

House the Homeless WA submissions to the Parliamentary Estimates Committee Inquiry into the financial administration of homelessness services in Western Australia

March 25 2022

ABOUT HOUSE THE HOMELESS WA

House the Homeless WA is a campaign launched in September 2020 to provide a platform for advocates, experts and community leaders to discuss WA's public housing and homelessness crisis, particularly as it affects Aboriginal people.

'House the Homeless WA' also supports people living homeless on the front line who wish to share their stories to connect with the public via the media and assist them to coordinate advocacy to generate political pressure.

The campaign successfully pressured the WA government to commit to build significantly more public housing to provide a long term solution to homelessness, and to provide supported transitional accommodation for immediate safety and security.

The campaign is coordinated by Jesse Noakes and Dr Betsy Buchanan OAM.

Dr Betsy Buchanan OAM

Betsy Buchanan is a revered advocate for Aboriginal people who has worked for more than five decades in an entirely voluntary capacity to support families in need and provide guidance and assistance to the Noongar community. She founded the first community legal centre in Western Australia and was attached to the Aboriginal Medical Service before founding Daydawn Advocacy Centre in Perth. In 2021 Betsy was made a Member of the Order of Australia for her advocacy and in 2020 she was granted the title 'Honorary Noongar' by the Langford Aboriginal Association in recognition of her lifetime of connection and trust with the Noongar nation.

Jesse Noakes

Jesse is a writer and campaigner who has advocated for Aboriginal families experiencing homelessness for about a decade. Between 2019 and 2021 he worked full time as a housing advocate at Daydawn Advocacy Centre, assisting families to access public housing and providing legal advice and representation to families facing eviction from housing. In early 2020 he was a member of the WA Government's COVID-19 Homelessness Taskforce, which he left after blowing the whistle on the WA government's failure to protect vulnerable homeless people at the outset of the pandemic. Following the WA government's record investment in public housing at the 2021 Budget, Jesse continues in a freelance capacity to work with and support Aboriginal families experiencing homelessness, especially those wishing to drive further political change. Jesse has compiled these submissions in consultation with Dr Buchanan.

The current status of homelessness in Western Australia

Despite Western Australia having “one of the strongest economies in the nation and the world during the pandemic”¹ and recording a record \$5.6 billion surplus in 2020-21, we are experiencing a homelessness crisis.

Lack of Public Housing and the Public Housing Waitlist

There are more than 18,000 households on the public housing waitlist, higher than at any time under this government. This equates to at least 31,000 people, and the Housing Authority claims they have an average wait-time of 105 weeks (more than 2 years). Following a peak of 24,000 in the early years of the Barnett government, a sustained building program from 2010-2016 reduced the waitlist by nearly 50% to 13,000 by 2018. Over the past three years it has significantly increased, including by around 30% since the start of the COVID-19 pandemic.² See waitlist graph [here](#). [This chart](#) shows the housing wait-time for each zone in the metro area by bedroom allocation (listed by the year for which allocations are currently being housed) - you will note that in some zones the wait for certain types of housing is significantly in excess of 10 years.

More than 3,500 of these applications have been deemed ‘priority’, which means they have been shown to require immediate urgent housing assistance. The number of applications on the priority waitlist has doubled since January 2020.³

The waitlist itself is kept artificially low by restrictive eligibility requirements. There are many more people in need of secure affordable housing who experience extreme hardship in the private housing market.

The number of people experiencing homelessness is rising

The number of people experiencing chronic homelessness in Perth, Fremantle and surrounding suburbs is recorded by the <https://www.endhomelessnesswa.com/bynamelist-datapage>, managed by the Zero Project and contributed to by a number of services.

- In the month to November 2021 there were 1080 individuals on the list, a record high, up more than 30% (from 680) since November 2020, including 514 sleeping rough⁴
- In the same period 129 people were newly identified as homeless
- Just 13 people (1.2%) from the list were housed and three deaths were acknowledged over the same period.⁵
- Only about 30% of those on the list are connected to case management, meaning even if they were to be provided with housing there would be a significant gap in capacity to provide wraparound services⁶.
- 39% of the people on the By Name List are First Nations people

¹ Premier Mark McGowan Media Statement *Strong COVID-19 response fuels WA's economic success*
9 September 2021 at

<https://www.mediastatements.wa.gov.au/Pages/McGowan/2021/09/Strong-COVID-19-response-fuels-WA's-economic-success.aspx>

² <https://thewest.com.au/news/social/perth-housing-crisis-waitlist-climbs-for-public-housing-in-wa-c-4723578>

³

<https://thewest.com.au/politics/state-politics/priority-public-housing-wait-list-jumps-70-percent-in-less-than-12-months-ng-b881975441z>

⁴ <https://www.endhomelessnesswa.com/bynamelist-datapage>

⁵ Note the By Name List only refers to people sleeping rough and identifying as chronically homeless in Perth, Fremantle and surrounds. On any given night more than 9000 people are experiencing homelessness in WA with the large majority are 'hidden' and couch surfing or in overcrowded dwellings.

⁶ According to John Berger, WA Alliance to End Homelessness, Pers.Com 20 December 2021

A significant number of people dying on the street

Homeless deaths data

- In 2020, 56 homeless people died on Perth streets. The average age of death was 47.⁷ 28 % of those who died identified as Aboriginal or Torres Strait Islander.⁸
- In the first eight months of 2021 another 44 people (at least) known to homelessness services died in Perth. 32 % of those who died identified as Aboriginal or Torres Strait Islander.⁹
- In 2021 there was a disproportionate number of young First Nations women dying on the street in the Perth CBD. Between June and August four women aged between 33 and 42 died within 100m of Forrest Place in the Perth CBD.
- Data collected from the UWA Home2Health research team in 2021 showed that a cohort of 417 homeless people spent more than 23,000 cumulative days as mental health inpatients over the previous two years, equivalent to \$35.8 million in healthcare costs or \$86,000 per person.¹⁰
- For a comparable cohort of 23 homeless people who had spent a cumulative 3,168 days as mental health inpatients in one year prior to being housed, this reduced to just 68 cumulative inpatient days in the one year post-housing.¹¹

The Causes

An Acute Shortage of Emergency Accommodation

- Refuges and crisis accommodation centres are at capacity and are turning away women and children, and staff across the entire sector are in complete distress at the level of unmet and unprecedented need.
- The government's flagship homelessness accommodation response, two Common Ground facilities in Perth and Mandurah, are still years away from completion.
- The government's interim solution, a 100-bed transitional accommodation facility in the Perth CBD, opened in August but remains at roughly 50% capacity, with no referral pathway or intake procedure for people newly or chronically homeless.
- People needing emergency accommodation are referred to Entrypoint and CrisisCare, government-funded referral services for crisis accommodation - however, in the absence of any available crisis accommodation, they are almost always unable to assist people seeking their help.
- At the onset of the COVID pandemic, other states around Australia responded to the increased risk this presented to homeless people by providing immediate emergency accommodation for thousands of rough sleepers in hotel, motels and other supported accommodation facilities.¹² Up to 40,000 people were provided some form of temporary accommodation between March 2020 and 2021.

⁷The Home2Health team has been tracking outcomes for Perth's homeless population. Matching data from homelessness and health services with hospital records. Data cited in

<https://www.theguardian.com/australia-news/2021/oct/17/dying-on-the-streets-at-least-44-homeless-people-have-died-in-perth-this-year>

⁸ <https://nit.com.au/death-on-our-streets/>

⁹ <https://www.theguardian.com/australia-news/2021/oct/17/dying-on-the-streets-at-least-44-homeless-people-have-died-in-perth-this-year>

¹⁰

<https://static1.squarespace.com/static/5f2a1e961ace4d22632eec49/t/60a713a820a5810a363be7f7/1621562281214/MHHP+snapshot+2.pdf>

¹¹ Ibid.

¹² https://povertyandinequality.acoss.org.au/wp-content/uploads/2021/02/COVID19_Rental-housing-and-homelessness-impacts_report-1.pdf See Chapter 2

- Other countries including New Zealand, the UK, Canada and the US displayed similar responses to remove people from the streets in the face of the COVID crisis.¹³ WA did not. Despite extensive emergency contingency planning from the homelessness sector in March 2020, just 20 people were accommodated for a one month trial in one CBD hotel in April 2020. The trial was discontinued following the initial four week period.¹⁴ However, the 13 people who remained in this trial throughout the four week duration were given public housing at the end of it.
- Access to ID and onerous ID requirements are also a huge issue – not just to get onto the public housing list or into crisis accommodation, but it also has health implications including the ability to get vaccinated and in turn to have access into many public facilities and services.

Case study

We will provide a number of case studies after each section to provide some first-hand insight into what the system looks like from the inside, speaking from our joint experience working with Daydown Advocacy Centre over many years.

With the onset of COVID-19 it was swiftly apparent that COVID posed a unique threat to people experiencing homelessness who were unable to self-isolate, sanitise and stay indoors when the first wave of lockdowns struck. All existing emergency accommodation intake was immediately paused due to isolation and social distancing requirements. The Department of Communities set up a COVID-19 Homelessness Taskforce, of which I was a member, to develop immediate responses to this crisis. As mentioned, other Australian states had rapidly housed thousands of rough sleepers in emergency accommodation with the prospect of a subsequent transition to long-term housing thereafter. However, the sole product of the WA Taskforce was a four week trial in a city hotel for 20 rough sleepers with extremely restrictive conditions including mandatory 14-day in-room quarantine upon arrival which some participants were unable to comply with.

Despairing of the government's inaction while hundreds of people languished on the street in the face of a then-unknown pandemic threat, I decided to act unilaterally and arranged a deal with a Fremantle hotel, empty due to border restrictions, to book the majority of their rooms at reduced rates to shelter rough sleepers on an impromptu basis. Approximately 35 people, including singles, couples and two families, were accommodated in the Hougoumont experiment from the start of April. I moved in for the duration and managed the accommodation with the assistance of hotel staff, volunteer medical visits and food assistance from the community. The arrangement endured for roughly four weeks until growing media pressure¹⁵ caused the government to open up a second temporary accommodation site south of Fremantle to which the majority of the people staying at the Hougoumont were transferred.

¹³ https://povertyandinequality.acoss.org.au/wp-content/uploads/2021/02/COVID19_Rental-housing-and-homelessness-impacts_report-1.pdf

¹⁴ <https://www.watoday.com.au/national/western-australia/wa-government-scraps-homeless-hotel-program-after-participants-walk-out-within-days-20200506-p54qig.html>

¹⁵ <https://heraldonlinejournal.com/2020/04/09/govt-drags-its-heels/>

Payment for the hotel rooms, which were booked at a rate of \$100 per room per night, was funded via a crowdfunder to roughly \$20,000 and private philanthropy donations to cover the remaining \$20,000. Despite a total absence of any case workers, security or other support besides what I and the hotel staff provided, there were no significant issues with antisocial behaviour or medical issues and people reported feeling more rested, healthier and safer than they had been previously while on the street. The resulting pressure on the government led to approximately 45 additional people finding accommodation at the second accommodation site, of which all who remained on site were ultimately offered public housing. This experiment showed that temporary emergency accommodation can be provided cheaply, safely and immediately in the interim, and places an onus on authorities to provide longer-term housing.

A Chronic Shortage of Social Housing

While people experiencing chronic homelessness tend to have complex issues, the single biggest cause of homelessness is simply a lack of housing.

- Social housing supply has not kept up with demand and in fact has gone backwards. After successive years of selloffs and underinvestment there was a net loss of 1426 properties in the last term of government (2016/17-2020/21).
- Meanwhile the social housing waitlist continues to skyrocket. It increased by 30% in just two years, rising from 13,877 applicants in December 2019 to 18,388 applicants (or more than 32,000 people) in January 2022. Since March 2018 the number of priority applicants has increased by 181%, to 3716 applicants (7518 people). (See Appendix).
- As of November 2021 the average wait time for public housing is 105 weeks - more than two years,¹⁶ but there are cases of people waiting between 8-17 years.
- Last month, the private rental market hit a new low - a vacancy rate of just 0.6% with vacancies at 40-year low and rent hikes at record highs.

Case study - JN

I have lost count of the number of families Daydawn has helped to access the public housing waitlist, who only then discover what we already know too well - that they still face an almost interminable wait before they will be offered a property. The despair that arises from this endless limbo, while all the horrific impacts of homeless accrue for their families, can leave people acutely desperate and has serious health impacts.

One woman I have supported was evicted from public housing at Christmas in 2015 due to arrears due to maintenance costs. She spent the next five years living in her car until we assisted her with a public housing application. She was subsequently approved for the priority list in mid-2020. However, returning to my office nearly a year later in June 2021, we were told by a housing officer in the Fremantle zone, where she is listed for a priority one-bedroom unit, that they were currently housing priority applications from February 2014 - in other words, my client still faced a six year wait, having already been homeless for six years. The toll on people's mental health is acute and can lead to self-harm and suicide attempts as they effectively give up on ever getting respite from homelessness.

¹⁶ <https://thewest.com.au/news/social/perth-housing-crisis-waitlist-climbs-for-public-housing-in-wa-c-4723578>

Evictions

Each year the Housing Authority evicts hundreds of households from public housing, many into homelessness.

While overall there is a lack of transparency and accountability relating to evictions data (described below) the following figures have been released by the Housing Authority in recent years:

- 680 households were evicted from public housing in 2016-17
- 562 households evicted in 2017-18
- 689 in the period from 2018-19¹⁷ and
- 470 between July 2019 and March 2020, at which point the COVID eviction moratorium took effect.

Since the lifting of the COVID eviction moratorium in April 2021, there appears to have been a continuing reduction in evictions from public housing. However, anecdotally and based on conversations with senior Department figures, this is a de facto policy rather than anything regulated or legislated per se. As such, it is likely a response to increased public scrutiny on evictions and their impacts leading to homelessness, and we cannot expect this respite to last any longer than is thought politically necessary.

