free to negotiate the terms of their residency agreements within the parameters of these principles;
- Option 4 – include a definition of boarder¹⁹³ in the RTA, regulation of boarders remaining under the common law; and
- Option 5 – introduce a voluntary code of practice for the boarding and lodging sector.

In total, 20 submissions were received from a range of individuals and organisations. A further 95 survey responses were received, of which 30 per cent came from lessors and 70 per cent came from boarding and lodging residents.

Respondents supported regulating the boarding and lodging industry, preferring either to introduce an overarching set of occupancy principles (Option 3) or to include regulation in the RTA (Option 2). Support for each of these models was evenly divided.

¹⁹² RTA s.5(2)(d).

¹⁹³ This would also include lodgers.

Experience from COVID

Moratoria on rent increases and evictions during COVID extended to boarding houses. Consumer Protection received feedback from some boarding providers that the moratoria on evictions was causing problems. For example, some tenants were not complying with house rules, drinking alcohol, taking drugs, and making other residents and staff feel unsafe. If emergency eviction provisions are included in the proposed boarding and lodging provisions, this should cover circumstances such as those outlined above.

Objective

To ensure the RTA provides appropriate protection for the rights of boarders, lodgers and rooming house residents while maintaining sufficient flexibility for lessors to maintain control of their housing or their investment.

Proposal considered

The following proposal was presented in the CRIS for consideration.

It is proposed to amend the RTA to introduce regulations for boarding and lodging. The proposal is that where the premises are capable of accommodating above a threshold number of residents, modified tenancy regulations will be drafted and implemented. Where the premises are capable of accommodating below a threshold number of residents – for example in the landlord’s own home – the proposal is to introduce occupancy principles. The detail of the modified tenancy laws and the occupancy principles, as well as the threshold number of residents, will be developed in consultation with key stakeholders during the drafting stage.

The types of matters that would be regulated by the modified tenancy laws include:

- form of agreement;
- rent in advance;
- security bonds;
- property condition reports;
- rights and obligations of the accommodation provider and the resident;
- house rules;
- urgent eviction; and
- termination of the agreement.

The occupancy principles would address such matters as:

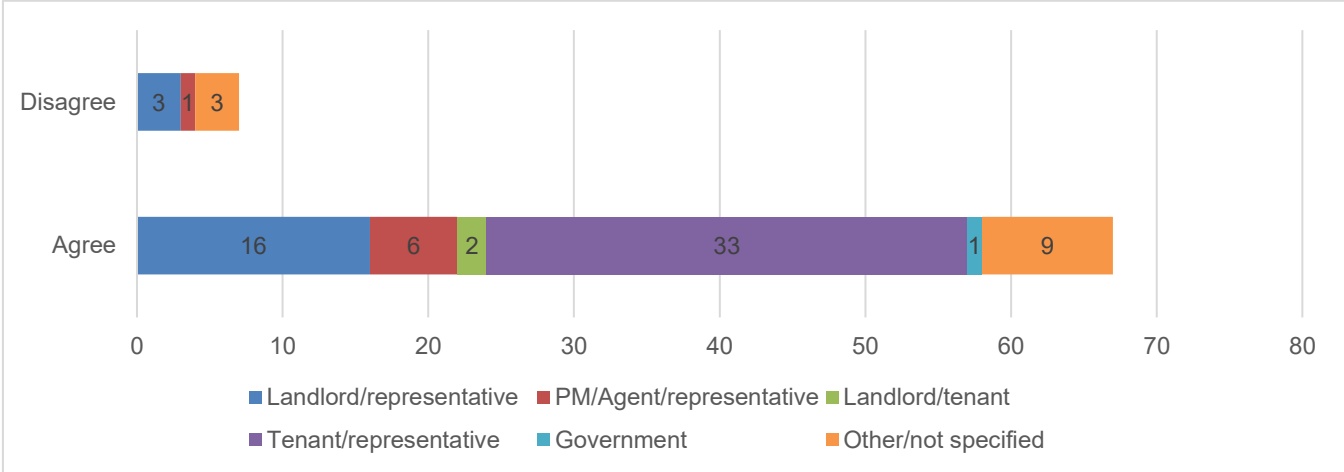
- minimum content of a residency agreement;
- security bonds;
- house rules; and
- termination of tenancies.

This proposal combines the options that were supported by stakeholders in the 2016 review (Options 2 and 3).

Stakeholder feedback to the CRIS

Seventy-four submissions were received in response to the proposal. Overall, support for the proposal was very strong with 92 per cent of respondents agreeing and only eight per cent disagreeing. A breakdown of the responses is provided below.

Figure 10 - Breakdown of responses - Boarding and lodging



The reasons for supporting the proposal include:

- that WA boarding and lodging residents have the least legal protections of any residents in Australia, and yet they are among the most vulnerable;
- different providers operating similar services operate differently, creating inconsistency in the sector; and
- placing different standards on different parts of the housing sector is unfair.

Circle Green Community Legal supported introducing modified tenancy regulation to cover boarding and lodging and including definitions of boarders and lodgers into the RTA (Option 2 of the 2016 review). Circle Green also submitted that the way a premises is run (that is, whether or not the lessor lives on the premises), rather than the number of lodgers, should be the distinguishing feature of a boarding house.

Shelter WA supported introducing occupancy principles (Option 3 of the 2016 review) because occupancy principles allow more variation than residential tenancy agreements. Shelter WA submitted that this is important because there is a greater variation between the sorts of housing services provided under occupancy agreements than residential tenancy agreements.

REIWA supported occupancy principles (Option 3 of the 2016 review) because it would allow parties to negotiate terms of each agreement. It also supported regulating boarding and lodging under the RTA where the lessor does not reside at the property.

Communities supported the proposal because residents of boarding and lodging services in WA currently have limited legal protections.

Of the respondents who disagreed with the proposal, the majority indicated that operators need to be able to terminate boarding and lodging arrangements with short notice. This concern was echoed by provider Foundation Housing and community service organisation Uniting WA which expressed concerns about staff and resident safety if terminations could not occur quickly enough. Shelter WA also strongly emphasised the need for boarding and lodging facilities to terminate accommodation agreements in a swift manner, particularly where residents pose serious risks to other residents or to staff.

Other reasons for not supporting the proposal included:

- that operators may have less control over their premises under the proposal;
- licence to occupy agreements are already in place, which, in conjunction with house rules, balance the rights of the resident, landlord and greater community;
- return of the bond may be more urgent for boarding residents, and therefore it may be preferable for the bond to be held with the operator rather than the Bond Administrator; and
- legislating to regulate boarding and lodging arrangements compromises the ability to deliver other services which are often provided within these homes.

A number of respondents submitted that boarding and lodging arrangements are different from residential tenancy arrangements. These differences would need to be reflected in legislation or occupancy principles. For example:

- regulating boarding and lodging houses involves dealing with relationships between residents of the same premises, not just the relationship between the lessor and the resident, as is the case with residential tenancies;
- there are numerous different types of boarding house with different types of residents staying for different periods, and regulation will need to take into account the different needs of these groups; and
- boarding house arrangements tend to be transient by design, as opposed to residential tenancies which may be more permanent.

Minimum threshold for a boarding house

The CRIS asked how many residents should be the minimum threshold for a boarding house. Responses varied from one person to seven people. However, the most common preference was for four or five residents.

Other jurisdictions

All other Australian jurisdictions have some form of regulation of the boarding and lodging or rooming house sector. Some specifically regulate boarding or lodging arrangements, while others regulate rooming accommodation, but exclude boarding and lodging.

In some jurisdictions prescriptive requirements apply, in others, occupancy principles apply. A two-tiered approach applies in a number of jurisdictions, with the statute applying in circumstances where the number of residents exceeds a certain threshold. Generally, the minimum number of residents to meet the threshold is between three and five people.¹⁹⁴

Impact analysis

Proposal	Potential benefits	Potential disadvantages
<p>Amend the RTA to introduce regulation for boarding and lodging.</p> <p>Modified tenancy legislation would apply to premises with over a certain number of residents.</p> <p>Under that number, occupancy principles to be introduced</p>	<p>Lessors</p> <ul style="list-style-type: none"> • Largely maintains flexibility regarding boarding¹⁹⁵ arrangements. • Greater clarification of lessor responsibilities. • Potential for reduced disputes due to clarification of rights and responsibilities. <p>Boarders</p> <ul style="list-style-type: none"> • Allows for greater certainty regarding boarders’ rights. • Increased security of tenure in some circumstances. <p>Government</p> <ul style="list-style-type: none"> • Reduced risk of disputes due to clarification of rights and responsibilities. 	<p>Lessors</p> <ul style="list-style-type: none"> • Potentially some loss of flexibility for small boarding houses. • Potentially some increased responsibilities in ensuring compliance with the rules or occupancy agreement. <p>Boarders</p> <ul style="list-style-type: none"> • None discernible for boarders living in premises over the threshold. • Boarders living in premises under the threshold may have fewer protections. <p>Government</p> <ul style="list-style-type: none"> • None discernible.

