



**Submission to the Department of Mines, Industry  
Regulation and Safety (Consumer Protection  
Division)**

**Review of the Residential Tenancies Act 1987**

April 2020

## About Carers WA

Carers WA is the peak body representing the needs and interests of carers in Western Australia and is part of a national network of Carers Associations. Carers provide unpaid care and support to family members and friends who have disability, mental illness, a chronic condition, terminal illness, an alcohol or other drug issue or who are frail aged. The person they care for may be a parent, partner, sibling, child, relative, friend or neighbour. Illness and disability are non-discriminatory and the caring role can be borne by any individual at any given time, regardless of socioeconomic status, age or location. Caring is a significant form of unpaid work in the community and is integral to the maintenance of our aged, disability, health, mental health, and palliative care systems. A report undertaken by Deloitte, Access Economics, 'The economic value of unpaid care in Australia in 2015', determined the replacement value of the care undertaken by carers in Australia to cost \$60.3 billion per annum.

Some important facts about carers include:

- There are 2.65 million unpaid carers in Australia. More than 861,000 carers are primary carers.
- There are more than 230,000 family and friends in a caring role in Western Australia or approximately 1 in 9 in the community.

## Enquiries

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## 1.0 Introduction

Carers WA appreciates the opportunity to comment on the review of the Residential Tenancies Act 1987.

The Consultation Regulatory Impact Statement (RIS) provides an extensive set of options to improve the function of the Act as well to as introduce greater fairness to the relationship between lessors and tenants. Carers WA supports the intent of the consultation RIS statement and looks forward to the implementation of the changes suggested.

## 2.0 Current work in disability housing

Carers WA is currently working on a project to identify the systemic barriers people with disability face when seeking accessible, safe, affordable and inclusive homes. The project, funded by the Department of Communities, commenced in March 2019 and aims to:

- Undertake an in-depth consultation process to determine and detail the experiences of people with disability in accessing housing in WA; and
- Identify opportunities for reform and advocate for systemic change across the community to address the barriers identified.

Research for the project was conducted from March – December 2019. Information and experiences were collected directly from people with disability and/or their family carers through;

- 73 online surveys (responses were recorded from 26 people with disability, 39 carers of people with disability, 6 service providers and two others)
- Two metropolitan consultations attended by people with disability and/or family carers
- Three regional visits (Geraldton, Esperance and Broome)
- 12 case study interviews
- Individual conversations via email and telephone
- Attendance at various peer to peer support groups and information sessions.

Information from these consultations with people with disability and their families have informed this response to the review of the Residential Tenancies Act 1987. Comments in this submission are confined to review options which relate directly to people with disability and their carers.

## 3.0 The premises - Minimum standards

### 3.1 Minimum standards

**Issue** - Whether there is a need to amend the law in relation to the standards of premises to ensure that premises offered for rent in Western Australia are fit for purpose.

**Option A** - Status quo - no specified minimum standard.

**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.

#### 43. Which option do you prefer and why?

Carers WA supports Option B. People with disability have lower incomes and poorer housing outcomes than the remainder of the population. They are more likely to be renting at the more affordable end of the market which is more likely to expose them to cheaper properties which are not in good repair. The inclusion of minimum standards for rental premises will protect this vulnerable group of renters.

#### 46. If option B is pursued, what matters do you think the minimum standards should cover?

The minimum standards which are of particular importance to people with disability are around ventilation and insulation, protection from damp and flooding, dimensions of rooms and access to and within premises. People with disability report that their conditions include an inability to regulate body temperature which makes heating and cooling an essential requirement. Often respiratory problems co-exist with other physical disabilities and disproportionately affect people with disability, making ventilation and protection from damp essential. Dimensions of rooms are important to those with mobility and access issues.

#### 47. If Option B is enforced, how should compliance be monitored and enforced? For example, should there be a proactive inspection regime or should there only be an inspection if a tenant makes a complaint? Why?

Carers WA would support a proactive inspection regime. Inspections based only on complaints may not protect the most vulnerable tenants who are unable, for a variety of reasons, to make a complaint.