Lack of transparency in evictions data

It has been almost impossible to obtain specific numbers of evictions involving children, domestic violence or mental illness, or tenants with serious mental illness. Figures are no longer published in the Department Annual reports, and successive Housing Ministers have claimed it would be too costly for the Department to collate and report the number of children evicted, or that the data is not collected. This position has been maintained in response to questions in parliament¹⁸, correspondence from federal Senator to the Minister¹⁹, and a freedom of information application.²⁰

This is despite public housing application forms and annual rent review forms recording the name, age and gender of children in the household, as well as ATSI status, and this information is used by the Housing Authority to determine the number of bedrooms the family is eligible to be offered²¹.

Overrepresentation of First Nations people in evictions

¹⁷ Housing Authority statement to Jesse Noakes, journalist, Crikey, "Punitive public housing tenancies are pushing people into the streets", 26 June 2019 <https://www.crikey.com.au/2019/06/26/public-housing-western-australia/>

¹⁸ Question On Notice No. 2617, 2618 & 2619 asked in the Legislative Council on 19 February 2015 by Hon Lynn Maclaren, to Hon Minister Colin Holt, Minister for Housing;

Question without notice, asked in the Legislative Council Tuesday 15 August 2017, by Hon Tim Clifford, to Hon Stephen Dawson, Minister representing the Minister for Housing

¹⁹372. Hon TIM CLIFFORD to the minister representing the Minister for Housing: I refer to the Housing Authority's disruptive behaviour strategy, or the three-strikes policy. Since January 2016 — (1) How many children have been evicted from Housing Authority properties as a result of the three-strikes policy? (2) Of these children, how many were of Aboriginal or Torres Strait Islander descent? (3) How many women have been evicted from Housing Authority properties as a result of the three-strikes policy? (4) Of these women, how many were experiencing domestic violence? (5) How many people who have been evicted as a result of the three-strikes policy had mental health issues? Hon STEPHEN DAWSON replied: I thank the honourable member for some notice of the question. The following information has been provided to me by the Minister for Housing. (1)–(5) The Department of Community Services advises that it does not collate this information. The provision to the Department of Community Services of information relating to a person's cultural identity and mental health status is voluntary. The Department of Community Services does not collect the information in the format requested".

²⁰ Correspondence Senator Sue Lines, Minister for Housing Hon Peter Tinley, September 2018

²¹ Seek further details from Anna, Freedom of Information request, SCALES Community Legal Centre xxxx year.

²¹ Housing Authority, Rental Policy Manual, Allocations Policy, 4. Family size pp32-36 http://www.housing.wa.gov.au/HousingDocuments/Rental_Policy_Manual.pdf

Senior Housing Authority staff²² have admitted that anecdotally they believe that 50-60% of the households evicted are Aboriginal. This leads to the concern the Housing Authority evicts hundreds of Aboriginal children to homelessness each year.

Since 2017 the Network of Tenancy Advocates have asked successive Housing Ministers to review evictions policy at the Housing Authority due to high rates of evictions into homelessness.

Discrimination in Housing Authority practices and application of evictions

The problem of systemic discrimination in Housing Authority practices, and the disproportionate impact of practices on Aboriginal families has been well documented in Equal Opportunity Commission WA²³ inquiries. The Western Australian Equal Opportunities Commission released an extensive report specifically on this topic in 2009 called 'Finding a Place'.²⁴ Since then, Equal Opportunities Commissioner John Byrne stated in 2018 that while improvements had been made, the problem in fact remains widespread.²⁵

Reasons for Eviction

There are four main reasons or causes for eviction: Debt and rental arrears, lack of access to justice, termination of leases without grounds or use of fixed term leases to terminate the tenancy (through no fault of the tenant), and disruptive behaviour and/or application three strikes policy.

In 2016, figures showed of the 495 evictions across Western Australia, 212 **(43%) were due to rent arrears and water bills**; 157 (32%) for poor property standards and only 71 (14%) for disruptive behaviour. This points to an underlying crisis that the majority of people facing eviction into homelessness are also likely to be experiencing poverty.²⁶

1. Debt and rental arrears

Debt, in the form of rental arrears or outstanding bills, is the leading cause for evictions from public housing.

2. Lack of access to justice

The eviction process is obscure, complex and technical. It begins with a Form 1B or 1C Notice of Termination, issued by the landlord nominating a date by which the tenant must provide 'vacant possession' of the property. If the tenant continues to occupy the property past that date, the landlord may make a Form 12 Application for termination of the tenancy to the Magistrates Court. A first mention hearing date is set down, in front of a registrar, at which the tenant can either accept the application and seek to negotiate a further time period for vacant possession, or oppose the application for termination. In this case, the matter will usually proceed to be listed for trial. If the tenant does not appear at court for a hearing, the Court will inevitably Order termination and vacant possession in their absence.

²² Greg Cash, then Housing Authority Manager Services, personal communication, meeting with Michelle MacKenzie, Shelter WA and Kate Davis, Tenancy WA

²³ Finding a Place: An inquiry into the existence of discriminatory practices in relation to the provision of public housing and related services to Aboriginal people in Western Australia, 2004, Equal Opportunity Commission,

Finding a Place: Final report of the Implementation and Monitoring Committee, 2011 Equal opportunity Commission

A better way: An inquiry into the Department of Housing's disruptive behaviour strategy & more effective methods for dealing with tenants, 2013, Equal opportunity Commission

²⁴ <http://www.eoc.wa.gov.au/community-projects/past-projects/inquiry-into-private-rental-housing>

²⁵ <http://www.eoc.wa.gov.au/mediacentre/eoc-in-the-news/2018/08/21/racial-discrimination-widespread-in-the-private-rental-market-advocates-war>

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²⁶ <https://www.tenancywa.org.au/wa-peaks-call-freeze-evictions-public-housing>

All court notices are served by post. It is not unusual for tenants to be unaware of eviction proceedings until a Court has already made Orders for termination. The legal process is complex and technical and requires an understanding of the Residential Tenancies Act - without advice or representation, tenants are unlikely to be able to adequately defend themselves. There are only a handful of tenant advocacy services in Perth, only some of which are able to appear in court on their clients' behalf (the other merely offering advice). Many tenants are evicted from their properties without understanding or responding to the process in defence of their tenancy. This issue of access to justice and natural justice is particularly acute for Aboriginal tenants.

3. Without grounds terminations

The Residential Tenancies Act (WA) provides two avenues for landlords who wish to terminate a tenancy without providing a reason they may need to justify in court.

Section 64 of the RTA allows a No Reason Termination with 60 Days Notice, which may be used to terminate either periodic tenancies (which have no specified term or end date) or fixed term tenancies (which expire on a given day).

Section 72 of the RTA allows for Termination of a Fixed Term Tenancy following the conclusion of the fixed term.

4. Fixed term tenancies

The Housing Authority previously used Section 64 terminations widely but restricted this practice following a campaign more than a decade ago. However, they are still able to use this form of termination and continue to do so in certain cases.

The Housing Authority uses fixed term tenancies widely, and indeed appears to have a practice of using six- or twelve-month 'probationary' tenancies for most new tenants, especially if they have a previous tenancy history with the Housing Authority. Fixed term tenancies not only put added pressure and scrutiny on new tenants, they also remove the need for due process or evidence to be presented in the event of an attempt to terminate the tenancy. Section 72 is often used to circumvent the evidentiary requirement under other sections, including Section 75A three strikes evictions when there are disruptive behaviour allegations the Housing Authority may doubt their ability to substantiate in court. There is no defence against a fixed term tenancy termination and they have been used increasingly in recent years to evict Aboriginal families into homelessness.²⁷

5. Three strikes policy

About 10% of evictions are a result of the controversial "three strikes policy" for disruptive behaviour introduced in 2011.²⁸ Responses from the Department to media enquiries show that in 2018/19, the last year for which we have these figures, 9 of 81 evictions by bailiff were for 'three strikes'. In 2017/18 the figure was 15 of 121, and in 2016/17 the number was 48 of 293 evictions by bailiff. This is a small minority of evictions, despite the popular notion that disruptive behaviour is the problem.

The primary sub-section of the Residential Tenancies Act concerning disruptive behaviour reads as follows:

(1)A competent court may, upon application by the lessor under a social housing tenancy agreement, terminate the agreement if it is satisfied that the tenant has —

²⁷ <https://www.crikey.com.au/2019/06/26/public-housing-western-australia/>

²⁸ <https://www.mediastatements.wa.gov.au/Pages/Barnett/2011/04/Public-housing-tenants-face-tougher-%E2%80%98three-strikes%E2%80%99-policy.aspx>

- (a) used the social housing premises, or caused or permitted the social housing premises to be used, for an illegal purpose; or*
 - (b) caused or permitted a nuisance by the use of the social housing premises; or*
 - (c) interfered, or caused or permitted any interference, with the reasonable peace, comfort or privacy of any person who resides in the immediate vicinity of the premises,*
- and that the behaviour justifies terminating the agreement.*

A major issue with this legislation is the inclusion of ‘cause or permit’, which introduces vicarious liability for the behaviour of non-tenants in the immediate vicinity of the premises if the tenant is held to have ‘permitted’ their presence. The capacity of Aboriginal tenants to prevent behaviour from non-residents is severely limited by factors involving family violence, cultural and family obligations, and health and mental health issues affecting family members, and widespread social issues including homelessness.

At the time of its introduction the WA Association of Mental Health (WAAMH) stated while people have a right to quiet enjoyment of their neighbourhood, the eviction of disruptive tenants who are so by virtue of their mental illness is not a satisfactory outcome. Support and medical intervention is necessary in these situations to ensure that people living with a mental illness can maintain their tenancies and are not dealt with punitively by a system that does not take into consideration individual circumstances. Indeed it is the role of housing providers, servicing tenants living with a mental illness, to ensure that housing and support is provided. Eviction from public housing is not only problematic at the time but has consequences in the future, with evicted tenants not being able to access public housing again. An individual can consent to end the tenancy rather than be evicted but then must return to the years-long wait list.²⁹

In 2018 the Office of the Auditor General report³⁰ on Managing Disruptive Behaviour made a key finding that “strikes were issued against tenants with complex mental health illness, family violence or inter-generational dysfunction. The Department does not direct resources towards early intervention for these tenants, instead following standard procedures to manage all disruptive behaviour” and raised a number of recommendations in relation to disruptive behaviour management processes.

Three Strikes Case Study

Evictions, especially those resulting from three strikes for disruptive behaviour, can have a cumulative effect on Aboriginal families. In June 2019, I took on a new case, a Noongar mother [REDACTED] and her five children, who were facing eviction from their Ballajura home due to disruptive behaviour (DB) allegations. Many of the DB allegations pertained to incidents not involving the tenant [REDACTED], but instead to her extended family members. Other allegations pertained to incidents involving domestic violence perpetrated against [REDACTED] by her then-partner, now serving a jail sentence for his abuse. [REDACTED] sister [REDACTED] was evicted from her public housing property in 2018 with her three children, in a three strikes eviction stemming from extensive domestic violence for which her ex-partner was also serving a jail term, and had been homeless since then. [REDACTED] and her three children moved between [REDACTED] house, placing serious overcrowding pressure on the property, and the public housing home of a third sister, [REDACTED]. [REDACTED] case was repeatedly adjourned due to the COVID pandemic and a trial was finally listed for late 2020.

²⁹ <https://waamh.org.au/assets/documents/systemic-advocacy/submissions-and-briefs/Policy-brief---Three-Strikes-Policy.pdf>

³⁰ Managing Disruptive Behaviour in Public Housing, report 12, December 2018 Office of the Auditor General Western Australia

In early 2020, ██████ was served with eviction papers by the Housing Authority due to disruptive behaviour allegations at her property. These complaints were, once again, a combination of incidents stemming from domestic violence (directed against both ██████ and against her sister ██████ during visits to the property) and those caused by family members staying or visiting her property. ██████ and her three children were evicted from their property in August 2020.

██████, ██████ and ██████ were now all living at ██████ three bedroom property with their 10 children. As we approached the trial date, allegations of disruptive behaviour increased, all seemingly stemming from incidents involving the 10 school-age children now forced to live together in this small family home. ██████ faced being the third sister in three years evicted due to cumulative disruptive behaviour - this time, all three sisters and their children would all be out on the street with nowhere to go.

Fortunately, following media coverage and internal advocacy with the Housing Authority (and a last minute further adjournment of ██████ trial to May 2021), we managed to negotiate new tenancies for each of the three sisters, conditional on engagement with increased external support services. All three have stable new homes for their children, who are doing well at school. ██████ case was withdrawn and her trial vacated. Hundreds of other Aboriginal families have not been so lucky.³¹

Impact of Eviction

Eviction to homelessness has serious consequences for children. Childhood homelessness is associated with poor health, poor education outcomes and exposure to trauma for children³² and is a strong predictor for adult homelessness, incarceration and poor health outcomes.³³

Tenancy WA and the peak community sector bodies have repeatedly called for a moratorium on the eviction of children to homelessness from public housing³⁴, but previous Minister Peter Tinley declined to implement a moratorium or other policy change with respect to the eviction of children and the evictions have continued unabated³⁵.

Private rental evictions and a dysfunctional rental market

Following the lifting of the Covid Rental Increase and Eviction moratorium in April 2021 there was an immediate spike in tenancy terminations leading to evictions. There were 462 eviction applications in April 2021, 405 in May 2021 and 370 in June 2021, an increase of 30% on the monthly average in the 18 months prior to the lifting of the moratorium.³⁶

The lifting of the moratorium occurred at a time where the private rental market was in complete meltdown, with record low vacancy rates and skyrocketing rents. The severe lack of affordable and available rental properties meant families facing eviction had nowhere to go and were evicted into homelessness; those facing sudden rent increases of \$50-\$100 (which were typical immediately after

³¹ <https://www.abc.net.au/news/2020-10-24/tent-city-homeless-during-covid-19-in-western-australia/12806654>

³² MacKenzie, D., Flatau, P., Steen, A., & Thielking, M. (2016). *The cost of youth homelessness in Australia research briefing*. Australia: Australian Policy online., and Y Aratani, "Homeless Children and Youth: Causes and Consequences" National Centre for Children and Poverty, Columbia University, 2009.