Table 23 - Impact analysis - Boarding and lodging

Assessment against the policy objective

The policy objective is to ensure the RTA provides appropriate protection for the rights of boarders, lodgers and rooming house residents while maintaining sufficient flexibility for lessors and without unduly impacting on their ability to recognise a return on their investment and manage their premises.

The CRIS proposed regulating the boarding and lodging sector using a tiered approach, either by applying occupancy principles or under the RTA, depending on the number of residents.

Responses to the CRIS did not provide substantive evidence of unintended consequences of proceeding with the proposal.

¹⁹⁴ More detail is provided in the 2016 CRIS, p26.

¹⁹⁵ Note – in this table, the term “boarding” also captures “lodging”. Similarly, the term “boarder” captures the term “lodger”.

Analysis of the submissions in response to the 2016 review indicated overwhelming support for reform to the boarding and lodging sector. This support was echoed by submissions in response to the CRIS, which proposed a combination of the two most widely supported reform options.

The combination of these options achieves the objective as follows:

- Introducing a definition of boarders and lodgers in the RTA provides clarity to lessors and residents about the nature of their relationship and the rules that apply.
- Regulating larger boarding and lodging houses under the RTA ensures that the rights of residents are protected.
- Occupancy principles give lessors and residents in small boarding houses the flexibility to tailor the terms of their agreement to suit their particular situations but still provide protections to residents.

The proposal is also consistent with other Australian jurisdictions.

Consumer Protection is mindful that balancing the rights and obligations of lessors and residents in a wide variety of circumstances is complex. To ensure this balance is maintained, details of the regulations and occupancy principles will be finalised in consultation with key stakeholders.

In particular, the following issues will be addressed:

- flexibility of lessors to terminate tenancies at short notice, whilst preserving tenants' security of tenure;
- ensuring the safety and comfort of all residents;
- how to regulate the relationships between residents;
- how to balance the needs of different types of residents within the boarding and lodging sector; and
- ensuring that the regulations allow for transient and temporary living arrangements, as well as long term housing.

Recommendation 32 - Boarding and lodging

Amend the RTA to regulate boarding and lodging homes and premises.

Include clear definitions of boarding and lodging in the RTA.

Where premises are capable of accommodating above a minimum threshold number of residents amend the RTA so that modified tenancy rules apply. Matters to be considered for modified tenancy rules include:

- form of residency agreement;
- security bonds;
- house rules;
- termination of the agreement;
- rights and obligations of the accommodation provider and the resident;
- rent in advance;
- urgent evictions; and
- property condition reports.

Where the premises are capable of accommodating below the minimum threshold, amend the RTA so that occupancy principles will apply. Matters to be considered for occupancy principles include:

- minimum content of a residency agreement;
- security bonds;
- house rules; and
- termination of an agreement.

Stakeholders will be consulted during the drafting process on definitions and matters to be considered for modified tenancy rules and for occupancy principles.

7 A QUALITY RENTAL MARKET

7.1 Knowledge of the law (CRIS part 10.1)

Issue

Under the RTA a private lessor is not obliged to engage a qualified property manager to manage their premises. There is also no requirement for a lessor who chooses to self-manage their premises to acquire any knowledge about the RTA.

The review considered whether private lessors who self-manage their rental premises should be required to demonstrate an awareness and basic level of understanding of the RTA.

Current situation

In Western Australia, property managers are required to demonstrate a level of understanding of the RTA before they are allowed to work as a property manager. They must demonstrate knowledge by successfully completing of a range of units of competency in relation to leasing and obtain certificate of registration under the *Real Estate and Business Agents Act 1978* (WA).

The requirement for property managers to be trained and hold a certificate of registration ensures only suitably qualified people operate in the real estate industry who have an adequate knowledge of the laws that apply to the rental sector.

However, there is no corresponding requirement for private lessors. A lack of knowledge about residential tenancy laws can have negative consequences for the tenant, the lessor and the rental market as a whole.

In Consumer Protection's experience, complaints by tenants about the conduct of self-managing lessors occurs much less frequently than complaints about the conduct of property managers. However, the nature of non-compliance by self-managing lessors, and therefore the consequences of their conduct, are often far more significant.

Objective

To reduce the incidences and consequences of non-compliance with the RTA.

Options considered

The following options were presented in the CRIS for feedback in relation to this issue.

Option A Status quo

Under this option there would be no change. There would be no training specifically developed and tailored for the benefit of self-managing private lessors. Self-managing private lessors would continue to have access to information resources provided by Consumer Protection and by landlord organisations.

Option B Voluntary qualification for private lessors

Consumer Protection could work with registered training organisations (RTOs) to develop a training course that is specifically targeted to the needs of private lessors. The course would be developed in consultation with key stakeholders, but would likely cover topics such as:

- i. lessor rights and obligations under the RTA;
- ii. the role of a property manager and how to choose a property manager;
- iii. managing the relationship with the tenant;
- iv. dispute resolution, including alternatives to court; and
- v. building standards and maintenance of premises.

There would be a cost associated with completing the course. The cost would be set by the RTO. The course would be available in person and/or online. Once a lessor successfully completes the course, they would receive a qualification or statement of competency. A lessor could then advertise this qualification when advertising their premises for let as a means of setting them apart from other private lessors.

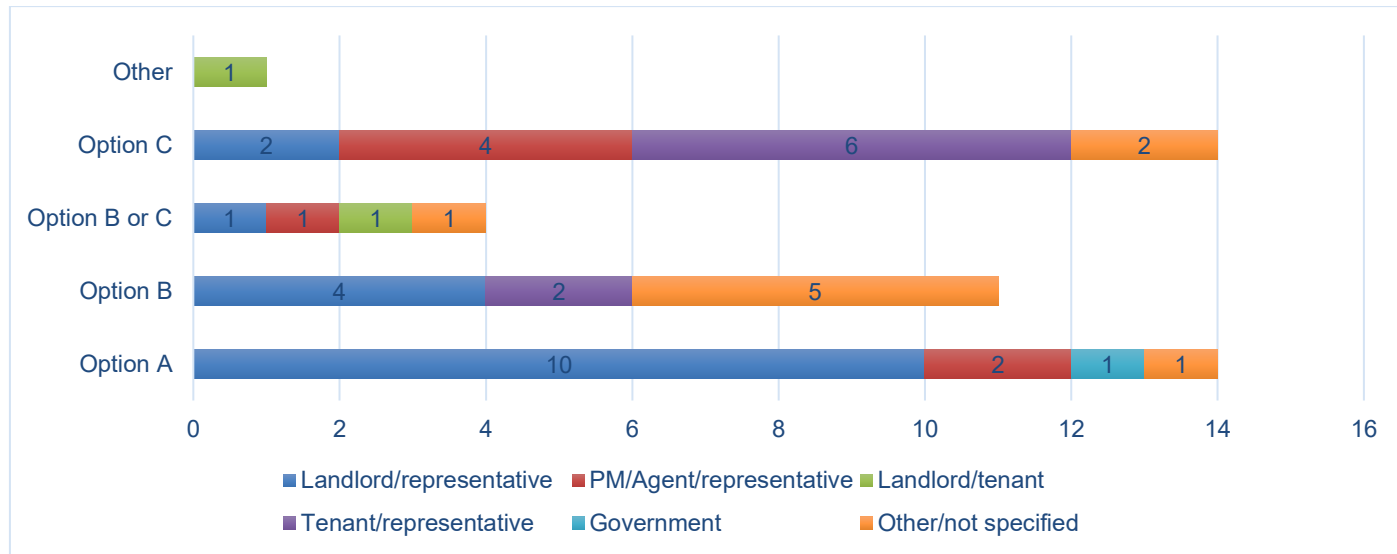
Option C Mandatory training for all private self-managing lessors

As per above, Consumer Protection would develop an appropriate course in consultation with key stakeholders. The course would be available in person and/or online. The course may be delivered by an RTO and/or by Consumer Protection. The course would be mandatory for any private lessor who self-manages their rental premises. There would be a cost to lessors associated with completing the course. There may also be a compliance cost to government in ensuring that all those required to undertake the course have done so.

Stakeholder feedback to the CRIS

Respondents demonstrated a similar level of support for each of the options. Of the 44 responses, 32 per cent supported introducing mandatory training for all private self-managing lessors (Option C), 25 per cent supported introducing a voluntary qualification for lessors (Option B) and 32 per cent supported retaining the status quo (Option A). Nine per cent of respondents supported Both Option B and Option C. One respondent suggested an alternative option including education for both tenants and lessors.

Figure 11 - Preferred option - Training for self-managed lessors



Option A

The majority of respondents who supported Option A were lessors and their representatives. Their main reason for preserving the status quo was concern about the time and cost to lessors and government of introducing and maintaining qualifications.