### 3.2 Modifications to the premises

**Issue** - Tenants are increasingly renting for longer and throughout different life stages. Having the ability to make a rental property a home by making modifications to suit a tenant's needs reflects the changing nature of renting and is a key theme that came out of early discussions with tenant groups in the lead up to this review.

**Option A** - Status quo - no modifications without Lessor's consent.

**Option B** - Amend the RTA so that a tenant is entitled, without consent of the lessor, to make minor modifications that do not impact the structural integrity of the premises and can be easily reversed, or to improve disability access and ageing in place, and to make any other modifications with the lessor's consent, which cannot be unreasonably withheld.

**Option C** - Amend the RTA so that a tenant may make alterations to the premises only with the lessor's consent, but that the lessor must obtain an order that withholding of the consent is justifiable in the circumstances.

#### **48. Which option do you prefer and why?**

Carers WA supports Option B. All tenants should be entitled to make minor modifications without the consent of the lessor. People with disability and their families often need to make modifications to a tenancy to allow for accessibility or for safety. Option B would allow people with disability to make minor modifications in a timely manner to meet their unique and specialised accessibility or safety requirements.

People with disability often require modifications to the premises that are more substantial than the current definition of a 'minor modification'. Currently many people with disability report that lessors refuse the modifications requested. The addition of the clause stating that lessors cannot unreasonably withhold consent will assist people with disability to gain permission for necessary modifications.

Guidelines should be developed to define the circumstances under which consent could be reasonably withheld. The process for challenging a decision of a lessor should be straightforward and relatively quick to ensure that any lessors unreasonably withholding consent are dealt with in a timely manner to allow essential modifications to be made for people with disability.

#### **51. If Option B or C is pursued, should a lessor be allowed to seek an additional bond to cover reversal of the modifications? Why or why not? If yes, how much additional bond should be permitted?**

If option B is pursued, the lessor should not be able to seek an additional bond to cover reversal of modifications. Current bond amounts should cover the cost of reversing minor modifications, if the lessee leaves the premises without reversing the modifications. Lessees should not be required to reverse more significant modifications made for accessibility or safety due to disability. It is likely that modifications made for accessibility will be permanent and will not affect the liveability of the premises for the next tenant.

## 4.0 Boarding and Lodging

**Issue** - In 2016-17, Consumer Protection consulted with the broader community to determine if there was a need to regulate boarding and lodging in Western Australia. As was noted in the discussion paper released by Consumer Protection at the time, Western Australia was, and remains, the only Australian jurisdiction that does not have some form of regulation of the boarding and lodging sector.

**Option** - 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 principals, 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.

### 95. Do you agree with this proposal? Why or why not?

Carers WA supports this proposal on the basis that it protects people with disability as landlords. People with disability report that they take in a boarder to assist with various needs and in return offer a reduced rent to the boarder. The boarder may provide anything from security and minor maintenance to personal care. In order to protect people with disability who are vulnerable to financial and physical abuse, the introduction of occupancy principles is supported. Guidance around house rules, security bonds and termination of tenancies would assist people with disability to establish and maintain mutually beneficial relationships with boarders.

## 5.0 Rights of occupants in shared housing arrangements

**Issue** - Although the RTA does not apply to boarders and lodgers, other occupants in shared housing arrangements, such as sub-tenants and co-tenants are included within the scope of the Act. The rights and responsibilities of occupants in shared housing arrangements may require clarifying to streamline processes around change of cotenants and co-tenancy disputes, as well as recognising the rights of sub-tenants, particularly where the head tenant faces eviction.

**Option** - Clarification of the rights and responsibilities of co-tenants and sub-tenants under the RTA, including providing for greater security of tenure where appropriate, is required. Shared housing arrangements are anticipated to increase and measures to clarify these arrangements will provide certainty for the sector. In relation to sub-tenants, it is proposed to amend the RTA to provide that a subtenant 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 if the agreement is 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.

### 116. Do you agree with the proposal? Why or why not?

Carers WA supports these amendments. People with disability entering a co-tenant arrangement, particularly those with intellectual disability, can find it difficult to understand their rights and obligations. The introduction of a 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 would assist in clarifying these rights and obligations. This project has heard that people with disability in shared housing arrangements can be left with debts or damages incurred by co-tenants.