³³ This has been highlighted in the *Ngulluk Koolunga Ngulluk Koort (Our children, our heart)* research at the Telethon Kids Institute. Ngulluk Koolunga Ngulluk Koort is a five year research project to improve outcomes for Koolunga (children) in WA, with Noongar Elders in a co-researcher group, and has identified insecurity of housing for Aboriginal families as one of Three Priority Areas

<https://www.telethonkids.org.au/globalassets/media/documents/projects/nknk/nknk-community-update---newsletter-march-2019.pdf>

<https://www.telethonkids.org.au/globalassets/media/documents/projects/nknk/nknk-findings-community-consultations.pdf>

³⁴ <https://www.theaustralian.com.au/nation/politics/call-to-freeze-evictions-of-vulnerable-families/news-story/159e773cb2f2f66403f447c12382f1f3>

Letter from Community Sector Peaks, to Minister Tinley Minister for Housing, June 2017,

Letter from Tenancy WA, to Minister Tinley Minister for Housing, April 2017

Reply from Minister Tinley July 2017

³⁵ The Department of Communities has launched a new program THRIVE in October 2019 which aims to sustain public housing tenancies and avoid evictions. However, there is still no commitment to data collection and reporting about the eviction of children, the consideration of children's interests in eviction decisions or the cessation or reduction in the practice of evicting children to homelessness.

³⁶ <https://thewest.com.au/news/social/more-than-1250-families-out-on-the-street-since-rental-moratorium-ended-ng-b881910560z>

the moratorium lifted), faced the same fate. This was well documented in the media at the time, and tenancy support and welfare services were overwhelmed with record numbers of requests for assistance, the majority of which were going unmet.

Aboriginal people face further systemic barriers to accessing the private rental market, specifically extensive discrimination that often makes it nearly impossible for them to secure private rental housing. Evidence of widespread discrimination in an Australian context is confirmed in a 2016 report by the Australian Housing and Urban Research Institute (citing continued discrimination as a barrier for Indigenous Australians in accessing the private rental market)³⁷; Shelter SA's 2019 report on racial discrimination in the private rental market;³⁸ and a 2020 nation-wide, decade-long study from the Australian National University revealing that three out of every four Australians holds a racial bias against Indigenous Australians.³⁹ Notably, this study revealed that Western Australians showed higher levels of prejudice than other states. Aboriginal Legal Services have litigated multiple cases of discrimination in accessing services in the private housing market, and it is a ubiquitous and ongoing issue that JN deals with on a daily basis at Day Dawn.

Case Study

One of the only families I have known to successfully enter the private rental market still illustrate the discrimination faced by Aboriginal families at the confluence of public and private housing. ██████ and his three daughters became known to me while they were residents at the crisis accommodation we provided at a Fremantle hotel during the first weeks of COVID (see above). While staying in emergency isolation at this hotel, I was present while ██████ was informed by the Housing Authority that his appeal of a decision to deny him any further public housing assistance (preventing him from applying for public housing, see below) was unsuccessful. His family was therefore barred from public housing. ██████ subsequently applied for over two dozen private rentals before finally securing a property with the assistance of teachers at his daughters' school. During this search, ██████ was rejected for one three bedroom property despite being the only applicant - he claimed he was told that the owner was concerned he would have other family members staying there who would damage the property.⁴⁰

██████ was sole parent to his daughters since they were toddlers - now in their late teens, two are at university and the other doing well in Year 12. In spite of his successful and charming family, ██████ and his daughters faced eviction after a 12-month fixed term tenancy. COVID restrictions led to another short term six-month tenancy. ██████ tragically died of a heart attack in October - his orphaned daughters were evicted by a court on January 20 2021.

Housing Authority policies and procedures

Certain internal policies of the Housing Authority have the effect of significantly disadvantaging Aboriginal people trying to access public housing:

Further Assistance Reviews: New applicants for public housing who have previously held tenancies with the Housing Authority are typically subject to Further Assistance Reviews. These are conducted by Housing personnel and may identify applicants deemed to have 'issues with previous tenancies'. This may consist of debt accruing from previous tenancies (see below), previous disruptive behaviour or other issues leading to eviction, or a failure to demonstrate inability to access the private market

³⁷https://www.ahuri.edu.au/__data/assets/pdf_file/0014/8150/AHURI_Final_Report_No263_The-role-of-private-rental-brokerage-in-housing-outcomes-for-vulnerable-Australians.pdf

³⁸<https://www.sheltersa.asn.au/site/wp-content/uploads/190430-Shelter-SA-Research-Report-on-Racial-Discrimination-in-Private-Rental-FINAL.pdf>

³⁹<https://www.abc.net.au/news/2020-06-09/three-in-four-negative-bias-against-indigenous-australians-study/12335184>

⁴⁰<https://www.watoday.com.au/national/western-australia/families-face-life-on-the-street-as-shocking-new-numbers-reveal-depth-of-wa-housing-crisis-20210702-p5869g.html>

(e.g. not substantiating multiple failed attempts to secure private rentals). There are several possible results: applicants may be approved to join the public housing waitlist; applicants may be conditionally wait-listed 'Under Management Assessment'; or applicants may be 'Declined Further Assistance'.

Declined Further Assistance: An applicant who is declined further assistance is rejected for public housing. This happens regularly if a tenant has been previously evicted from a public housing property. The circumstances of past evictions, including rationale, evidence and any mitigating circumstances, may not be taken into account by the decision-maker, who may have no connection to the previous tenancy or factors bearing on its termination. Changes in the applicants' circumstances since previous tenancies may be likewise overlooked. JN is familiar with many families, homeless and in acute crisis, who have been Declined Further Assistance and thereby barred from public housing assistance when they need it most - many have already demonstrated they are unable to access the private rental market.

Management Assessment: Applicants placed under Management Assessment are nominally accepted onto the public housing waitlist but have a probationary period, typically of six or twelve months, during which they have to demonstrate compliance with certain conditions set by the Housing Authority. These may include debt repayment, engagement with support services, attempts to access the private rental market, etc. While Under Management Assessment, applicants theoretically maintain their place on the wait-list but are not eligible to be housed during this time. Consequently, families are placed in a further limbo while their compliance is determined by the Housing Authority, and if they are deemed to have failed their assessment they will be removed from the waitlist at the conclusion of the Management Assessment period. Often the conditions are almost impossible to meet - e.g. a requirement that applicants first demonstrate a successful 12-month tenancy other than in public housing, with the result that the applicant languishes without ever being eligible for a housing offer.

Vacated Tenant Liability: Public housing tenants are subject to periodic rental inspections to assess the property. Any property damage or routine maintenance is charged to the tenant to be paid on top of their ongoing rent and utilities. Inspections are carried out by Housing Services Officers. Maintenance and repairs are carried out by third party contractors, often at rates significantly above private market rates. For example, JN recalls an Aboriginal tenant who was charged \$1300 for the replacement of a screen door. When she failed to make repayment of this bill, she was evicted. If tenants are unable to repay maintenance or repair bills the charges accrue as Tenant Liability debt.

When a public housing tenancy ends, whether terminated by the Housing Authority or the tenant, the Housing Authority completes a 'final vacate inspection' and bills the vacating tenant for any repairs or maintenance they deem necessary. As with routine inspections, these are entirely at the discretion of Housing and charged at third party contractor rates. It is not unusual for these charges to run into tens of thousands of dollars, regularly exceeding \$30,000.

Theoretically, damage accruing due to family violence or criminal damage may not be charged to the tenant. However, it is necessary to provide full police reports which, in circumstances where a family is newly homeless after recent eviction following extensive domestic violence, are often difficult to acquire.

If a former tenant subsequently reapplies for public housing, their Vacated Tenant Liability Debt is often used as a rationale for Declining Further Assistance or placing the new application Under Management Assessment (see above). Tenants have only 12 months in which to appeal any Tenant Liability they feel may be unjustly applied to them.

Tier 2 Appeals: The only review process for decisions about tenant liability, declined further assistance or management assessment is via an Appeals Mechanism form submitted to the Housing Authority. If the initial decision is maintained, a further appeal is possible to a Tier 2 Review Panel. This panel comprises members of the community, selected, retained and paid by the Housing Authority, who meet to consider appeals in person. I have never attended a Tier 2 appeal that found in favour of the tenant or applicant and against the Housing Authority's initial decision. There is no further review or appeal possible following a Tier 2 Appeal - the decision is final.

Case study 1 - Declined Further Assistance

A family with multiple generations of child removal and sexual abuse in state institutions has their own children removed. In 2012, their young daughter was killed while in state care. The family have an ongoing compensation claim against the state worth hundreds of thousands, still unresolved eight years after their daughters' death. The family were subsequently evicted from public housing in 2016, following which they were billed some thousands for repairs by the Housing Authority. Unable to repay this, it accrued as Vacated Tenant Liability debt (see below). When I assisted them to reapply for public housing in 2019 they were Declined Further Assistance following a Further Assistance Review due primarily to the outstanding debt. I helped them appeal this decision and attended the Tier 2 Appeal hearing with them. We explained the history and context of this debt, the trauma history and the outstanding compensation claim, and their chronic homelessness and its compounding impacts. I felt the hearing had gone well. Later that day we received notice that the Tier 2 Review panel had determined to reject their appeal and maintain the original decision to Decline Further Assistance. They are still homeless today, due to an outstanding debt to the Department of several thousand dollars while they await the outcome of a compensation claim against the Department for a figure many times what they owe.

Case Study 2 - Vacated Tenant Liability

A mother of five children who sustained acute and sustained domestic violence from an ex-partner subsequently jailed for his abuse was charged more than \$35,000 by the Housing Authority following her eviction in 2016 (due to damage done by said ex-partner, following an eviction where she had no legal representation.) She was homeless for three years following her eviction and barred from accessing public housing. In 2019, Daydawn successfully appealed more than half the debt on the grounds of domestic violence, reducing it to less than \$15,000 and allowing the family to reapply for public housing in June 2019. They were then subject to a Further Assistance Review which took 9 months to complete, meaning they were only approved for priority assistance in March 2020. Following sustained advocacy and media pressure they were finally housed in September this year just before they were evicted from a 12 month fixed term private tenancy.⁴¹

Case Study 3 - Management Assessment

A young mother of three with brain injury sustained during chronic family and domestic violence had been homeless for several years. She was on the streets while heavily pregnant, living at high profile homeless camps before accessing temporary accommodation from the government for several months earlier this year. Her fourth child was removed from her at birth during this time - the child protection proceedings are ongoing in Perth Children's Court. She had previously had multiple public housing applications rejected. With my assistance, she submitted another public housing application with copious support documentation, and was then subject to an extended Further Assistance Review. At the conclusion of this, she was placed on Management Assessment until August 1, with several conditions attached including engagement with support services. In late July, several days

⁴¹ <https://www.sbs.com.au/nitv/article/2021/08/24/perth-housing-crisis-hits-noongar-family-five>

before the Management Assessment period was up, she left the supported accommodation and returned to the streets, following which her engagement with support services ceased. Following another extended review period, she was placed under a further six months of management assessment. Despairing of her likelihood of being housed, and with knowledge that any chance of reunification with her baby was dependent on housing, she chose to reoffend rather than remaining homeless on the street - and is currently incarcerated at Melaleuca Prison, while the Department push for an 18 Year Order on her baby.

SOLUTIONS AND RECOMMENDATIONS

Immediately Address the Shortage of Social Housing

After a year of intense public campaigning we secured a record commitment of \$875m for 3300 new social housing homes in the 2020-21 State Budget, but most of these homes won't be delivered until at least 2023. In any case, with a public housing waitlist in excess of 18,000 and continuing to climb, the demand remains far greater than available supply in spite of increased investment. A mandated target for new public housing construction, of perhaps 1,000 new properties added to public housing stock each year, is achievable and necessary.

Immediately Address the Shortage of Emergency Accommodation

Small trials during COVID and responses following public pressure or political crises (such as tent cities in Perth and Fremantle) show that, when necessary, the government is able to deliver short term emergency accommodation for people in crisis on the street. With an ongoing absence of transitional accommodation or housing, and deaths on the street showing that homelessness in Perth is an ongoing public health emergency, an immediate response is required.

One policy response, first developed by the COVID Homelessness Taskforce but never utilised, is to fund emergency brokerage for service providers to access emergency accommodation for people in crisis due to homelessness in hotels, motels and other short term accommodation until long-term housing can be delivered. Service providers already provide emergency accommodation in hotels when imperative but on an ad hoc, unfunded basis. A pooled brokerage fund would provide comprehensive, strategic crisis response with a long-term pathway out of homelessness.

At a conservative estimate of 1000 people experiencing homeless each night in Perth, with accommodation estimated to cost \$100 per person per night, \$36.5 million per year would provide emergency accommodation for every person experiencing homelessness every night.

Aboriginal housing allocation

In recognition of past trauma history, current inequality and inequity in social and economic metrics and the Gap between Aboriginal outcomes and the rest of West Australian society - as well as the starkly disproportionate homelessness and public housing figures for Aboriginal people in WA - a specific allocation of public housing should be set aside for Aboriginal families, suggested between 25% (the proportion of total public housing tenancies occupied by Aboriginal people) and 40% (the proportion of Aboriginal people of the total homeless population in Perth).

This would help to address the systemic discrimination in Housing Authority allocations practices. Recent UWA research found that Aboriginal families waited longer than others to get public housing - the research didn't explain why. In KD's view, it could be explained by a combination of factors: low stock of larger houses despite the long-documented need of Aboriginal families for larger houses;

management review policies set out above that impact disproportionately on Aboriginal housing applicants, delaying or excluding them from housing.