Some lessors suggested that tenants are often unaware of their obligations under the RTA, so there would be as much benefit in requiring tenants to undergo training or education as there would be for lessors.

Some respondents questioned whether training would prevent instances of non-compliance by lessors, given that property managers are frequently the subject of complaints, despite having undergone mandatory training requirements. Other respondents pointed out that there are already resources available from Consumer Protection which give lessors the opportunity to educate themselves if they want to.

Option B

Option B was supported predominantly by lessors and stakeholder bodies, representing both lessors and tenants.

The majority of respondents supported Option B because it represented the “best of both worlds” – it gives lessors the opportunity to undertake training if they feel they need to, without imposing the costs and inconvenience of mandatory training. Some respondents emphasised that training could be used as a point of difference for lessors advertising their rental property. Some respondents recollected instances in which lessors did not comply with the RTA because they were not aware of their obligations.

One lessor submitted that training should be voluntary because it is a minority of self-managing lessors who do the wrong thing, and it would be unfair to have the cost and time demands of training imposed on lessors who already do the right thing.

REIWA supported Option B, indicating that a tenant's rental experience should not be compromised based on whether the rental property is privately managed or managed by a property manager.

Option C

Option C was evenly supported by a cross section of stakeholder groups, who mostly submitted that mandatory training would improve the rental experience for tenants. Many property managers shared stories of encounters with lessors breaching their obligations under the RTA.

One property manager suggested that mandatory training is necessary because it would capture all lessors, not just those who choose to undertake training. He felt that the types of lessors who would choose to undertake voluntary training would likely be the type of lessors who would already conduct their own research, such as by reviewing Consumer Protection's resources. The same property manager also provided a list of circumstances of non-compliance which he has encountered during his career. These circumstances included not lodging bonds with the Bond Administrator, not providing a property condition report, providing properties in an unclean or insecure condition and arriving at the property for an inspection without notice.

Circle Green submitted that requiring a lessor to attend training once per year is not overly onerous, particularly given the importance of the resource that they are responsible for administering. It also submitted that training may reduce ongoing compliance and dispute costs throughout the tenancy.

Peel Community Legal Service echoed this submission, stating that increased knowledge by lessors should ultimately result in fewer disputes overall between tenants and lessors. It suggested offering different RTOs the opportunity to offer the training package, creating competition in the marketplace, as is the case for courses such as responsible service of alcohol.

Communities did not support Option C due to concerns that it may impact investment in the rental market, but submitted that if Option C were implemented, perhaps private lessors who had been operating without complaints or disputes should be exempt from the requirement and only new lessors or lessors who had been subject to court orders in the past three years, should be required to receive mandatory training.

Cost implications

Most respondents submitted that cost implications could be minimised if the training course were offered online and the testing administered via an online quiz. Some suggested that it could be delivered in a similar way to the responsible service of alcohol course, which is relatively cheap and easy for the trainee.

Other jurisdictions

Currently no Australian state or territory requires a self-managing lessor to demonstrate any understanding of the relevant tenancy law prior to entering into a residential tenancy agreement with a tenant. Some overseas jurisdictions, such as Scotland and Northern Ireland, offer voluntary training for private lessors who manage their own tenancies.¹⁹⁶

Assessment against the objective

The policy objective is to reduce the incidences and consequences of non-compliance with the RTA.

Option A

Option A partially achieves the objective, as Consumer Protection already publishes comprehensive materials about lessors' obligations under the RTA. There is the potential for Consumer Protection to increase the promotion and availability of this material, increasing the number of lessors who access it. This may help to reduce the incidence and consequences of non-compliance with the RTA.

Option B

Option B may partially achieve the objective because it may reduce the incidence of lessor non-compliance with the RTA. However, it is unclear how many lessors would undertake training, especially when the market is experiencing low rental vacancy rates and there is no benefit to lessors distinguishing themselves as having a special knowledge of the RTA.

Further, some stakeholders expressed the view that lessors who are interested in further educating themselves already have the opportunity to do so, via resources published by Consumer Protection. Therefore, voluntary training may not work to educate non-compliant lessors.

Introducing and maintaining any kind of training also carries with it significant costs to government, including to develop the training course, monitor lessor compliance with training and audit RTO delivery of training.

The costs of introducing voluntary lessor training outweigh the benefits. Consumer Protection already provides comprehensive resources to lessors who wish to improve their knowledge of the RTA, which is always freely accessible. Any lessor training to be provided by RTOs would largely replicate this information, therefore introducing additional training may not result in increased knowledge of the RTA or reduced instances of non-compliance.

Option C

Option C may achieve the objective but would result in a significant cost to government and impost on lessors.

¹⁹⁶ More information about the programs available in Scotland and Northern Ireland was presented in the C-RIS, pages 132 -133.

Introduction of training for lessors would carry significant costs to government, including developing and monitoring the training course and auditing RTOs which deliver the training. This cost would be more than under Option B because government would have to monitor and record which lessors have undertaken the training. This is a significant regulatory burden and would be difficult to implement in the absence of a lessor register.

Further, it is unclear to what extent introducing mandatory lessor training would result in reduced instances of lessor non-compliance with the RTA. As noted above, the majority of complaints received by Consumer Protection are about property managers who already undergo training about the RTA. The extent to which improved training would result in lower dispute resolution and compliance costs during the tenancy is unknown.

Option C imposes an additional administrative burden and cost on lessors. Many lessors expressed that they have limited spare time and resources available to undertake training, and if they have demonstrated compliance over years of owning property they should not be required to undertake training.

Recommendation 33 - Training for lessors

Maintain the status quo, lessors should not be required to undertake mandatory or voluntary training of their obligations under the RTA.

It is recommended that Consumer Protection work to actively promote the educational material that is currently available to lessors and investigate options for more effectively delivering the material to a greater number of lessors.

7.2 Register of lessors (CRIS part 10.2)

Issue

There is currently no central register of private lessors in Western Australia. The absence of any centralised or complete list of private lessors creates some difficulties for Consumer Protection in relation to compliance and education for the sector.

The review considered implementing a register of private lessors to improve available information about the private rental market and improve Consumer Protection's ability to execute its education and compliance functions.

Current situation

Private lessors will be registered with the Bond Administrator if they collect a security bond and lodge this with the Bond Administrator in accordance with the RTA.¹⁹⁷ However, information collected by the Bond Administrator cannot be used by other divisions of Consumer Protection for purposes such as educational mail outs. In addition, there are some lessors who fail to lodge, or choose not to collect, a security bond. Consumer Protection has no record of these lessors.

In contrast, property managers must hold a certificate of registration, which is recorded on a register maintained by the Commissioner for Consumer Protection. Communities also maintains a register of all community housing providers funded by that Department.

The CRIS broadly discussed two options for a lessor register which were:

- a lessor register that is only accessible by Consumer Protection for use in carrying out its functions; and
- a lessor register that is accessible by members of the public to improve access to information about lessors.

A central register capturing all lessors would provide benefits to government as an aid to planning and policy development. Currently the bonds database provides limited information and data to guide policy development, compliance activities and communications with private lessors because the requirement to lodge a bond only applies when a bond is paid. A comprehensive register could, for example, enable better communication with private lessors about changes to the RTA or emerging issues in the sector. This has been the experience with the establishment of the short-term rental accommodation register (STRA register) which commenced operation in July 2024. For example, the STRA register provides useful data to state and local governments on the number of properties that are available for short term rental, which assists with planning and the making of local by-laws.

¹⁹⁷ RTA s.29(4) requires a person who receives a security bond to pay the amount of the bond to the bond administrator.

Objective

To improve information about the private rental market to assist with better compliance and to enable better communication with private lessors in an effort to improve outcomes for tenants, without unduly impacting the efficiency of the market.

Options considered

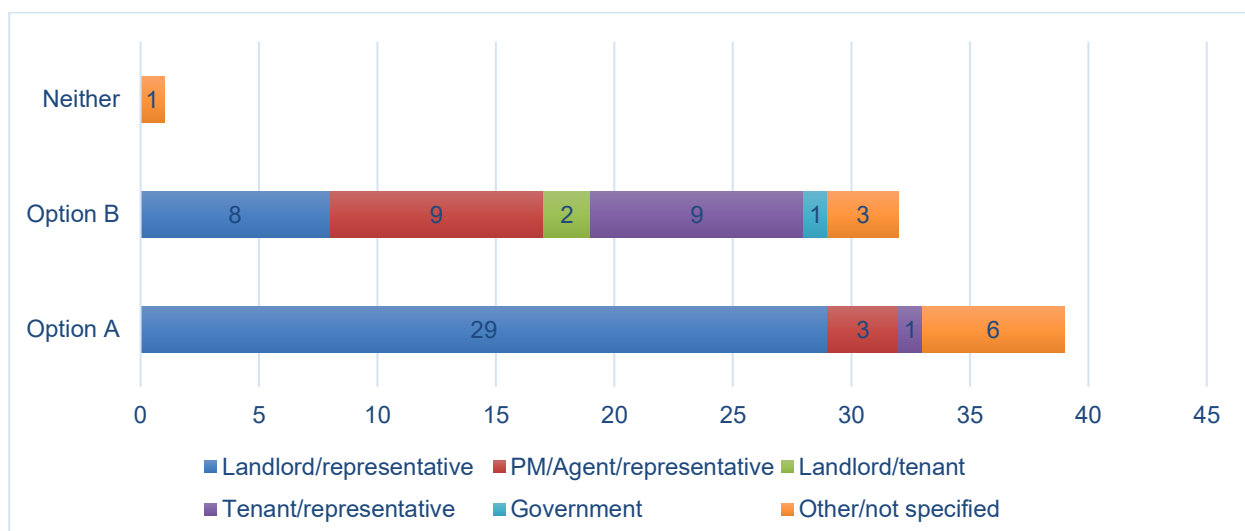
The following options were presented in the CRIS for feedback in relation to this issue.

Option A	Status quo
	Under this option, there would be no change. There would be no requirement for private lessors to register with Consumer Protection.
Option B	A register of all private lessors is implemented
	The RTA would be amended to require all private lessors to register with Consumer Protection. The database model would be developed in consultation with key stakeholders. The RTA would stipulate what information is to be maintained on the database and for what purpose the information can be used.
	There would be a cost to the lessor for registration. This would be to cover the cost of developing and maintaining the register. However, if the database operates through a web-based portal so that lessors can enter their own data and edit the data when their circumstances change, the costs of registration would be kept to a minimum.

Stakeholder feedback to the CRIS

Of the 72 responses in relation to this issue, 54 per cent supported maintaining the status quo (Option A), 45 per cent supported introducing a lessor register (Option B) and one respondent did not have a preference. The majority of respondents to this issue were lessors, agents and property managers and their representatives.

Figure 12 - Preferred option - Lessor register



Option A

The majority of lessors and their representatives who responded to this issue (including REIWA) were of the view that it is inappropriate to introduce a register of lessors.

A number raised concerns about the costs involved in establishing and maintaining a register. Others suggested that a register is not necessary, particularly given that information about a large number of lessors is available via the Bond Administrator.¹⁹⁸

Some respondents suggested that creating a register would result in excessive bureaucracy and an additional administrative burden on lessors and government. It was also suggested that those lessors who currently do not comply with the RTA are unlikely to comply with any registration requirements.

Concerns were also raised by lessors and their representatives about the privacy implications of a lessor register. One respondent suggested lessors should be identified by a registration number rather than name in order to protect privacy interests. Another respondent's view was that access to the register should be limited to people genuinely interested in applying to lease a property and suggested that imposing a fee to search the register might mitigate the risk of unnecessary access.

Option B

Option B was supported by a cross-section of respondents including tenants and their representatives, agents and property managers and some lessors.

A number of respondents supporting Option B suggested that a register of lessors would assist tenants make more informed decisions about renting, including avoiding scams. Some thought that a register could improve compliance with the RTA and accountability of lessors.

Some respondents provided qualified support for Option B, stating they would support a register only if it could be delivered at no cost to the lessor.

Information to be included on the register

Respondents suggested the following information should be included on a lessor register:

- basic details about the lessor (name and contact details);
- information about each property leased by the lessor;
- contact details in relation to the property, such as a property manager;
- details of any training completed by the lessor¹⁹⁹; and
- details of substantiated non-compliance by the lessor.

¹⁹⁸ RTA s.11A only permits information obtained by the Bond Administrator to be used or disclosed in limited circumstances. It is unlikely that these circumstances would include the Department using the information to "keep track" of lessors and contacting them to provide education/advice.

¹⁹⁹ This would only be relevant if appropriate training or accreditation is available.

A number of respondents suggested that strict controls should be imposed on the use of information included on a register and raised concerns about privacy and safety for landlords, particularly if the register were made publicly available and searchable by tenants. Others raised concerns about the potential for people to use a database for commercial purposes, for example concerns were raised that property managers would contact property owners seeking business.

Cost implications

The CRIS sought feedback on potential cost implications of the proposed lessor register. Stakeholders suggested:

- the system would be expensive to develop, as it would contain a document management component, complaint and training tracking, and other features;
- once established the register should not require significant staffing as many of the features could be automated;
- compulsory registration would be another fee for a lessor and therefore a disincentive to invest in the rental sector; and
- the cost impact on lessors would vary, depending on the size of their property portfolio, with costs more easily absorbed across a number of properties.

Other options to address the issue

The CRIS also sought feedback on other options to address the issue. Suggestions included:

- educating tenants on what information to obtain before they sign an agreement;
- creation of a voluntary register;
- additional education and compliance for lessors; and
- a system of mandatory reporting of non-compliant lessors.

Other jurisdictions

No other Australian jurisdiction currently requires private lessors to register themselves and each property they lease. However, a number of international jurisdictions have introduced a registration requirement. In Northern Ireland, Scotland and Wales, it is mandatory for all private lessors to register themselves and each property they lease.²⁰⁰ The registration in each jurisdiction varies between three and five years in duration. Penalties apply for offering a private property for rent if both the lessor and the property are not registered.

²⁰⁰ Northern Ireland see <https://www.nidirect.gov.uk/articles/landlord-registration-scheme>;
Scotland see <https://www.landlordregistrationscotland.gov.uk/about>;
Wales see <https://www.rentsmart.gov.wales/en/landlord/landlord-registration/>

According to the Northern Ireland authorities, some of the benefits of the lessor register are that it: allows tenants, neighbours, and local councils to identify lessors; provides information on the number of lessors providing properties for rent and allows lessors to receive regular updates; provides education and support to lessors; and improves tenants' confidence in their lessors and increases lessors' accountability by promoting good practice.

Impact analysis

	Potential benefits	Potential disadvantages
Option A No change	<p>Lessors</p> <ul style="list-style-type: none"> No additional cost or administrative burden. Lessors have control over access to information about their rental properties and their status as a lessor. <p>Tenants</p> <ul style="list-style-type: none"> No change. <p>Government</p> <ul style="list-style-type: none"> No additional cost imposed for government. 	<p>Lessors</p> <ul style="list-style-type: none"> None discernible. <p>Tenants</p> <ul style="list-style-type: none"> No change. <p>Government</p> <ul style="list-style-type: none"> Risk that Consumer Protection is unable to identify and contact all lessors for purposes of compliance and education. There is limited scope for government to use information on the bonds database for purposes other than those set out in the RTA.
Option B Mandatory register of all lessors	<p>Lessors</p> <ul style="list-style-type: none"> May reduce the incidence of non-compliance by lessors. <p>Tenants</p> <ul style="list-style-type: none"> Improved ability to know whether lessors have history of non-compliance. May improve protection from scams or illegal subletting (providing scammer does not pose as the real lessor). <p>Government</p> <ul style="list-style-type: none"> Allows Consumer Protection to readily identify all lessors. Likely to improve Consumer Protection's engagement with private lessors. Provides data to assist government with better planning. 	<p>Lessors</p> <ul style="list-style-type: none"> Cost and time commitment for lessors to register and update details as required. Privacy issues if personal information is made publicly available. <p>Tenants</p> <ul style="list-style-type: none"> Increased costs for lessors may be passed on to tenants through higher rents. <p>Government</p> <ul style="list-style-type: none"> Significant costs to government to develop, maintain and monitor a register of lessors. Risks in managing personal information on register.

Table 24 - Impact analysis - Lessor register

Assessment against the policy objective

The policy objective is to improve information about the private rental market to assist with better compliance and to enable better communication with private lessors in an effort to improve outcomes for tenants, without unduly impacting the efficiency of the market.

Option A does not achieve the objective, as maintaining the status quo does not improve the information available about the private market, nor does it assist with better compliance and communication with private lessors.

Option B partly achieves the objective. The impact of a register will vary depending on the information collected, who has access to that information and how it is used.

The costs and benefits of the two types of lessor register are canvassed below.

A register accessible by Consumer Protection

This type of register will increase the information about the private market held by Consumer Protection. This will improve the ability of Consumer Protection to communicate with private lessors, provide education and undertake proactive compliance. Creation of a register of private lessors with appropriate data sharing mechanisms could also assist Consumer Protection and other government agencies in policy development and planning.

Recent experience with developing new registers or adapting existing registers suggests that there could be significant costs to government to implement the necessary IT system to establish a lessor register, keep the register current and monitor compliance with registration requirements. There may also be administrative costs for those lessors who do not currently require a bond.

A register that is publicly accessible

If the public is given access to information held on a register (as is the case in jurisdictions such as Wales and Scotland), this may significantly impact lessors and create risks in terms of privacy and inappropriate use of information on the register.