Recommendations relating to evictions from public housing

- An immediate moratorium on evictions from public housing in order to be able to review the current practices and provide direction to the Housing Authority for immediate reforms. Immediate reforms are required to refocus the Housing Authority approach from a punitive approach, to an approach focussed on understanding and coordinating the supports that a household needs to sustain a tenancy. The current approach can be summarised: 'Tenants are expected to do three simple things: pay the rent, look after the house and get along with the neighbours. Tenants who don't do this don't deserve housing.'

This needs to be changed so that where a tenant is not meeting reasonable expectations, the Housing Authority (or associated support service) seeks to understand the challenges the tenant is facing, and seeks to proactively and collaboratively engage support services to assist the tenant with those challenges. The current punitive approach means that tenants are routinely evicted in the midst of crisis, suicide attempts, major health issues, extended family crisis, rather than being connected with supports to address these overwhelming needs.

Recommendations relating to discretion

- Remove the restrictions placed on discretionary decision making introduced under the three strikes policy, and specifically, reinstate the discretion of Regional Managers to withdraw termination applications, so that Housing Authority staff can work to implement practical strategies to sustain tenancies.
- Remove the policy of barring transfers to alternative public housing properties in cases where termination proceedings have commenced.

Recommendations with respect to domestic violence

- It is crucial that women and children do not face eviction from public housing as a result of being victims of domestic violence. It is imperative that the Housing Authority adopts policies and trains staff to be able to identify domestic violence cases, and to then screen these matters into a 'support track' rather than an 'evictions track'. The Disruptive Behavior Management Unit admits that they struggle to discern the difference between 'disruptive behaviour' and 'domestic violence' (or as they put it the difference between DB and DV). This requires urgent rectification, as domestic violence cases require an appropriate response, not eviction proceedings.

Recommendations with respect Mental health screening

- We recommend the Housing Authority should adopt policies and train staff to identify cases involving serious mental illness impacting on a tenant's capacity to sustain a tenancy. Again, these cases need to be referred to a support track rather than an eviction track. The Housing Authority should seek tenant's consent to work with their mental health support workers, and then should work collaboratively with these services - this means notifying health providers when the Housing Authority is investigating complaints, and seeking support to address a tenant's behaviour, rather than commencing termination proceedings.

Recommendations with respect to eviction of children

- As an immediate step we recommend that the Housing Authority not proceed with a termination application or eviction where the Department of Child Protection and Family Services (DCPFS) advises that they are working with the family and that the current housing is important for the children's protection and care, and similarly where the DCPFS advises that they have not previously engaged with the family and have not identified child protection concerns, but would be concerned that eviction would put the children at risk. Homelessness is a serious risk factor for children being taken into state care, and a leading cause of babies being apprehended at birth, in families who otherwise have protective parenting skills.
- We recommend that the Housing Authority engage in 'strong families'⁴² style round table negotiations with support services and relevant departments before evicting children from public housing. Only where coordinated support services fail should the Housing Authority take steps to terminate a tenancy and evict children to homelessness. The Housing Authority currently consistently refuses to engage in these roundtable approaches.
- Previous Housing Ministers were fond of stating that public housing tenants are adults, who make choices. However, the government has a duty to our community's most vulnerable children to prevent childhood homelessness, and to foster a culture of protecting the human rights of the child. While there is a cost in facilitating 'strong families' style Roundtable meetings, this is unlikely to be greater than the current expense of litigating termination applications through the Magistrates Court. Redirection of these resources to achieve the positive outcome of sustaining tenancies would be a far greater benefit across government and for the whole community, than the current significant funds expended seeking the poor public outcome of eviction to homelessness, with the high resulting costs to child protection, education, health, policing and corrections departments. The cost of homelessness to government is well documented⁴³, and is best considered from a whole of government approach.
- We recommend the Housing Authority urgently provide a report detailing the number of children evicted from public housing, including the number of Aboriginal children evicted from public housing. Further, recognising the difficulty advocates have had obtaining this information⁴⁴, we recommend the Department be required to publish this data publicly every month.

Limit No Grounds termination

A lessor should only be able to terminate a lease when there is a good reason to do so with possible grounds limited to:

- Tenant no longer eligible for housing assistance - for example, where a tenancy is offered by a community housing provider under a youth accommodation scheme.

⁴² Strong Families is a program run through the DCPFS, which involves a roundtable of government departments and community organisations working with a family, to agree a shared case plan. The roundtable ensures that the services are working together, that the family isn't left with critical gaps in services, and the service providers hold each other accountable for delivering the agreed services. This approach would go some way to addressing the Housing Authority's concern that social services withdraw from supporting a family once housing is provided, which may set a family up to fail if they need support to be able to effectively sustain a tenancy.

⁴³ <http://www.csi.edu.au/research/project/cost-of-youth-homelessness/>
<http://www.csi.edu.au/news/media-release-stable-housing-will-save-australia-millions/>
http://www.csi.edu.au/media/uploads/AHURI_Final_Report_No265_What-are-the-health-social-and-economic-benefi..._2edQIWz.pdf

⁴⁴ Members of Parliament have previously sought this information through questions in parliament (Hon Lynn MacLaren 19 March 2015 Extra from Hansard p1839b Question 2618) where the then Minister Holt refused to provide the information to Parliament citing that "The Department does not readily collate this data, and provision of the detailed information sought would require considerable research diverting staff from their normal duties." The Housing Authority has also resisted FOI applications seeking information about children being evicted from public housing.

- Tenant has ceased to be employed by the lessor – where the tenancy arose out of a contract of employment between the lessor and the tenant, and the lessor needs the premises to house another employee.
- Serious or persistent breach by tenant.
- Demolition, approved change of use or major renovation – limited to significant, necessary repairs or renovations.
- Frustration – that is, the premises are uninhabitable e.g. premises made unfit to live in due to a natural disaster.
- Lessor requires the premises for their own housing, or an immediate family member’s housing – subject to assessment of reasonability in all the circumstances.

Remove fixed term tenancy agreements

Please refer to [this excerpt](#) from submissions made by Tenancy WA to the DMIRS Review of the Residential Tenancies Act for further detail and background on this and other sections in this solutions paper related to reform of the evictions process.

Recommendations for termination proceedings as a last resort

We recommend that termination applications are only used as a last resort⁴⁵, after:

- referral to support services;
- attempts at collaborative work with community services; and
- an analysis of ‘whole of government cost’ demonstrates that the eviction is in the public interest. This analysis requires some consideration of the likely impact on the community of the tenant and family being evicted from public housing.

A ‘last resort’ policy may best be implemented by setting thresholds in policy to prevent termination applications being made for debts below set amounts, and for property standards issues which are not impacting on community health or safety, and for ‘disruptive behaviour’ which does not involve danger of serious injury to neighbours. These issues still require an appropriate management response from the Housing Authority, but this response should be targeted at supporting the tenant to sustain the tenancy, rather than seeking eviction.

Recommendations in relation to Debt and rental arrears

Given rental arrears are the single largest reason for eviction, and debt is also used as a reason to refuse a tenancy application, the need for reform in this area is urgent.

We note in response to the tragic death in custody of Ms Dhu in 2014 after being locked up for \$3622 in unpaid fines, the State Coroner recommended an overhaul of the fines and penalties

⁴⁵ Despite the rhetoric of using ‘termination application as a last resort’ in many cases termination proceedings are brought without the Housing Authority making a referral to STEP (Supported Transition and Engagement Program, now Thrive) or seeking to engage with any other community support services, and without adequately identifying the underlying issues (like domestic violence or mental illness) which are impacting on the tenancy. Rather than using termination applications as a last resort, the Housing Authority frequently uses termination applications as a mechanism to seek compliance from a tenant – for example to seek rectification of property standards issues. The ‘big stick’ approach is counter productive and does nothing to improve a tenant’s capacity to meet their tenancy obligations, but rather risks pushing people beyond their capacity to cope. It is worth noting written offers from Tenancy WA to work with the Housing Authority to assist in developing effective practical early intervention and prevention strategies to address these issues which do not justify termination were ignored.

system to remove imprisonment as an option for fine defaulters, and in June 2020 a law to end the practice of sending people to jail for not paying fines and making imprisonment for unpaid fines a last resort was passed. These long overdue reforms introduced changes that facilitate the recovery of these fine debts, including the introduction of garnishee orders, allowing fines to be collected from salaries or bank accounts, and 'work and development permits' for debtors experiencing hardship affecting their ability to pay their fine debts which allow a fine defaulter to work off their debt through an agreed activity including work or study.

Address Systemic racism in housing and service delivery

This paper has highlighted many significant ways homelessness has been caused and compounded by a housing system that is inherently structurally racist.

We recommend -

Expert administrative panels

With an acute shortage of public housing and endless waitlists, applicants with immediate need, such as Aboriginal families in crisis due to intergenerational trauma, child abuse and removal and health crises, have no prospect of finding the imminent resolution to homelessness they need. All priority cases are not alike - some families need housing immediately, to prevent further crisis, trauma and possibly death. Specialist panels, specifically for Aboriginal applicants, made up of experts, should assess each new applicant based on health, child protection and incarceration factors and prioritise their application accordingly based on risk:

- To examine any proposed tenancy termination or eviction of an Aboriginal person or family and fully consider the health, incarceration and child protection consequences of proceeding to terminate the tenancy and evict the household to homelessness.
- To replace all Tier 2 Appeal panels, currently comprising lay-people on the Housing Authority payroll without the expertise or cultural awareness necessary to make decisions of such life-changing significance.
- These expert panels must comprise Aboriginal and First Nations people.

Abolish Further Assistance Reviews

- Anyone deemed eligible for public housing has already demonstrated inability to access alternative housing and sufficient need. Previous tenancy history with the Housing Authority should not be a barrier to renewed public housing.
- Alternatively, Further Assistance Reviews could be maintained but refocused to assess further support or assistance that can be provided *to* public housing applicants, rather than *whether* applicants should be able to access public housing at all.

Abolish Management Assessment

- People subject to Management Assessment have demonstrated a need for public housing as a last resort to resolve homelessness - placing further conditions upon their application and monitoring their behaviour for compliance prevents people in crisis accessing the housing support they need.

Abolish Declined Further Assistance

- This policy has the effect of indefinitely barring some of WA's most vulnerable families from accessing public housing. Anecdotally, it is disproportionately applied to Aboriginal applicants. Often, it is applied based on debt owed to housing.

Independent Assessment of all Tenant Liability

- Maintenances and repairs ought to be subject to independent review and audit procedures to ensure fairness and equity.
- Procedures ought to be eased to make it easier to appeal debt due to third party damage or domestic violence. The 12 month limitation period on appealing debt should be removed.
- Vacated tenant liability from previous tenancies should not be a factor preventing applications or offers of further public housing assistance, provided there is some regular repayment plan in place for existing debt.

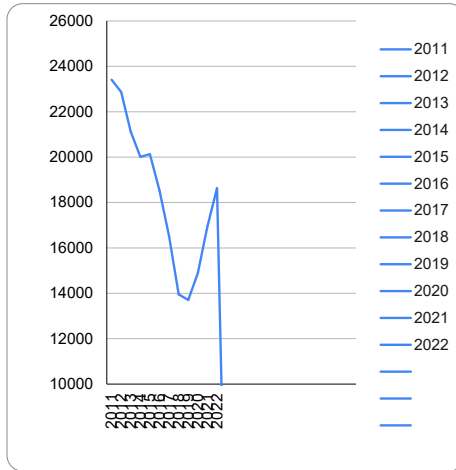
Submissions from families

There are multiple families who would appreciate the opportunity to provide evidence to this committee but do not feel able to make submissions in writing. We would be happy to discuss with the committee ways in which these families may contribute their experience, expertise and insight to the Inquiry by appearing in person to give evidence.

Contact:

Jesse Noakes [REDACTED]

2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
23411	22871	21121	20013	20127	18530	16516	13953	13708	14890	16949	18630



Housing waitlist allocations year for NOR and SOR zones as at August 2020								
Location	1 bdr wait-turr	1 bdr priority	2 bdr wait-turr	2 bdr priority	3 bdr wait-turr	3 bdr priority	4 bdr wait turr	4 bdr priority
North central	2004	2017	2015	2020	2015	2019	2008	2019
North City (city office)	2006	2015	2016	2018	2018	2019	2019	2019
North West Metro (Mirrabooka office)	2008	2018	2017	2018	2015	2018	2009	2019
Northern Districts (Joondalup office)	2006	2015	2013	2015	2017	2018	2017	2019
North east metro (Midland office)	2008	2013	2018	2018	2014	2018	2014	2018
Kwinana	Feb-07	2018	Apr-07	2019	Feb-15	Feb-19	Oct-16	May-20
Mandurah	Aug-09	Dec-17	Aug-15	Sep-19	Jun-17	Feb-20	Apr-17	Feb-20
Fremantle	Dec-13	Oct-15	Nov-18	Mar-19	Mar-19	Jan-20	Aug-18	Aug-18
(The year listed is the date of initial application for the most recent applicant housed from the waitlist in that zone)								

6. (PART 2.1) “NO GROUNDS” TERMINATION

6.1 Consultation Statement:

6.1.1 Considered options

Option A – Status quo

Under this option there would be no change. Lessors would continue to be able to use section 64 of the RTA to terminate without grounds, giving tenants 60 days’ notice to terminate the tenancy agreement.

Option B – Replace no grounds termination with prescribed grounds for termination

The RTA would be amended to remove no grounds terminations. A number of new grounds would be inserted which a lessor may rely on to terminate the tenancy agreement. The new grounds for termination of the tenancy agreement would likely reflect the grounds listed in the discussion above¹⁵, but would be developed in consultation with key stakeholders. The notice period would remain as 60 days.

Option C – Retain no grounds termination but increase the notice period

This option would increase the notice period a lessor would be required to give a tenant from the current 60 days’ notice to a longer period; for example, three months or six months’ notice.