It is unclear to what extent the introduction of a register of lessors is likely to result in benefits to tenants. If tenants have greater access to information, this may enable tenants to make better informed decisions before entering into a tenancy, however the degree to which this will occur depends on the extent and quality of information contained on the register. These limited benefits do not outweigh the significant privacy concerns of having all lessor information publicly accessible.

Recommendation 34 - Lessor register

Amend the RTA to implement a variation of Option B so that a private lessor register can be established using the information already provided by lessors to the Bond Administrator and by requiring lessors who do not require a bond to provide basic details to the bond administrator for inclusion on the register. Further work to be undertaken to determine the details of the information to be provided by lessors and implementation timeframes.

It is further recommended that the amendments provide for information in the lessor register to be useable for the purposes of future policy development, education and compliance activities.

7.3 Code of practice (CRIS part 10.3)

Issue

Many of the tenancy complaints received by Consumer Protection reflect the way lessors or property managers interact with tenants. For example, complaints are received about the timing of inspections and a perceived lack of willingness by the lessor or property manager to engage positively with a tenant to resolve issues about the premises. The review considered whether these types of behaviours could be improved through the introduction of a code of practice.

Current situation

In some industries, codes of practice set out detailed guidelines for fair dealing between the business and their customers. Codes of practice can be mandatory or voluntary, or can contain both mandatory requirements and voluntary best practice recommendations. Codes of practice are widely used in the consumer protection arena to guide traders and service providers.

In WA, there is no code of practice for lessors. The Real Estate and Business Agents and Sales Representatives Code of Conduct 2016 (REBA Code), which applies to certified property managers, primarily deals with the property manager's relationship with the lessor rather than their relationship with the tenant. As a result, there is no set standard to guide lessors and property managers in their interactions with tenants.

Objective

To reduce complaints by tenants caused by improper conduct by lessors and property managers.

Options Considered

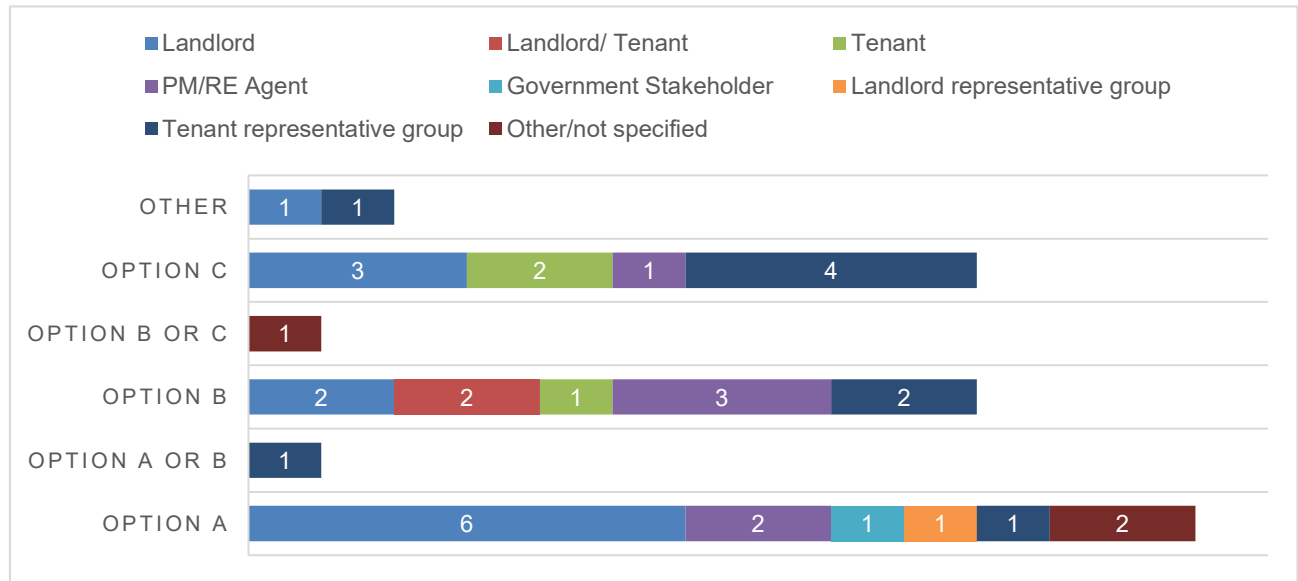
The following options were presented in the CRIS for feedback:

Option A	Status quo Under this option there would be no change. There would be no requirement for lessors to comply with a code of practice.
Option B	A voluntary code of practice to apply to lessors The RTA would be amended to allow for a voluntary code of practice to be developed in consultation with key stakeholders. While compliance with the code would be voluntary, those lessors that did comply with the code could promote themselves as being compliant as a means of distinguishing themselves from other competitors in the market.
Option C	A mandatory code of practice to apply to all lessors The RTA would be amended to allow for a mandatory code of practice to be developed in consultation with key stakeholders. The code of practice would set out minimum standards of conduct required by lessors and any person acting on behalf of the lessor. The code may also extend to providing examples of best practice to encourage conduct beyond the minimum standard.

Stakeholder feedback to the CRIS

The 31 responses to the CRIS on this issue reflected a similar level of support for each of the options. Introducing a voluntary code of practice (Option B) and a mandatory code of practice (Option C) both received 32 per cent support (with three per cent supporting either Option B or C). Maintaining the status quo (Option A) received 23 per cent support. Two respondents suggested alternative options including expanding the REBA Code and providing education for tenants. A breakdown of responses is provided below.

Figure 13 - Preferred option - Code of practice



Option A

Option A (status quo) was primarily supported by lessors, property managers, agents and their representative groups. The most frequently submitted reasons for supporting Option A included:

- the cost of imposing a code is not justified because there is already a code that applies to property managers, and there is no evidence to indicate this code is inadequate;
- concerns that a voluntary code of practice should not be implemented because it would be ineffective; and
- if a code of practice is implemented it should apply to tenants too.

REIWA supported Option A, asserting that the RTA provides sufficient scope for enforcing standards and that any code of practice would be a duplication.

Option B

Option B (voluntary code) was primarily supported by property managers and agents, along with some lessors and tenant representative groups. Most respondents supported Option B because it would provide more clarity to lessors and tenants about their rights and obligations, without imposing a significant additional burden on property managers, who already undergo training. One respondent referred to the Welsh Code of Practice as an ideal model.

Some respondents expressed concerns that introducing a voluntary code may not be effective because the type of lessor who is likely to comply with the code is likely the sort of lessor who would already seek out available information. Since Consumer Protection already publishes a comprehensive lessor guide, a code may not provide additional benefit.

Shelter WA supported either maintaining the status quo or introducing a voluntary code of practice to apply to lessors.

Circle Green supported either Option B or C, together with other compliance and education mechanisms for lessors, such as a register of lessors and a database of non-compliance. This is because for a code of practice to be effective, Circle Green asserts it needs to be supported by legislation which sets out rights and responsibilities as well as consequences for non-compliance. Circle Green also recommended that Consumer Protection issue “best practice” guidelines relating to residential tenancies and that tenant advocate organisations be involved in the development of a code of conduct or best practice guide.

Option C

Option C (mandatory code) was primarily supported by tenant representative groups, and some lessors and tenants.

The main reason for supporting Option C was that it would ensure consistency and better protection for tenants. The Gosnells Community Legal Centre submitted that a code of practice would better enable tenants to demonstrate where lessors’ conduct was poor or inadequate.

Communities noted that it would seek an exemption if Option B or Option C were implemented, as Communities already provides training to housing officers on lessor and tenant rights and obligations. It also raised the issue of how compliance with a code of practice would be monitored and noted that the RTA already provides for obligations and penalties, so the benefits of a code of practice above and beyond these duties would need to be articulated.

As an alternative to the options, Communities suggested that Consumer Protection could better educate lessors by automatically sending information about their obligations when they lodge the security bond.

Cost implications

Stakeholders were invited to make submissions about the potential cost implications of the options.

Communities submitted that creating and maintaining a code of practice would require a funding source and that monitoring compliance with a mandatory code would require significant additional funding.

One submission raised a concern that ‘Mum and Dad investors’ do not earn a lot from the rental market, and that Option C would impose unreasonable costs and fees on them.

Other jurisdictions

There are currently no codes of practice for landlords in other Australian jurisdictions. However, Queensland is expected to be the first state to introduce a code of conduct after an amendment Act passed by the Queensland Parliament received assent on 6 June 2024. This Act amended the Residential Tenancies and Rooming Accommodation Act 2008 (QLD) to strengthen renter’s rights and stabilise rents. One reform was to insert a head of power that allows for a Rental Code of Conduct to be developed (in consultation with the sector) and prescribed by regulation. The new code may set minimum conduct standards for property managers, lessors and renters to strengthen the rules and make the expectations of all parties clearer.²⁰¹ Changes to the law in Queensland, including the code of conduct, will come into effect in stages over the course of the next few years.