6.1.2 Questions asked

- 1. Which option do you prefer and why?*
- 2. Can you think of other ways to address this issue? Please provide as much detail as possible.*
- 3. What do you think would be the cost implications of the different options? Please provide as much information if possible.*
- 4. If Option B is pursued, what should be the prescribed grounds for a lessor to terminate a tenancy agreement? What would be a sufficient notice period for each ground?*
- 5. If Option C is pursued, what should be the notice period for a no grounds termination notice? For example, three months, six months, longer? Why?*
- 6. If you are a tenant or landlord, have you ever used a no grounds termination to end a tenancy agreement or been subject to one?
Please specify in your answer whether you are a lessor or tenant.*

¹⁵ See page 15 and 17 of the Consultation Statement for a list of the grounds Consumer Protection is considering.

6.2 Summary of Tenancy WA's position

Recommendation (Part 2.1, Question 1): Tenancy WA recommends that Option B (Replace no grounds termination with prescribed grounds for termination) be implemented.

Why: If no grounds terminations were prohibited, tenants would have greater security of tenure, knowing that that they could not be subject to an eviction at any point without just cause.

Comment (Part 2.1, Question 3): While Tenancy WA does not have the appropriate economic and financial expertise to comment in detail on the cost implications of the different options, based on Tenancy WA's experience, Tenancy WA submits:

- the costs of 'no grounds' terminations are disproportionately borne by the tenant;
- the economic benefits of security of tenure are well documented; and
- there is no evidence that abolishing 'no grounds' terminations will have an adverse economic effect on the private rental market.

Recommendation (Part 2.1, Question 4):

A lessor should only be able to terminate a lease when there is a good reason to do so with possible grounds limited to:

- Tenant no longer eligible for housing assistance - for example, where a tenancy is offered by a community housing provider under a youth accommodation scheme.
- Tenant has ceased to be employed by the lessor – where the tenancy arose out of a contract of employment between the lessor and the tenant, and the lessor needs the premises to house another employee.
- Serious or persistent breach by tenant.
- Demolition, approved change of use or major renovation – limited to significant, necessary repair or renovations.
- Frustration – that is, the premises are uninhabitable e.g. premises made unfit to live in due to a natural disaster.
- Lessor requires the premises for their own housing, or an immediate family member’s housing – subject to assessment of reasonability in all the circumstances.

Comment (Part 2.1, Question 5): In Tenancy WA’s, view increasing notice periods while retaining no grounds eviction will do nothing to improve security of tenure.

6.3 Question 1: Which option do you prefer and why?

6.3.1 Ending ‘no grounds’ terminations

The ability of lessors to terminate a tenancy without a valid reason (including as a result of the expiry of a fixed term tenancy) is one of the most significant barriers to a tenant’s security of tenure. It creates an imbalance of power between lessors and tenant. If lessors can terminate a tenancy without reasons, tenants cannot enjoy long-term housing security. There is also very little incentive to enter into longer-term agreements.¹⁶

Australia remains one of the only jurisdictions in the OECD to retain ‘no grounds’ termination. Internationally, Germany, Sweden, Scotland, most of the Canadian provinces and some major US cities, only allow a lessor to terminate a tenancy on prescribed grounds.¹⁷In 2018, 453

¹⁶ Make Renting Fair WA, Fact Sheet #1 'Ending Unfair Evictions', <
<https://www.makerentingfairwa.org.au/wp-content/uploads/2020/02/MRF-FactSheets-Tenancy10-1.pdf>>, 1.

¹⁷ C Martin, K Hulse and H Pawson, 'The changing institutions of private rental housing: an international review', *Australian Housing and Urban Research Institute*, (January 2018), 52.

people contacted the Tenancy WA Advice Line because their lease was ending. There were 6,436 downloads of the factsheet about the issue.¹⁸ With 1 in 10 people who rent being evicted without grounds at least once¹⁹, without grounds eviction is a common among renters in Australia and even more common among vulnerable tenants such as those with a disability.²⁰

The Make Renting Fair WA Survey (2020) found that 8% of respondents have experienced no grounds terminations.²¹ Importantly, all renters in Western Australia face the threat of an unjustified and unfair eviction. Whether no grounds terminations happen on a large scale or not, the risk of being evicted for no reason is ever present and acts as an unspoken threat.

6.3.2 Impact of 'no grounds' terminations and insecure tenure

Rental churn caused by involuntary movement by tenants from property to property comes at a cost to the individual, the government, and the community. These movements have financial, social, economic and health implications and these impacts disproportionately affect the most vulnerable. As the Productivity Commission found, involuntary moves can 'disrupt access to place-based services', 'lead to homelessness and the need for temporary accommodation services', and 'compromise a range of child development outcomes, including among Indigenous children'.²² Some specific impacts of insecure tenure include:

(a) Securing repairs/maintenance

No grounds termination provisions not only provide scope for lessors to unfairly evict tenants but also create uncertainty and stress for tenants and can deter them from exercising their rights to request repairs, report problems with maintenance or repairs, make legitimate complaints, and challenge rent increases and unfair evictions.

Tenants do not assert their rights out of fear of being given notice to vacate or out of fear of not having their lease renewed.²³

50% of Western Australia tenants are living in homes that need repairs.²⁴ The 2018 report 'Disrupted' commissioned by Choice, National Shelter and the National Association of Tenant Organisations identified that 44% of renters in Australia are concerned that a request for repairs could result in eviction.²⁵

¹⁸ Tenancy WA Statistic Summary (2019).

¹⁹ Choice, National Shelter and The National Association of Tenant Organisations (NATO) *Disrupted: The consumer experience of renting in Australia* (2018), 19.

²⁰ Choice, National Shelter and The National Association of Tenant Organisations (NATO) *Disrupted: The consumer experience of renting in Australia* (2018), 19. The research also found that 16% of Australian tenants with a disability have received a notice to leave without grounds.

²¹ Make Renting Fair WA 2019 Survey, 30; this is a similar result to the Choice 'Disrupted' survey which found that 10% of Australians who rent have received one or more formal notices to leave without grounds, and that 8% have been evicted one or more times without being given a reason or explanation. n 18.

²² Australian Government Productivity Commission, 'Vulnerable Private Renters, Evidence and Options', Productivity Commission Research Paper (September 2019), 18.

²³ Choice (National Shelter & The National Association of Tenant Organisations), 'Unsettled: Life in Australia's private rental market' (February 2017), 16.

²⁴ Choice (National Shelter & The National Association of Tenant Organisations), 'Unsettled: Life in Australia's private rental market' (February 2017), 7.

²⁵ Choice (National Shelter & The National Association of Tenant Organisations), 'Disrupted: The consumer experience of renting in Australia' (2018), 4.

Results from the Make Renting Fair Survey WA (2020) revealed similar results - 42% of respondents were 'very concerned' that a request for repairs could get them evicted and 13% did not have their lease renewed at the end of a fixed term due to a request.²⁶

(b) Household insecurity

As mentioned in the Consultation Statement, the Productivity Commission in its recent research into vulnerable private renters found:

- the fastest growth in private renting has been among households that include at least one Indigenous person, a person aged over 65 years, or a person with a disability or long-term health condition; and
- most of the increase in private renting has come from families with children and single parents, who value certainty of access to schools and other services.²⁷

Security of tenure benefits tenants, particularly young children, by providing a stable living environment. Children's education can be disrupted by the need to find new schools when forced to move at short notice, and the disruption may set back their educational development.²⁸ Older people may struggle to obtain a lessor's agreement to structural alterations when their mobility reduces.²⁹

Recent research on the impact of forced evictions found that of the renters surveyed, financial expense (89%), emotional toll and anxiety (90%), and the time commitment and stress involved in finding and securing new housing (91%) were key costs they had to consider when forced to move.³⁰

(c) Social impacts

Involuntary moves disrupt social networks.³¹ The Productivity Commission has found that:

[h]igher involuntary residential mobility has costs over and above the transaction costs associated with moving. If families with school-aged children are forced to frequently move, educational performance can decline and the risk of behavioural issues increases. Excessive residential mobility is further associated with declining social capital as social networks and relationships are disrupted by frequent

moving.³²

²⁶ Make Renting Fair WA 2019 Survey, 30

²⁷ Australian Government Productivity Commission, 'Vulnerable Private Renters, Evidence and Options', Productivity Commission Research Paper (September 2019), 21.

²⁸ Australian Government Productivity Commission, 'Vulnerable Private Renters: Evidence and Options', (Productivity Commission Research Paper, September 2019), 11; The Conversation, 'Moving home can affect your children's health and education', (26 August 2016), Accessed on 22/04/2020 <<https://theconversation.com/moving-home-can-affect-your-childrens-health-and-education-62738>>.

²⁹ Dr S Curry, 'The Renter's Journey, A consumer-centred approach to understanding the dynamics of Australia's private rental market', Consumer Policy Research, (2016), 60.

³⁰ Lives Turned Upside Down, NSW renter's experience of 'no grounds' evictions, 14.

³¹ N Gurran et al, 'Housing markets, economic productivity, and risk: international evidence and policy implications for Australia', *Australian Housing*, (Final Report No. 255, December 2015), 11.

³² A Sánchez and D Andrews, OECD Economics Department Working Papers No. 846, 'To Move or not to Move: What Drives Residential Mobility Rates in the OECD?', (2011).

Recent research into the cost of housing insecurity and forced evictions on tenants further found that a forced move often resulted in additional travel costs or a longer commute (57%) and would be a likely disruption to their own sense of community and personal support network (53%). Over a quarter of respondents reported they had either experienced or would anticipate disruptions to their childcare or school arrangements (28%), or worried about losing access to their current local medical services or community supports (28.4%).³³

(d) Health (including mental health) impacts

Whether a no grounds termination happens or not, knowing that an eviction could come at any time, with little notice creates a 'climate of fear' and leaves renters living in a stressful state of anxiety and insecurity, particularly for the renters with children or the growing numbers of older people renting privately.

Numerous studies have shown the link between housing insecurity and health outcomes.

Research conducted by the University of Adelaide, shows that the mental health outcomes of housing disadvantage (caused by among other things, moving house often, insecure housing tenure, and eviction) include a higher incidences of depression, stress and anxiety.

The research further concluded that one in five Australians experience a mental disorder in any given year³⁴ and nearly half will experience some form of mental illness during their lifetime³⁵. Mental health accounts for more than \$9 billion of public and private spending³⁶ in Australia, and 4.2 million Australians received mental health-related prescriptions³⁷ in 2017-18.³⁸

A project initiated by the Ministry of Business, Innovation and Employment and Auckland Council identified that high levels of involuntary moves can make it difficult for households to maintain contact with health

professionals which means that health issues remain undetected and untreated, leading to increased hospitalisation and the need for more extensive care.³⁹

6.3.3 Retaliatory evictions

Tenancy laws that allow for no grounds terminations, necessarily facilitate evictions based on retaliatory and discriminatory conduct.⁴⁰ Vulnerable renters are more impacted by retaliatory

³³ Tenants Union of New South Wales and Marrickville Legal Centre, 'Lives Turned Upside Down, NSW renter's experience of 'no grounds' evictions', (March 2019), 14.

³⁴ See

<<https://www.aihw.gov.au/reports-data/health-welfare-services/mental-health-services/overview>>. ³⁵ See

<<https://www.aihw.gov.au/getmedia/0e102c2f-694b-4949-84fb-e5db1c941a58/aihw-hse211.pdf.aspx?inline=true>>.

³⁶ See < <https://www.aihw.gov.au/reports-data/health-welfare-services/mental-health-services/overview>>. ³⁷

See < <https://www.aihw.gov.au/reports-data/health-welfare-services/mental-health-services/overview>>. ³⁸

The University of Adelaide, 'Poor Housing Leaves Its Mark on Our Mental Health For Years To Come', (July 2019) Accessed on 20/04/20,

<<https://www.adelaide.edu.au/research/news/list/2019/07/29/poor-housing-leaves-its-mark-on-our-mental-health-for-years-to-come>>.

³⁹ Ministry of Business, Innovation and Employment, Auckland Council and The Auckland CoDesign Lab, 'Exploring Security of Tenure Through Co-design', 8.

⁴⁰ P Carr and M Tennant, A National Shelter Report prepared by the National Association of Tenant Organisations, 'A Better Lease on Life – Improving Australian Tenancy Law' (April 2010), 24.

evictions as they have 'smaller financial buffers', 'have greater difficulty finding suitable, affordable alternative accommodation' and are 'more susceptible to discrimination.'⁴¹

Whilst there are some restrictions on the use of no grounds terminations (and recourse to challenge them) under the RTA, it is difficult to prove that the notice was given in retaliation to a tenant asserting their rights.

More importantly, at a practical level, tenants have little interest or capacity to follow through with the process of contesting an eviction as retaliatory, even when it may manifestly be so. Having received an eviction notice in a retaliatory context, most tenants already feel deeply uncertain about their prospects of retaining their tenancy and their desire to remain in the property is often affected by the mental impacts of negative interactions with a lessor or real estate agent that generally precede the eviction notice.

In Tenancy WA's experience many tenants will choose an alternate pathway when the lack of certainty around likely outcomes is explained to them. This is not to do with the respective merits of their case, but rather that the prospect of the cumulative stress and cost in addition to the uncertainty of success renders escalating a matter to court unattractive to the tenant. If a tenant has received a retaliatory eviction notice, at this stage most would rather direct their financial and emotional efforts to finding a new property to live in unencumbered by the anxiety of a lessor who doesn't want them living there and the lingering threat of eviction rather than stay and attempt to contest the notice.

This is an area where the adjudication process of tenancy matters in Western Australia also has an impact. Given tenancy matters are heard in the Magistrates Court with typically unreported decisions, there exists a lack of transparency and clarity around likely outcomes from taking a dispute of any kind into this forum for resolution.

This will be discussed in more detail in Tenancy WA's Part 2 – Further Submissions in response to Part 7.2 Resolving Other Disputes of the Consultation Statement.