Internationally, Wales requires all private lessors and property managers to comply with a code of conduct. The code has been created by the Welsh Government as a way to ensure a consistent standard of letting and management practice in Wales. It is compulsory in Wales for all lessors to be registered, and it is a condition of registration that lessors and property managers comply with the code.

The code has been drafted to incorporate mandatory compliance requirements and best practice options or suggestions. This latter information is intended to assist lessors and property managers to raise the level of rental practice above minimum standards.

Assessment against the objective

The objective is to reduce complaints by tenants that are caused by improper conduct by lessors and property managers.

Option A

Option A partially achieves the objective because Consumer Protection already publishes comprehensive materials about lessors’ obligations under the RTA. There is the potential for Consumer Protection to increase the promotion and availability of this material, or to supplement it with “best practice” guidance. Consumer Protection also engages with lessors and provides guidance on best practice in the event of complaints. This may help to reduce complaints by tenants caused by improper conduct by lessors and property managers.

²⁰¹ Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024

Option B

Option B has the potential to achieve the objective for those lessors who choose to comply with the code. However, as this is a voluntary option, it is unclear how many lessors would choose to comply with the code, especially if there is limited benefit to a lessor distinguishing themselves as being compliant, such as in the current tight rental market.

As discussed in part 7.1 – Knowledge of the Law – it may be the case that lessors who are interested in further educating themselves about their obligations under the RTA already have sufficient opportunity to do so via the resources published by Consumer Protection. This throws into question the efficacy of a voluntary code.

Introducing a code would also carry with it significant costs to Consumer Protection, both in developing and introducing the code. Limited options also would be available to Consumer Protection if the voluntary nature of the code results in a high rate of non-compliance.

On balance, the costs of introducing a voluntary code outweigh the benefits. Consumer Protection already provides comprehensive resources to lessors who wish to improve their compliance with the RTA, which is always freely accessible. A code would largely replicate this information and therefore may not succeed at reducing lessor non-compliance.

Option C

Option C may partially achieve the objective but would impose a significant cost impost on government. Introducing a mandatory code would carry significant costs to government, to develop and implement the code and monitor compliance. This cost would be greater than under Option B because of the expectation for government to monitor lessor compliance. Monitoring compliance would also be difficult to implement in the absence of a lessor register.

Further, it is unclear to what extent introducing a code would result in reduced instances of lessor non-compliance with the RTA. As noted above, the majority of complaints received by Consumer Protection are about lack of communication or poor conduct, rather than clear breaches of the RTA.

It appears that the main benefit of introducing a code would be to clearly set out and guide lessors on their obligations and best practice. However, this benefit may be better achieved by updating the resources Consumer Protection already makes available. For example, additional best practice examples could be developed and promoted more strongly to lessors. On balance, the costs of Option C outweigh the likely benefits.

Recommendation 35 - Code of practice

Maintain the status quo so that neither a voluntary nor mandatory code is developed.

Consumer Protection will work to actively promote the educational material that is currently available for lessors to use and investigate options to deliver that the material to a larger number of lessors. Educational material will be revised to include examples of “best practice” conduct.

8 MISCELLANEOUS

8.1 Disposal of abandoned goods (CRIS part 11.1)

Issue

Under the RTA lessors are required to dispose of abandoned goods of value at public auction. Lessors in rural or remote areas where public auction houses are not easily accessible face greater costs in arranging for the storage and disposal of abandoned goods.

The review considered modernising the process for the disposal of abandoned goods to remove overly restrictive processes on lessors, particularly in rural or remote locations.

Current situation

The RTA provides the ways in which lessors may deal with abandoned goods of differing values.²⁰² Lessors may incur penalties where abandoned goods are not stored and disposed of in accordance with the RTA.

Perishable foodstuffs and goods of little or no value

The lessor may, after 2 days from termination of the tenancy agreement, dispose of the following left by the tenant:

- perishable foodstuffs; or
- goods where their value is less than the estimated cost of removal, storage and sale.

Goods of value

Where the value of the goods is greater than the estimated cost of removal, storage and sale, the lessor must store the goods safely for at least 60 days and notify the tenant within seven days of storing the goods. The method of notification varies depending on whether or not the lessor knows the tenant's contact details.

If the abandoned goods are not claimed within 60 days, the lessor must sell the goods at a public auction. The lessor must pay proceeds into the Rental Accommodation Account (RAA). Before doing so, the lessor may retain from the proceeds of sale reasonable costs incurred in storing and disposing of the abandoned goods.

Important documents

If the tenant leaves behind important personal documents, such as photographs, official documents or correspondence, the lessor will be required to store the documents for at least 60 days and take reasonable steps to notify the tenant where to collect the documents.²⁰³

²⁰² RTA s.79.

²⁰³ RTA s.80A.

Feedback received by Consumer Protection

Consumer Protection has received feedback that lessors in rural and remote areas have more difficulty complying with the rules governing abandoned goods than metropolitan lessors. This is because lessors in regional areas cannot easily access a public auction house to lawfully dispose of a tenant's abandoned goods. This necessitates transporting the goods to another location, which significantly increases the costs of disposal.

Although the RTA does not define what constitutes a public auction house, there is potential for online sellers to be included within its scope. It is settled at common law that online sales that have the characteristics of an auction, including a bidding process and an automatic closing of this process, are equivalent to a public auction house²⁰⁴. Not all online platforms fall within the definition of a public auction house: online sale platforms like Gumtree only allow goods to be sold as a private treaty.

Abandoned goods that are licensed or registered (e.g. motor vehicles) present a particular issue for lessors. While the RTA does not prohibit lessors selling licensed or registered abandoned goods, lessors may experience difficulties selling goods that fall within this category for the following reasons:

- Reputable auction houses may be unwilling to facilitate the sale of abandoned goods that are licensed or registered.
- The abandoned goods may have an interest registered against them on the Personal Property Security Register (PPS), such as a vehicle loan. Lessors may expose themselves to liability for any debts where abandoned goods have an interest registered against them.

Disposal of Abandoned Goods Act 1970 (WA)

The *Disposal of Abandoned Goods Act 1970 (WA)* (DUG Act) sets general rules for the disposal of different values of abandoned goods, depending on whether the goods are prescribed, valued under \$3,500 or valued over \$3,500. The DUG Act currently does not apply to abandoned goods under the RTA and certain other laws where specific provision is already made.²⁰⁵

The DUG Act is currently being reviewed with a view to modernising the Act and reducing the regulatory burden on a receiver of goods while maintaining appropriate levels of protection for owners of goods. One of the issues considered by the review is what would be the appropriate monetary thresholds that determine the categories of abandoned goods²⁰⁶ and the protections for receivers and owners of goods in each category. Stakeholders were asked what other values might be appropriate for these categories and the relevant protections for each category.

The outcomes of the review of the DUG Act will inform drafting instructions relating to the treatment of abandoned goods under the RTA.

²⁰⁴ CRIS p 149.

²⁰⁵ *Disposal of Uncollected Goods Act 1970 (WA)* s.6.

²⁰⁶ Review of the *Disposal of Uncollected Goods Act 1970 (WA)* issues paper, June 2019, pp.24-26.

Objective

To modernise the requirements for disposal of abandoned goods in the RTA.

Proposed option

The following proposal was presented in the CRIS for consideration.

It is proposed to amend the RTA to allow a lessor to determine how to dispose of the goods (whether by sale or donation) except where the goods are of significant value, in which case the lessor must dispose of the goods by public auction.

This proposal is unlikely to have a significant impact on stakeholders. Consumer Protection is proposing to proceed with this recommendation unless stakeholder feedback provides substantive evidence of unintended consequences from this course of action.

Stakeholder feedback to the CRIS

The proposal was overwhelmingly supported, with 94 per cent of the 51 respondents to the CRIS agreeing with the proposal. Four per cent of respondents disagreed, and two per cent supported another option.

Many respondents who supported the proposal expressed the view that current requirements for sale at auction are overly onerous on the lessor, both in time and cost.

The following suggestions were also made in relation to the proposal:

- The time that a lessor must hold valuable property should be reduced from 60 days. The suggestions for an appropriate timeframe ranged from 14 to 30 days.
- A number of respondents submitted that “significant value” needs to be clearly defined in the legislation to avoid uncertainty.
- The provision allowing sale at public auction should be expanded to include online platforms such as eBay and Gumtree. In regional areas, where auction houses are not available, private sales should be allowed.
- Lessors should receive compensation for their time in dealing with the abandoned goods instead of just compensation for the costs of transport, storage and sale.

Other jurisdictions

Most states and territories require the sale of abandoned goods of a certain value by public auction. The approach of different states and territories in how lessors may dispose of a tenant’s abandoned goods varies, as does the minimum value of goods that the lessor must sell at auction and the timeframe that the lessor must store the goods before sale. In all jurisdictions the lessor is entitled to recover reasonable costs of storage and sale of the abandoned goods.

Impact analysis

	Benefits	Disadvantages
<p>Proposal</p> <p>Amend the RTA to allow a lessor to determine how to dispose of the goods (whether by sale or donation) except where the goods are of significant value, in which case the lessor must dispose of the goods by public auction.</p>	<p>Lessors</p> <ul style="list-style-type: none"> • More flexibility to decide how to dispose of abandoned goods that are not of significant value. • Reduced burden of cost and time taken to store and auction items that are not of significant value. <p>Tenants</p> <ul style="list-style-type: none"> • None discernible. <p>Government</p> <ul style="list-style-type: none"> • None discernible. 	<p>Lessors</p> <ul style="list-style-type: none"> • None discernible. <p>Tenants</p> <ul style="list-style-type: none"> • None discernible. <p>Government</p> <ul style="list-style-type: none"> • If goods sold privately do not achieve as high a price as goods sold via public auction, there is the potential that the proceeds going to the RAA will be reduced, although this impact is likely to be negligible.

Table 25 - Impact analysis - Abandoned goods

Assessment against the policy objective

The policy objective is to modernise the requirements in the RTA for the disposal of abandoned goods. The CRIS proposed amending the RTA to allow a lessor to determine how to dispose of the goods (whether by sale or donation) except where the goods are of significant value, in which case the lessor must dispose of the goods by public auction. The CRIS proposed proceeding with the policy proposal, as it was unlikely to have a significant impact on stakeholders, unless feedback provided substantive evidence of unintended consequences. Responses to the CRIS did not identify substantive evidence of likely unintended consequences.

Goods of “low, medium and high value”

The DUG Act review will consider threshold values for low, medium and high value categories of abandoned goods. This will achieve the policy objective by allowing protections to be scaled for each category based on the value of the good, for example, the minimum period the good must be retained for collection by the tenant and the manner of disposal by the landlord if the good remains abandoned. Tenants continue to receive a reasonable opportunity to claim their goods, while the burden on lessors to store and transport abandoned goods is reduced. In particular, the proposal reduces the burden faced by regional and remote lessors to transport goods to a metropolitan location for public auction.

Recommendation 36 - Disposal of abandoned goods
 Amend the RTA to allow a lessor to determine how to dispose of a tenant’s abandoned goods (whether by sale or by donation) that are of low to medium value. Where the goods are of significant value the DUG Act will apply.

8.2 Rights of occupants in shared housing arrangements (CRIS part 11.2)

Issue

Occupants in shared housing arrangements (other than boarders and lodgers) are regulated under the RTA. This includes sub-tenants and co-tenants.

The rights and responsibilities of occupants in shared housing arrangements may need to be clarified in some instances. In particular:

- processes around the change of co-tenants;
- co-tenancy disputes; and
- the recognition of rights of sub-tenants, particularly where the head tenant faces eviction.

Shared housing arrangements are anticipated to increase as the rental market develops into a more long-term housing option for many people. Clarifying these arrangements will provide certainty for occupants and the sector.

Current situation

Sub-tenants

Sub-tenants lease the premises, or part of the premises, from the head tenant, whose name appears on the lease. Under the RTA a residential tenancy agreement may provide that the tenant:

- shall not sub-let the premises;
- may sub-let the premises; or
- may only sub-let the premises with the consent of the lessor (this consent cannot be unreasonably withheld).²⁰⁷

Sub-tenants are afforded the same rights as tenants under the RTA. However, their security of tenure is vulnerable if the head tenant faces eviction. Currently, if the lessor terminates a head tenant's tenancy agreement, the termination automatically applies to sub-tenants. Therefore, unless the sub-tenant successfully negotiates with the lessor to enter into a new residential tenancy agreement, the sub-tenant will also be required to vacate the property.

Co-tenants

Co-tenants are all individuals formally recognised on the residential tenancy agreement as tenants. Co-tenants are jointly and severally liable to the lessor for all debts arising under a residential tenancy agreement.

²⁰⁷ If a specific provision is not included in the tenancy agreement, it is deemed to include the third option - RTA - section 49.

Common disputes that arise between co-tenants include:

- where one co-tenant leaves the tenancy early and seeks a return of their portion of the security bond prior to the end of the tenancy;
- where a former co-tenant may find themselves liable for damage caused after they ceased to occupy the premises; and
- where one co-tenant is acting in a manner that disturbs another co-tenant's right to quiet enjoyment, or engages in threatening behaviour towards other co-tenants.

Currently, the RTA only addresses disputes between co-tenants in relation to non-payment of amounts owing under the tenancy agreement. The RTA does not provide a mechanism:

- for a co-tenant to terminate their interest in a tenancy agreement;²⁰⁸ or
- to compel the return or disposal of their portion of the security bond.

Objective

To clarify the rights and responsibilities of occupants of shared housing, specifically co-tenants and sub-tenants.

Proposal considered

The following proposal was presented in the CRIS for feedback.

In relation to sub-tenants, it is proposed to amend the RTA to provide that a sub-tenant becomes the head tenant in circumstances where the head tenant is evicted.

In relation to co-tenants, it is proposed to amend the RTA to provide that a co-tenant may terminate their own interest in a tenancy agreement either at the end of a fixed term or during a periodic agreement. It is also proposed to amend the RTA to clarify the process for determining the departing co-tenant's rights to any proportion of the security bond at the conclusion of their interest in the tenancy agreement.

This proposal is unlikely to have a significant impact on stakeholders. Consumer Protection is proposing to proceed with this recommendation unless stakeholder feedback provides substantive evidence of unintended consequences from this course of action.

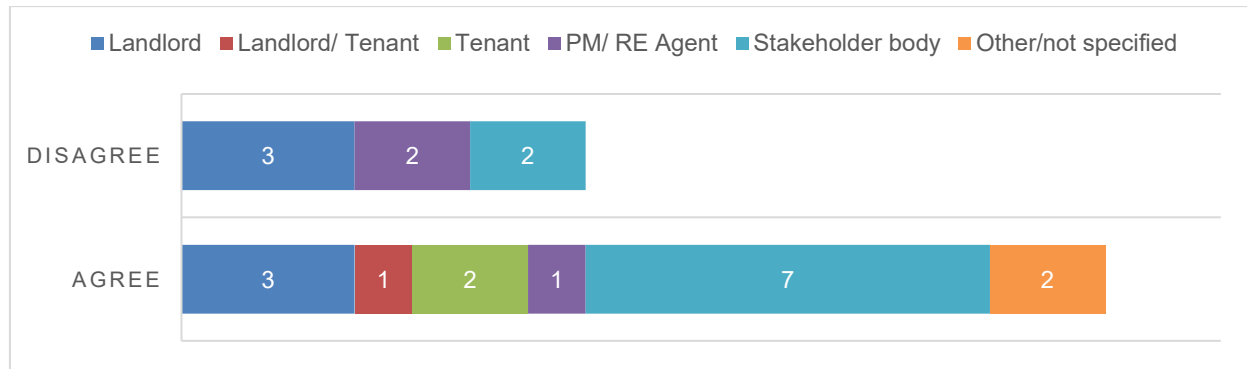
Stakeholder feedback to the CRIS

Sub-tenants

Of the 23 respondents who responded to the proposal about sub-tenants, 70 per cent agreed and 30 per cent disagreed. A breakdown according to respondent type is provided below.

²⁰⁸ Unless the relationship between the co-tenants and the behaviour of any of the co-tenants falls within the definition of family violence.

Figure 14 - Feedback - Subtenants



The most common reason for disagreeing with the proposal was that it removes the lessor’s right to review a sub-tenant’s rental information before the sub-tenant is included on the lease. Some respondents, including REIWA and PICA, submitted that lessors should have the opportunity to review and refuse a sub-tenant’s application to be included on the lease. Some of the respondents who supported the proposal did so with the caveat that the new head tenant must be able to pay for a new bond and pay rent.

Peel Community Legal Services also submitted that clarity will need to be provided to deal with the apportionment of liability in the case of a sub-tenant taking over a tenancy where previously a head tenant has caused damage.

Co-tenants

Of the 20 respondents who responded to the proposal about co-tenants, 100 per cent agreed with the proposal.

Some respondents raised a concern that where one co-tenant departs and takes their portion of the bond, there must be a requirement that the remaining co-tenants top-up the bond prior to any renewed term commencing.

It was suggested that the proposal would be particularly beneficial to co-tenants with intellectual disabilities. Carers WA submitted that clarifying the entitlement to security bond at the end of a co-tenancy would assist these tenants who can sometimes have difficulty understanding their rights and obligations.

Other jurisdictions

Sub-tenants

In Victoria, a sub-tenant becomes the head tenant where the head tenancy agreement is terminated.²⁰⁹ The new tenancy agreement is deemed to be on the same terms as the previous sub-tenancy agreement.

²⁰⁹ Residential Tenancies Act 1997 (Vic) s.91R.