In Tenancy WA's view, while no grounds termination provisions exist, lessors will be able to evict in a retaliatory or discriminatory fashion in response to any real or perceived issues with a tenant. Where the 'safeguard' against such evictions remains as an ability to contest an eviction after the fact, the reality is that the vast majority of tenants will not make use of this provision due to the stress, cost and uncertainty of outcome of the processes currently involved.

6.3.4 Numbers of 'no grounds' terminations

The survey conducted by the Bond Administrator and included in the Consultation Statement that looked at reasons for ending a tenancy identified that between February 2018 and March 2019 found that out of 23,445 responses, only 418 listed 'no grounds' termination as the cause of the tenancy ending.

Tenancy WA submits that this number, if an accurate representation, should not be interpreted as demonstrating that the use of s. 64 evictions (or the threat of a s. 64 eviction) is not a significant issue in Western Australia.

⁴¹ Queensland Government, 'A better renting future- Safety, security and certainty, Consultation Regulatory Impact Statement, Review of the Residential Tenancies and Rooming Accommodation Act 2008, Stage 1 Reforms, (November 2019), 7.

As mentioned above, the ongoing threat of a 'no grounds' terminations plays a significant role in de-stabilising security of tenure for renters and altering the balance of power between the contracting parties when exercising other rights and responsibilities. Whether or not a 'no grounds' evictions notice is issued, the fact that it can be issued is the more significant problem.

Furthermore, as is explored in **section 7. (Part 2.2) Fixed Term Tenancy Agreements** of this Submission, the availability of non-renewal of a fixed term agreement as a constructive eviction means that lessors wishing to get tenants out of a property only need to wait 6-12 months in order to give a de facto 'no grounds' eviction by this means.

This results in lessors generally not needing to issue a 'no grounds' eviction unless they have a particularly urgent desire to eject tenants from the property without cause. Therefore, the relatively low number of 'no grounds' terminations measured in the Bond Administrator survey should not be interpreted as showing that 'no grounds' and arbitrary eviction are not an issue in Western Australia.

Recommendation (Part 2.1, Question 1): Tenancy WA recommends that Option B (Replace no grounds termination with prescribed grounds for termination) be implemented.

Why: If no grounds terminations were prohibited, tenants would have greater security of tenure, knowing that that they could not be subject to an eviction at any point without just cause.

6.4 Question 2: Can you think of other ways to address this issue? Please provide as much detail as possible.

6.4.1 German model

In Germany, RT Agreements can be set for a fixed or an indefinite period, but since fixed term leases are only permissible on limited grounds, RT Agreements tend to be for an indefinite period. Where a RT Agreement has been entered into for an unlimited period, lessors can only give a termination notice where there is 'legitimate interest' and the general notice period is 3 months but gradually increases up to nine months depending on the length of the tenancy.

Reasons a lessor may give to terminate an unlimited RT Agreement include:

- the tenant is in manifest breach of a contractual duty;
- the lessor needs the premises for himself or his family; and
- the lease contract prevents the lessor from making an economically justifiable use of the premises. A simple renovation or modernisation of one apartment that does not require the tenant to leave is insufficient.⁴²

⁴²J Fitzsimons, 'The German Private Rented Sector, A Holistic Approach', The Knowledge Centre on Housing Economics, (March 2014),14; C Martin, K Hulse and H Pawson, 'The changing institutions of private rental housing: an international review', *Australian Housing and Urban Research Institute*, (January 2018), 92.

6.5 Question 3: What do you think would be the cost implications of the different options? Please provide as much information if possible.

Comment (Part 2.1, Question 3): While Tenancy WA does not have the appropriate economic and financial expertise to comment in detail on the cost implications of the different options, based on Tenancy WA's experience, Tenancy WA submits:

- the costs of 'no grounds' terminations are disproportionately borne by the tenant;
- the economic benefits of security of tenure are well documented; and
- there is no evidence that abolishing 'no grounds' terminations will have an adverse economic effect on the private rental market.

6.5.1 The costs of 'no grounds' terminations

For a broader discussion of the impact of 'no-grounds' terminations on tenants please see **section 6.3.2 The impact of 'no grounds' terminations and insecure tenure** of this Submission, noting that all of the impacts listed there have quantifiable economic dimensions, some of which are specifically mentioned where that data is available.

(a) Financial impact on tenants

Although most private tenants move voluntarily, a significant amount do so involuntarily and being forced to move for no reason can cause emotional harm and financial burden to tenants.

The cost of involuntary tenancy termination is largely incurred by the tenant. Moving house is expensive and forces tenants to finance multiple additional expenses, including bond and rent in advance, moving costs (for removalists, cleaners, utility connection), and further costs if the tenant has to pay rent and utilities on two properties during an overlap period.⁴³

Research has again concluded that moving homes is expensive, time-consuming, and emotionally taxing for renters. Of the renters surveyed in a recent survey conducted by Tenants Union of NSW South Wales and Marrickville Legal Centre, 63.6% indicated that the possibility of a 'no grounds' eviction was 'a serious source of anxiety'. Of those who had previously experienced a 'no grounds' eviction this number rose to 74.5%, suggesting previous experience substantially increased concern.⁴⁴

Moving homes is particularly stressful for families with school children as they must consider several additional factors,⁴⁵ and when vulnerable renters (and long-term renters) move, the moves are more likely to be involuntary. The financial cost of an

⁴³ Dr S Curry, 'The Renter's Journey – A consumer-centred approach to understanding the dynamics of Australia's private rental market', *Consumer Policy Research Centre*, (2016), 69.

⁴⁴ Tenants Union of New South Wales and Marrickville Legal Centre, 'Lives Turned Upside Down, NSW renter's

experience of 'no grounds' evictions', (March 2019), 21.

⁴⁵ Choice (National Shelter & The National Association of Tenant Organisations), 'Disrupted: The consumer experience of renting in Australia' (2018), 5.

involuntary move can be significant for this vulnerable cohort of renters.⁴⁶

The short timeframe for finding an alternative and the potential for new rents to be higher than that in an established tenancy increases the chances of homelessness.⁴⁷

(b) Broader economic consequences

Insecure tenure can have wider economic implications, outside of the individual:

In the intermediate rental market, the lack of a secure alternative to home ownership potentially increases demand from first-home buyers, affecting prices. They also add to competition in the rental market, and by being able to pay more rent, potentially increase rental costs which exacerbate the issues faced by low income renters. Landlords also face additional costs caused by insecure tenancies – high turnover can mean landlords spend more on the costs of re-letting. Similarly, having a property sit vacant while a suitable tenant is found means potential revenue is lost.⁴⁸

Security of tenure can improve socioeconomic outcomes⁴⁹. Allowing lessors to evict tenants for no reason creates renting churn which comes at a cost to the community and poor social outcomes equate to an increase in economic costs for government.⁵⁰

Being forced to move often means that tenants are unable to put down roots and play a more active role in the community.

A NSW Productivity Commission Discussion Paper published in 2019 states that:

[h]ousing tenure (i.e. renting and home ownership) impacts the productivity of our economy because it is closely related to how often households move.⁵¹

Looking at involuntary tenancy terminations in New South Wales, the Discussion Paper states that over 23,000 households are required to move due to their landlord giving notice every year. The NSW Treasury estimates the total direct costs of such terminations to be \$116 million per annum, primarily due to relocation costs incurred by renters.⁵²

While these costs cannot be reliably captured, it is accepted that stress can have adverse effects on household finances and there is a direct personal cost. It is also widely accepted stressed workers can impact the wider economy.

⁴⁶ Australian Government Productivity Commission, 'Vulnerable Private Renters, Evidence and Options', Productivity Commission Research Paper (September 2019), 18.

⁴⁷ Dr S Curry, 'The Renter's Journey, A consumer-centred approach to understanding the dynamics of Australia's private rental market', Consumer Policy Research, (2016), 60.

⁴⁸ Australian Government Productivity Commission, *Vulnerable Private Renters, Evidence and Options*, (Productivity Commission Research Paper, September 2019), 11.

⁴⁹ Australian Government Productivity Commission, *Vulnerable Private Renters, Evidence and Options* (Productivity Commission Research Paper, September 2019), 20.

⁵⁰ Ministry of Business, Innovation and Employment, Auckland Council and The Auckland CoDesign Lab, *Exploring Security of Tenure Through Co-design* (2015) 8; Ministry of Business, Innovation and Employment set up a project together with Auckland Council to learn more about potential ways to improve the rental experience for tenants and landlords, and how to avoid negative churn.

⁵¹ NSW Productivity Commission, *Kickstarting the productivity conversation* (2019), 120.

⁵² NSW Productivity Commission, *Kickstarting the productivity conversation* (2019), 120.

An example of this is captured by PricewaterhouseCoopers Consulting (Australia) Pty Ltd in their report on illegal phoenix activity.⁵³

Stress can have adverse effects on household finances as it has been shown to have adverse health effects, and therefore is seen as an increase personal costs of 'impaired physical and mental functioning, more work days lost, increased impairment at work, and a high use of health care services'. Stressed workers can also impact the wider economy through lower labour productivity by:

- adding to the cost of doing business due to absenteeism
- errors of judgement and action
- conflict and interpersonal problems
- violence or customer service problems
- resistance to change
- feelings of 'no time to do it right'
- loss of intellectual capital.

6.5.2 Abolishing no grounds eviction and impact on private rental market

Scotland who previously had similar levels of protection for tenants to Western Australia passed the *Private Housing (Tenancies) (Scotland) Act 2016* in 2017. Private rented tenancies are now open-ended and may be terminated on prescribed grounds only. This Act provides for 18 prescribed grounds for eviction, which had been expanded to include selling the property or the lessor moving back in.

The grounds are divided in to 4 areas to include:

- (a) where the property is required for another purpose;
- (b) the status of the tenant;
- (c) the conduct of the tenant; and
- (d) where there is a legal reason why the tenancy cannot continue.

Ten are grounds for 'mandatory' termination, where the tribunal has no discretion to refuse the eviction if the ground is proved; the remaining eight are 'discretionary'

where the tribunal should consider whether it is reasonable to grant an eviction order.⁵⁴

The reforms commenced in December 2017 and research conducted by Shelter Scotland, 18 months after their introduction, found that that private tenants were already feeling significant benefits from the change. More than half of tenants on the new tenancy felt more secure in their new housing situation and worried less about becoming homeless.⁵⁵ Shelter

⁵³ PricewaterhouseCoopers Consulting (Australia) Pty Ltd, *The Economic Impacts of Potential Illegal Phoenix Activity* (June 2018) 16 – 17
<https://www.ato.gov.au/uploadedFiles/Content/ITX/downloads/economic-impact-ofphoenix-activity-update_june-18_56257.pdf>.

⁵⁴ Private Housing (Tenancies) (Scotland) Act 2016, Schedule 3 Eviction Grounds

⁵⁵ Shelter, 'The New Private Rental Tenancies Evaluating changes to rental agreements in Scotland, Executive Summary',
2

Scotland's research also found that there had been no significant effects on the private rental market in the two years after the new policy was announced, neither in terms of size nor the cost of rent.⁵⁶

Similarly, in 2004 Ireland moved to increase security of tenure for tenants. The standard lease moved from 6-12 months to a legally prescribed six years, although lessors and tenants can terminate a lease in the first six months with 28 days' notice. Afterwards, lessors can only terminate the lease on prescribed grounds. Notice periods increased in line with the length of the tenure.

Although the effect of these changes was impacted by the global financial crisis, the reform did not reduce the supply of private rental housing. Following the introduction of the reforms, the private rental sector in Ireland grew substantially as a proportion of all housing. Like Australia, the Irish rental market is dominated by small individual investors.⁵⁷

6.6 Question 4: If Option B is pursued, what should be the prescribed grounds for a lessor to terminate a tenancy agreement? What would be a sufficient notice period for each ground?

Recommendation (Part 2.1, Question 4):

A lessor should only be able to terminate a lease when there is a good reason to do so with possible grounds limited to:

- Tenant no longer eligible for housing assistance - for example, where a tenancy is offered by a community housing provider under a youth accommodation scheme.
- Tenant has ceased to be employed by the lessor – where the tenancy arose out of a contract of employment between the lessor and the tenant, and the lessor needs the premises to house another employee.
- Serious or persistent breach by tenant.
- Demolition, approved change of use or major renovation – limited to significant, necessary repair or renovations.

- Frustration – that is, the premises are uninhabitable e.g. premises made unfit to live in due to a natural disaster.
- Lessor requires the premises for their own housing, or an immediate family member's housing – subject to assessment of reasonability in all the circumstances.

⁵⁶ Shelter, 'The New Private Rental Tenancies: Evaluating changes to rental agreements in Scotland, Executive Summary', 2 ⁵⁷ Grattan Institute, 128

6.6.1 Prescribed grounds

As outlined above, Tenancy WA recommends moving to a purely prescribed grounds model.

Such a policy movement will be part of a significant cultural shift in the Western Australian jurisdiction and as such it would, at least initially, risk placing significant pressure on the use and possible attempted misuse, of the remaining grounds for termination by lessors.

If the RTA is amended as recommended to a more secure tenure model that abolishes 'no grounds' terminations and prohibits the use of fixed term agreements, the prescribed grounds that remain for terminating a tenancy need to be finely calibrated to account for the legitimate needs of both tenants and lessors.

Importantly, a number of the prescribed grounds being considered in the Consultation Statement are matters which are already addressed in the RTA.

In Tenancy WA's view, further consultation will be needed to fine-tune the details of the balance of the prescribed grounds (or any amendments being proposed in relation to the existing prescribed grounds) to take into account the Western Australian regulatory context. If this model is pursued, Tenancy WA would welcome the opportunity to make further submissions on how it should operate.

6.6.2 Western Australian notice periods

Notice periods should be long enough to allow a tenant to find suitable accommodation that meets their needs.