In Scotland, for most tenancies, when a head tenancy is terminated, the sub-tenant becomes the head tenant under a new tenancy agreement unless the head tenant was evicted on a prescribed ground or where the Tenancy Tribunal makes a determination that the provision should not apply. The new tenancy agreement has the same terms as the sub-tenancy agreement.²¹⁰

Co-tenants

In the Northern Territory, a bond may specify the proportions of the security deposit paid in relation to each tenant under the tenancy agreement to which it relates. If it does not specify this, the bond will be taken to have been paid in equal measures by all co-tenants unless the Tribunal determines otherwise or all tenants agree in writing with the proportions paid as security deposit in relation to each tenant.²¹¹

Impact analysis

	Benefits	Disadvantages
<p>Proposal Amend the RTA to clarify the rights of sub-tenants and co-tenants</p>	<p>Lessors</p> <ul style="list-style-type: none"> • Ability to gain a new tenant quickly if head tenant is evicted. <p>Tenants</p> <ul style="list-style-type: none"> • Improved security of tenure for sub-tenants. • Additional flexibility to co-tenancies during the term of the tenancy. • Clarification of rights of co-tenants in relation to termination of interest and bond disposal. <p>Government</p> <ul style="list-style-type: none"> • None discernible. 	<p>Lessors</p> <ul style="list-style-type: none"> • Reduced flexibility to select a new tenant if the head tenant is evicted. • Possibility that where a co-tenant terminates their interest in the tenancy the remaining tenants will be unable or unwilling to top up the bond. <p>Tenants</p> <ul style="list-style-type: none"> • None discernible. <p>Government</p> <ul style="list-style-type: none"> • None discernible.

Table 26 - Impact analysis - Shared housing arrangements

Assessment against the policy objective

The policy objective is to clarify the rights and responsibilities of occupants of shared housing, specifically co-tenants and sub-tenants.

The proposal was not expected to have a significant impact on stakeholders and the CRIS stated that Consumer Protection proposed proceeding with the recommendation unless stakeholder feedback provided substantive evidence of unintended consequences from the course of action.

Responses to the CRIS did not provide substantive evidence of unintended consequences.

²¹⁰ https://scotland.shelter.org.uk/housing_advice/renting_rights/subtenants

²¹¹ Residential Tenancies Act 1999 (NT) s.33.

The proposal in the CRIS achieves the objective by:

- improving the security of tenure for sub-tenants by allowing them to automatically succeed as head tenants if the previous head tenant is evicted;
- giving certainty to lessors that if the head tenant is evicted, they will have another tenant on the lease; and
- clarifying the rights of co-tenants to depart a tenancy and to claim their share of bond if they do so.

While it was raised that lessors would appreciate the opportunity to review the sub-tenant's rental history and financial information before allowing them to become the head tenant, the improved security of tenure and certainty offered to the sub-tenant outweighs the perceived disadvantage to the lessor. The RTA currently provides a mechanism for the lessor to consent to a sub-lease, this should provide some protection to lessors. Further, if the sub-tenant breaches the lease in future, the lessor may pursue the usual methods to terminate the tenancy.

Recommendation 37 - Rights in share housing

Amend the RTA to provide:

- a sub-tenant becomes the head tenant in circumstances where the head tenant is evicted;
- a co-tenant may terminate their own interest in a tenancy agreement either at the end of a fixed term or at any time if the agreement is a periodic agreement; and
- the process for determining the departing co-tenant's rights to any proportion of the security bond at the conclusion of their interest in the tenancy agreement.

Further work to be undertaken to determine the mechanisms to:

- apportion liability where a sub-tenant takes over a tenancy and the previous head tenant has caused damage; and
- ensure that the lessor retains the full amount of the bond where one co-tenant departs.

8.3 Modifying the RTA in certain circumstances

Issue

The RTA is drafted with the intention of applying to all lessors and tenants in WA. However, given the breadth of tenancies, it is sometimes necessary to modify how the RTA applies to different types of agreement or premises. This modification can either be set out in the RTA itself or the regulations.²¹²

The review considered the ways in which the RTA may need to apply differently to certain tenancies to produce better and fairer outcomes for lessors and tenants.

Current situation

Section 6 of the RTA allows the Governor, by regulation, to provide that a provision of the RTA shall not apply, or shall apply in a modified way, to particular agreements, premises, or person or agency.²¹³

The power to modify or exempt the application of the RTA has been used over the years for a variety of reasons. Some examples include:

- to exempt the Housing Authority from having to provide the tenant with receipts for rent paid;
- modifying the minimum standards of security required for premises in rural zones or that are listed on the Register of Heritage Places; and
- modifying the application of section 70A of the RTA (in relation to the amount of notice required to be given to end a tenancy at the end of a fixed term) for a community housing provider so that the community housing provider could offer initial short fixed term trial tenancies.

The review examined whether there are other premises, or types of tenancy agreements, or types of lessors and tenants that warrant a different application of the RTA in certain circumstances.

Objective

To develop a policy framework for guiding future modifications of the application of the RTA.

Stakeholder feedback to the CRIS

The CRIS asked whether the RTA should be modified in certain circumstances, and if so, how modifications should be approached. Fifteen respondents made submissions in response to this topic.

²¹² The ability to make regulations modifying the application of the RTA is conferred by s.6 of the RTA.

²¹³ Limited to a person or agency acting on behalf of the Crown.

Considerations that should guide the decision-making process in considering requests to modify the RTA

In response to this question, some respondents such as REIWA suggested that in emergency situations, special provisions should be able to be introduced via government directives to minimise the time taken to pass amendment Bills through Parliament (with consultation with major stakeholders to mitigate risks).

The importance of consultation with key stakeholders before any reforms are implemented was echoed by Rentwest, who stated that consultation ensures a fair outcome for all parties.

Circle Green submitted that any proposed modifications to the RTA should consider the following policy considerations:

- impacts on security of tenure;
- the power imbalance between lessors and tenants;
- encroachment on existing rights; and
- accessibility, certainty and transparency.

Some respondents suggested that special consideration should be given to ensuring fairness for disadvantaged and vulnerable cohorts. National Disability Services submitted that modifications to the RTA should be underpinned by principles of inclusion and specific consideration should be given to people with disabilities. This suggestion was echoed by People with Disabilities WA. Since 2019, the Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has been released with recommendation 7.37 focussing on changes to tenancy laws.²¹⁴

Provisions of the RTA that may need to be modified in certain circumstances

Communities and the Department of Planning, Lands and Heritage both made specific submissions regarding exemptions they seek to the RTA. These exemptions will be considered individually, and if necessary, further consultation will be undertaken with these stakeholders.

One stakeholder submitted that the RTA should allow for modification to address the possibility of future pandemics or other large-scale disasters.

A number of respondents also made submissions seeking specific changes to the RTA that were not raised in the CRIS. Most of these suggestions came from key stakeholders such as Communities and Circle Green. In some instances, these changes were technical, such as minor amendments to the standard tenancy form. Some suggestions were more significant, such as repealing section 75A, which allows for termination of social housing tenancies due to objectionable behaviour. Each of these suggestions will be reviewed independently, and if the change is considered to be significant, a regulatory impact assessment will be undertaken before change is recommended in regulations.

²¹⁴ [Final Report | Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#).

Preferred option

The policy considerations offered will be noted in considering future amendments to the RTA.

At that time, each suggestion for modification of the RTA will be individually considered and if implementation is supported, further work undertaken. This work would for example include further consultation and a regulatory impact analysis where appropriate for the issue to ensure no unintended consequences.

Recommendation 38 - Consultation on modifying the RTA

Maintain the status quo so that any future amendments to regulations modifying how the RTA applies is subject to consultation.

9 OTHER REFORM SUGGESTIONS

Since the CRIS was released in 2019, there have been several suggestions for further reform to address emerging issues.

The reforms suggestions include:

- Strengthening protections for lessors or their agents inspecting rental premises where there is a risk that the tenant may abuse or assault them.²¹⁵
- Make minor amendments to the RTA to clarify the application of the Act to payments of monetary amounts to third parties “for or in relation to a residential tenancy agreement”. Amendments of this nature are intended to clarify the application of the RTA managed investment schemes linked to tenancy arrangements, such as the Sterling First New Life scheme.
- Consider whether to provide some basic protections for tenants and prospective tenants information that is provided to a third-party rental platform (that align with protections implemented in other states and territories).
- Consider whether to implement recommendation 7.37 of the Royal Commission’s Report into Violence, Abuse, Neglect and Exploitation of People with Disability ²¹⁶ which focuses on tenancy and occupancy protections for people with disabilities.

Consumer Protection will undertake further consultation on these matters, as appropriate, and provide recommendations to government.

²¹⁵ This issue was raised by REIWA during the 2023 Statutory Review of the family and domestic violence provisions in the RTA.

²¹⁶ [Final Report | Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#).

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