A NATO report on this topic states that "in considering appropriate notice periods, the risk to lessors for extending notices should be considered. In particular, where there is no breach by the tenant and therefore no obvious financial risk to the lessor, notice periods should be the most generous."⁵⁸

If the RTA transitions to longer form periodic tenancies with a prescribed grounds model, in Tenancy WA's view notice periods for certain forms of termination should be longer to account for the fact that:

- (a) tenants will be spending longer periods residing at the same premises; and
- (b) tenants should have a longer period of time to find new housing arrangements and exit the premises.

If moving to a prescribed grounds model Tenancy WA would welcome the opportunity to make further submissions on appropriate notice periods.

⁵⁸ P Carr and M Tennant, 'A Better Lease on Life – Improving Australian Tenancy Law', A National Shelter Report prepared by the National Association of Tenant Organisations, (April 2010), 2.

6.7 Question 5: If Option C is pursued, what should be the notice period for a no grounds termination notice? For example, three months, six months, longer? Why?

Comment (Part 2.1, Question 5): In Tenancy WA's view increasing notice periods while retaining no grounds eviction will do nothing to improve security of tenure.

6.7.1 Same outcome, different notice period

The issue to do with the intersection of terminating a RT Agreement and security of tenure is not the **length of time** to vacate or dispute a termination notice. Rather, it

is to do with the basis on which the termination occurs – that is whether it is a ‘no grounds’ termination or a termination on prescribed grounds.

Increasing notice periods while retaining ‘no grounds’ termination will not result in greater security of tenure - this simply means that tenants will have a longer period to feel anxious about moving house.

An eviction notice is an eviction notice whether you have 30, 60 or 90 days to prepare to leave the property. Extending that period does nothing to improve tenants’ security of tenure, it simply elongates the exit process which is already a difficult period for most tenants.

6.8 Question 6: If you are a tenant or landlord, have you ever used a no grounds termination to end a tenancy agreement or been subject to one? Please specify in your answer whether you are a lessor or tenant.

While this question is not applicable to Tenancy WA, see **section 6.9 Tenant Voices - eviction** of this Submission regarding feedback obtained from tenants.

6.9 Tenant Voices - eviction

Set out below are tenant comments from the Make Renting Fair survey on evictions. For more information on survey results see **Annexure A** of this Submission.

I was quite surprised when I moved back into renting that even though I knew my rights and the landlord obligations very well, I still felt that strong imbalance of power. Any complaint or request has the potential to tip the relationship over so that I can be evicted or not have my lease renewed. It is frustrating, frightening and expensive and exhausting to move house particularly with a chronic health condition.

Tenant’s rights here have improved somewhat in the past few decades. However, compared to other countries (etc) in which I have rented, W.A. leaves a lot to be desired. When renting in a small block of units in Fremantle (for 8 years) I noticed that none of the other tenants dared to stand up for themselves, to the owner nor real estate agent. I received a ‘no ground notice’ because they ‘felt like it’, nothing else. I think a E.G. 6 month ‘lease’ is not a lot, and, can lead to just 4 weeks notice after 5 months, hence few argue. Perhaps there is a benefit in more stable tenancy conditions because that would result in a more stable population and community.

I don't think any of this is going to help us . The landlord always has the power to evict for any reasons.

I really just want my home to be a strong foundation for my life to build from and circle back to. That can't happen with all the anxiety and fear that comes with renting. I love living in Vic Park and I want to contribute and benefit from the community, but when I have no idea how long we'll be here I'm hesitant. My life doesn't feel permanent and it doesn't feel like my own when I'm constantly reminded that the house I live in is not my own, when I have to constantly try and prove that I'm worthy of living in someone else's house, when I have zero control over my own home. How do I build anything from that?

Previous Unit had massive problems and major mould problem children got really sick when ask to fix agent cover for landlord refuse to do anything went 3 years without any help to rectify problems and was always threatened with eviction. Too much power to landlord. Pay good money to stay at a place that threatened to kick us out any time.

I have rented all my life...for over 50 years. I have lived in 3 different homes in just over one year, in the original home I was a tenant for nearly 10 years but had to move because I dared to complain about the conditions or cost of rent. In the second home the landlord and agent continually harassed us, and refused to allow me to install a fly wire door, a safety handle in the shower and toilet, or to hang pictures on the walls. They kicked us out when the lease came up for renewal, and refused to repay bond until we took them to court. I am a good tenant and too old for this nonsense.

I tried to negotiate a lower rent with the owners but that was refused and when I wouldn't sign a fixed term lease I was sent a 60 day notice to vacate the property even though I have been here for nearly 5 years and been an excellent tenant. I have found that a lot of the time as a tenant you can be treated in a patronising and demeaning way. I believe tenants need more rights and protection under the law especially when it comes to property condition reports and what is expected of you when you vacate for example they expect that the house is going to be in exactly the same condition as if no one has lived in it.

We had full gutters from December 2015 until January 2019. We continually raised the issue that it was a fire risk living so close to a petrol station. In winter the house would flood with water and no action was taken when I lodged the maintenance requests. Consumer protection advised me that I can issue a Form 23 and breach the owner for failing to keep the property in a healthy and safe manner which we did, as our contents insurance would not cover us if there was damage to our belongings. Upon receipt of this notice the property manager issued us a termination notice and a vacate letter. We then gave our 21 days notice to them and found a more suitable place to live.

The provider caused both of us a great deal of stress by trying to evict us in retaliation for us issuing them a breach notice for failing to carry out maintenance and repairs. I complained to various bodies; the eviction has now been revoked, the housing authority is investigating the provider and intervened to make the property safe by having damaged asbestos removed & the structural integrity assessed, and the provider has been directed to complete maintenance & repairs. The National Regulatory System for Community Housing are also investigating the provider and will conduct a compliance review this year relating to the regulatory framework. I tagged the WA Housing Minister in public photos on Twitter to get things done, and now there is a ministerial enquiry at the housing authority.

Last year I was given short notice to move out of a house which I had been renting privately for about 3 years. the landlord, who lives in an adjoining property gave me 3 weeks notice, claiming that this was generous notice.... when I let him know that he actually was required to give me 60 days notice he was furious and made it clear.

...if I 'complained' too much - about the plumbing or whatever, the response was "you don't have to live here" - ie, if you don't like it you can move out!

I've always prioritised good rentals in good locations for safety reasons so not had any major issues. However I've been asked a few times to vacate and it turned out the owner just wanted to increase their profits. I would have much preferred a system which affords me some stability of tenure to avoid having to move every year or so which is a costly and tiring event I prefer to avoid as I age.

I was on the joint public and community housing wait list from March 2009 to March 2019, when we moved in here. This house is owned by Community Housing Ltd and we have a periodic lease agreement for 25% of our household income. Since before we moved in we have been reporting and requesting to have done maintenance and repairs relating to such issues as holes punched in the walls and other wilful damage by the previous tenant, faeces and broken glass and other dangerous rubbish in the front and rear yards left by the previous tenant, water damage to the roof, dangerously unsecured fixtures, mould in the master bedroom, and inadequate cleanliness. We have been arguing back and forth for months, culminating in CHL refusing to do any further maintenance or repairs. There are building, health and safety concerns. I issued a breach notice and said I would apply to the magistrates court for performance orders if not remedied. They refused so I confirmed my intention. Then we received the no-grounds notice of termination in the mail. Tenancy WA have referred me to the community legal service for advocacy in fighting the retaliatory eviction. Either way we have to move out with no other option than homelessness or stay here with a hostile community housing provider. 15+ years of fighting for my survival have led me here and I'm so exhausted.

I recently moved out of a sharehouse that I had lived in for 8 years – when it was time for lease renewal we asked for a rent reduction to reflect the change in market and the owner evicted us (did not renew our lease) because we asked. It was the second time this has happened (we asked for a rent reduction in 2016 when rents were falling and received an eviction notice – we went to the owner and begged and said we would continue to pay full rent.

In my previous rental, I raised some issues when I moved into the place (I took over another person's place on the lease) and said that I wouldn't sign off on the original condition report (rolled over from 2009). So had the real estate agent come out to take photos. They asked how long I would be in the house and whether I was going to stay long-term. As an off the cuff comment I said that I might not be staying too long as I might move to a different suburb to be near a partner. Two weeks later the entire household (5 people) was given a no-grounds eviction notice. But the email said something to the effect of "wanting to paint and do some basic maintenance". For making an off the cuff comment, which was not yet an official decision, I effectively got the whole house kicked out. A few weeks after moving out, I found out that they re-rented the place. The rent for the entire place had gone up by \$225 per week.

We don't ask for repairs as we are afraid we will be evicted or the rent will rise.

gave us 60 days notice to vacate when we told them about this faulty air conditioner, then they tried to take money out of our bond for Owners' work ie Pruning 12 foot bushes and the wear and tear of this run down house.

I would like to see changes that mean that people like myself, disabled and on a low income, aren't living in fear, subject to the whims of owners and agents, vulnerable to mistreatment because of the expense and stress of moving, limits on pets and never really feeling secure.

The landlord has been either slow to fix or has refused to fix issues that relate to the safety of the occupants. When repairs are carried out they are delayed for as long as possible in what appears to be a punitive measure taken against us....We are approaching the end of the current lease and they have chosen to terminate our tenancy in what appears to be another punitive measure.

I would like a different arrangement but the house is on the market and would have a month to move out if it is sold unless it's brought for an investment property. The Landlord has been good to me as we know each other well, so it's just a wait and see game if someone buys this property or not.

worried i will have to move at the end of 12 months and possible rent increase if I sign into another 12 months

7. (PART 2.2) FIXED TERM TENANCY AGREEMENTS

7.1 Consultation Statement:

7.1.1 Proposed options

Option A – Status quo

Under this option there would be no change. Lessors and tenants would continue to be able to enter into both fixed and periodic tenancy agreements in all circumstances.

Option B – Use of fixed term agreements prohibited in all circumstances

Under this option, only open ended, periodic tenancies would be allowed under the RTA. This would only be effective if no ground terminations were removed from the RTA so that a lessor could not just terminate a periodic tenancy at will; rather a lessor would have to have one of the specified grounds prescribed within the RTA to terminate the tenancy. The grounds for termination of a tenancy agreement would be amended in consultation with stakeholders so that there are adequate grounds available to lessors and tenants to terminate the tenancy in appropriate circumstances (for example the lessor needs to move back into the premises) and so that the notice periods themselves are appropriate. By removing the ability of a lessor to choose not to renew an agreement, and by allowing for terminations in specified circumstances, the tenant will have greater certainty that the tenancy should be available to them for as long as they need it and as long as they are complying with their obligations under the Act.

Option C - Fixed term tenancies permitted in only limited circumstances

Under this option, fixed term tenancies would only be permitted in circumstances where the premises are genuinely only available for a limited period of time; for example, if the premises are the lessor's primary residence and the lessor chooses to lease the premises while they are travelling or living elsewhere for a known period, where the lessor intends to demolish or substantially renovate the premises at a certain point in time, or where the tenancy is linked to an employment contract.

As per Option B, the RTA would be amended in consultation with key stakeholders to develop appropriate grounds and timeframes for termination of the other periodic tenancies.

Option D – Fixed term tenancies permitted, with tenants entitled to an option to renew for a total minimum period of five years

Under this option, fixed term tenancies would be permitted, however tenants who are granted a fixed term tenancy agreement of less than five years would be entitled under the RTA to an option to renew, for a total period of at least five years. A tenant would not be obliged to exercise the option if they did not want to, however would be required to give notice to the lessor of their intentions. The notice period would be developed in consultation with stakeholders. The introduction of trial periods, for example, an initial 6 month tenancy which the lessor is not under obligation to renew, could result in an increased risk to tenants' security of tenure.

Option E – Amend the RTA to incentivise the use of longer fixed term agreements

Under this option, the RTA would be amended to incentivise the use of longer fixed term agreements by allowing lessors and tenants to contract out of some provisions of the Act, such as responsibility for repairs and maintenance, and add in additional terms. The terms that could be contracted out of, and those that

may be added in, would be prescribed in the legislation and determined in consultation with stakeholders.

7.1.2 Questions asked

7. Which option do you prefer and why?

8. Can you think of other ways to address this issue? Please provide as much detail as possible.

9. What do you think would be the cost implications of the different options? Please provide as much information if possible.

10. If Option D is pursued, for how many years should the option to renew the agreement apply? For example, three years, five years? Should there be an initial trial period if this option was pursued?

7.2 Summary of Tenancy WA's position

Recommendation (Part 2.2, Question 7): Tenancy WA recommends that Option B (use of fixed term agreements prohibited in all circumstances) be implemented.

Recommendation (Part 2, Question 7): In the alternative, Tenancy WA recommends that Option C (fixed term tenancies permitted in only limited circumstances) be implemented.

Recommendation (Part 2.2, Question 10): Tenancy WA recommends against Option D. If Option D is to be implemented, then there should be an initial trial period in order to properly assess its impact.

Why: Option D is potentially too prescriptive and inflexible. By mandating a prescribed length extension option lessors and tenants are presented with a limited choice which may not reflect the actual interests of either. Such a model reduces flexibility and choice for both tenants and lessors.

7.3 Question 7: Which option do you prefer and why?

7.3.1 Ending fixed term RT Agreements

Tenancy WA recommends that, in combination with removing no grounds eviction, abolishing fixed term agreements would be a significant way to strengthen security of tenure for the 1 in 3 Western Australians that rent their home.

While the RTA currently does not limit the period for which a fixed term tenancy agreement runs, lessors in Western Australia predominantly offer fixed term tenancy agreements for only a 6 or 12-month duration.⁵⁹ The duration of rental bonds in Western Australia show that on average, most tenancies are relatively short term. This average length is similar throughout Australia. Research undertaken by AHURI in 2011 showed that 94% of fixed term tenancies were for 12 months or less.⁶⁰

The Choice survey 'Disrupted' showed that:

- Approximately 88% of Australians who rent are on leases of 1 year or less, and therefore are uncertain of where they will be living in a year's time.⁶¹
- Less than 1 in 10 Australians who rent (9%) are on a lease longer than a

year.⁶² • In Western Australia:

- more than half of renters are on a 12-month fixed term lease agreement;
- 11% are on a fixed term for six months or less;
- 26% are on a periodic or non-fixed term lease; and
- 4% are on a fixed term for five years or more.⁶³

While it has been found that most tenants move voluntarily⁶⁴ a significant number of tenants do not have a choice of whether they can remain in their rented premises any longer than their fixed term stipulates.

According to the survey data collected by the Bond Administrator and included by the Consumer Protection in the Consultation Statement, of the 23,445 responses to the survey regarding the end of a tenancy, 15,272 were due to the end of a fixed term agreement/decision not to renew⁶⁵. From the sample of this survey this represents 65% of all agreements ending in Western Australia.

⁵⁹ AHURI Brief, 'Do long-term residential leases result in long-term tenancies?' (Web Page, September 2017) <<https://www.ahuri.edu.au/policy/ahuri-briefs/which-state-has-the-longest-rental-leases-in-Australia>>.

⁶⁰ AHURI Brief, 'Do long-term residential leases result in long-term tenancies?' (Web Page, September 2017) <<https://www.ahuri.edu.au/policy/ahuri-briefs/which-state-has-the-longest-rental-leases-in-Australia>>.

⁶¹ Choice, National Shelter and The National Association of Tenant Organisations (NATO) *Disrupted: The consumer experience of renting in Australia* (2018), 13.

⁶² Choice, National Shelter and The National Association of Tenant Organisations (NATO) *Disrupted: The*

consumer experience of renting in Australia (2018), 18.

⁶³ Choice, National Shelter and The National Association of Tenant Organisations (NATO) *Disrupted: The consumer experience of renting in Australia* (2018), 13.

⁶⁴ Australian Government Productivity Commission, *Vulnerable Private Renters, Evidence and Options*, (Productivity Commission Research Paper, September 2019), 9.

⁶⁵ Consultation Statement, p 16.

In Tenancy WA's view based on its client-facing work, the non-renewal of a fixed term represents a significant issue for tenants and has the most detrimental impact when it comes to impacting on security of tenure.

Under the current Western Australian legal framework there is nothing that can be done to prevent non-renewal of a fixed term RT Agreement, and this process operationally acts as a 'constructive eviction', giving lessors the ability to get rid of tenants at will at either 6 month or 12 month intervals regardless of whether tenants have met all their obligations under the RT Agreement and are wanting to continue living in the premises.

One perspective on the relatively low figure of completed 'no grounds' terminations in the same survey period (418) is that most lessors currently do not need to execute a 'no grounds' termination on a tenant as they only need to wait 6-12 months at most in order to be able to end the tenancy in a similar manner (no grounds).

Research conducted by Martin et al for AHURI looked at how security of tenure is assured in international jurisdictions. They concluded that 'most countries that afford greater security do not use fixed term leases to provide that security'.⁶⁶ They draw on the following examples:

Germany:	<p>The majority of tenancy agreements are for no fixed period. Security of tenure is instead safeguarded by laws that require lessors to demonstrate reasonable grounds for termination.</p> <p>In Germany, a fixed term agreement is only permitted where the lessor has reason for such a limitation. It must be demonstrated that:</p> <ul style="list-style-type: none">• the lessor requires the premises after the term as a dwelling for them, a member of their family, or an employee; or• if they wish to "eliminate the premises or change or repair them so substantially that the measures would be significantly more difficult as a result of a continuation of the lease."⁶⁷
Canada:	<p>Short fixed terms of 6–12 months are commonly used, but security is assured by a reasonable grounds justification, which in most cases does not include termination at the end of the fixed term.⁶⁸</p>

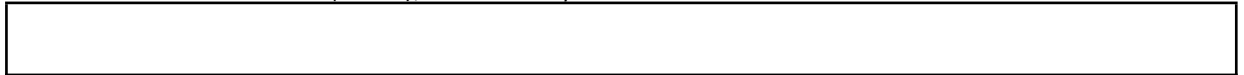
Ireland:	Security of tenure is afforded to tenants by 'part 4 tenancy' of the Residential Tenancies Act 2004 (Ireland) and the Planning and Development (Housing) and Residential Tenancies Act 2016. Following an initial 6-month period, tenants can remain in a rented property for up to 6 years. This is the case for both periodic and fixed term tenancies. The length of notice required depends on the length of the tenancy. ⁶⁹
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⁶⁶ Chris Martin, Kath Hulse and Hal Pawson, The changing institutions of private rental housing: an international review, (Australian Housing and Urban Research Institute, Final Report No. 292, January 2018), 53.

⁶⁷ Bürgerliches Gesetzbuch [Civil Code] (Germany) s575 - Fixed-term lease ('BGB').

⁶⁸ Chris Martin, Kath Hulse and Hal Pawson, The changing institutions of private rental housing: an international review, (Australian Housing and Urban Research Institute, Final Report No. 292, January 2018), 53.

⁶⁹ *Residential Tenancies Act 2004 (Ireland)*, 'Part 4 tenancy'.



During the first 6 months of a tenancy, the lessor can ask a tenant to leave without giving a reason (unless you have a fixed-term tenancy).

The lessor can end a Part 4 tenancy only in the following circumstances:

- the tenant failing to comply with tenancy obligations (but they must be notified of breach and given time to remedy it)
- If the property is no longer suited to the accommodation needs of the tenant and persons residing with them
- If the lessor intends to sell the property within 9 months (however, this reason may not apply if the lessor plans to sell 10 or more dwellings in a development within a 6-month period)

or for the following 3 specific reasons:

- If the lessor needs the property for their own use or for an immediate family member (this only applies to private lessors)
- If the lessor plans to change the business use of the property (for example, convert it to office use)
- If the lessor intends to refurbish the property substantially

The Residential Tenancies (Amendment) Act 2019 increased the notice periods for certain tenancies, with effect from 4 June 2019.

Length of tenancy Notice that the lessor must give

Less than 6 months 28 days

6 months or longer but less than 1 year 90 days

1 year or longer but less than 3 years 120 days

3 years or longer but less than 7 years 180 days

7 years or longer but less than 8 years 196 days

More than 8 years 224 days

Since 4 June 2019, if a landlord ends a tenancy because they are selling the property, changing its use, substantially refurbishing it, or because they need it for themselves or an immediate family member, and the property then

	becomes available for rent again, the landlord must offer it back to the tenant that had to vacate the property. This must be done within 12 months of the expiry of the tenants notice period.
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	As of January 2017, a lessor can no longer end a further Part 4 tenancy at any time during the first 6 months without having to give a reason. They must provide one of the reasons listed above. ⁷⁰
United Kingdom	<p>The United Kingdom announced in April 2019 that ‘Private landlords will no longer be able to evict tenants from their homes at short notice and without good reason’. In July 2019 they launched a consultation process on their proposal to abolish section 21 of the Housing Act 1988. Section 21 is the provision of their tenancy law that enables private lessors to repossess their properties from assured shorthold tenants without having to establish fault on the part of the tenant (without ground for eviction).</p> <p>In addition to abolishing section 21, they proposed reforms to ‘strengthen/extend’ the existing grounds for possession that are preceded by the service of a section 8 notice, particularly where the property is needed for the landlord’s or a family member’s use and where the lessor wants to sell the property.⁷¹</p>
Scotland	<p>On 1 December 2017, a new type of tenancy was introduced in Scotland. The Private Residential Tenancy (PRT) replaced the assured and short assured tenancy regime provided by for the Housing (Scotland) Act 1988 for all new PRS tenancies. The Scottish Government stated that the “overall aim of the Bill is to improve security of tenure for tenants, while providing appropriate safeguards for landlords, lenders and investors.”⁷²</p> <p>Key features of the tenancy include:</p> <ul style="list-style-type: none"> • is open-ended, which means a landlord will no longer be able to ask a tenant to leave simply because the fixed term has ended • provides more predictable rents and protection for tenants against excessive rent increases • includes the ability to introduce local rent caps for rent pressure areas • provides comprehensive and robust grounds for repossession that will allow landlords to regain possession in 18 specified circumstances⁷³

⁷⁰ Citizens Information, ‘Private Tenants: security of tenure’ (Web Page) <https://www.citizensinformation.ie/en/housing/renting_a_home/types_of_tenancy.html>; Citizens Information, ‘If your landlord wants you to leave’ <https://www.citizensinformation.ie/en/housing/renting_a_home/if_your_landlord_wants_you_to_leave.ht>

ml>. ⁷¹Wendy Wilson, House of Commons Library, *The end of 'no fault' section 21 evictions* (Briefing Paper, Number 8658, 27 September 2019) <<https://commonslibrary.parliament.uk/research-briefings/cbp-8658/>>; Sam Buckingham-Jones, 'UK government bans no-fault evictions for renters; Australia left wanting' *Domain* (Web Page, 28 April 2019) <<https://www.domain.com.au/news/uk-government-bans-no-fault-evictions-for-renters-australians-left-wanting-831131/>>.

⁷²The Scottish Parliament, *Private Housing (Tenancies) (Scotland) Bill: Stage 3* (SPICe Briefing 15/68, 8 March 2016), 3. ⁷³Scottish Government, *Policy - Private Renting: Private residential tenancy* (Web Page) <<https://www.gov.scot/policies/private-renting/private-tenancy-reform/?>>.

The Netherlands	Tenants have indefinite/unlimited duration of lease and under certain conditions fixed term leases of 5 years available, and since July 2016, fixed term leases of up to 2 years are also possible. ⁷⁴
Denmark	A tenancy agreement is usually entered in to for an indefinite period and a lessors right to terminate is very restricted. The lessor can only terminate the tenancy for reasons specified in the Danish Rent Act. Where the tenancy agreement is for a fixed term. If the tenant remains in the premises for more than a month after the expiry of the fixed term, the tenancy will continue for an indefinite period. If the lessor intends to use the premises for their own purpose, the tenancy may be terminated by giving one year's notice. ⁷⁵

7.3.2 Issues with long term fixed term RT Agreements:

In considering the other options presented by Consumer Protection in the Consultation Statement, Tenancy WA submits that there are some issues with moving to a model of long term fixed term RT Agreements.

There can be significant risk for tenants entering into a long fixed term RT Agreement. It limits residential mobility and exposesthem to ongoing financial risk (e.g. fixed and increasing rental payments for the duration of the tenancy and penalties for breaking the lease).

The Productivity Commission report on vulnerable renters noted that although tenants may hold long tenures, the flexibility associated with periodic leases is highly valued.

Many renters prefer shorter fixed terms in case they want or need to move, or have a change in circumstances. Further, low-income renters are more likely than others to choose to move in order to access more affordable housing. Longer fixed-terms would preclude such moves unless renters were willing and able to break their leases and pay the associated penalties.

Longer fixed term RT Agreements may be appropriate in some cases, and for some tenants. However, 'renters who prefer stability do not necessarily prefer longer fixed-term leases.'⁷⁶

In these circumstances, Tenancy WA is concerned that longer fixed term RT Agreements will not be an appropriate mechanism to increase security of tenure for most tenants.

Research by Tenants Union Victoria⁷⁷ revealed the following preferences for length

of lease: • 21% - 12 months fixed term

• 19% - 24 months fixed term

⁷⁴ International Union of Tenants, *Rent regulation and security of tenure in the private rental sector* (Reports from IUT members to the 20th congress), 36 – 37.

⁷⁵ Jakob Juul-Sandberg, *Denmark Tenant's Rights Brochure*, 187, in Christoph U. Schmid and Jason R. Dinse, editors, *My Rights as Tenant in Europe, A compilation of the national Tenant's Rights Brochures from the TENLAW Project* (2017). ⁷⁶ Australian Government Productivity Commission, *Vulnerable Private Renters, Evidence and Options* (Productivity Commission Research Paper, September 2019), 77.

⁷⁷ Tenants Union of Victoria, *Online survey of Victorian Private Market Renters: 2015* (Survey Report, May 2015), 33.

• 17% - 6 months fixed term

• 16% - no fixed terms

• 9% - indefinite

• 8% - 3-year fixed term

• 7% - 5-year fixed term

• 1% - 10-year fixed term

This data shows that while tenants are a diverse population with varying needs, longer fixed term RT Agreements are not something most renters aspire to.

New South Wales and Victoria considered how to encourage long fixed term tenancy agreements in their tenancy law reviews.

Tenants Union of New South Wales argued that reform to encourage long fixed-term residential tenancy agreements holds 'limited potential to improve security of tenure and stability for tenants'.⁷⁸ The Tenants Union of New South Wales state that this is not due to the current regulatory environment provided by the Residential Tenancies Act 2010 (NSW) but the structure and composition of the rental market itself:

The private rental market in Australia is predominantly made up of small holding landlords. A majority of landlords own only a single rental property, and most operate at a loss.

Despite their ongoing losses, these landlords are not primarily concerned with the supply of housing, but with returns on their investment. In general they adopt a

speculative investment strategy, focused on capital gains rather than rental income. They use incentives within the tax system to offset their losses, while anticipating overall profits (boosted by further tax concessions or exemptions upon sale) as property is expected to increase in value over time.

The market for sale of rental properties is integrated with that for owner-occupation. In order to maximise capital gains, landlords like to offer vacant possession of property as it allows an uncomplicated sale to owner-occupiers as well as investors. In between sales, it is possible for landlords to eliminate future capital gains tax liabilities by moving into a property as their principal place of residence at least once every six years. As such, landlords have a strong financial interest in rolling short fixed-term tenancies and/or periodic tenancies that can be terminated at any time without grounds.⁷⁹

Instead, the Tenants Union of New South Wales submitted that the most effective way to address insecurity of tenure is to remove the ability of a lessor to terminate a tenancy without ground and provide an expanded list of reasonable grounds for termination.⁸⁰

⁷⁸ Tenants' Union of NSW, Submission to Fair Trading NSW, *Long fixed-term residential tenancy agreements in New South Wales* (January 2017), 1.

⁷⁹ Tenants' Union of NSW, Submission to Fair Trading NSW, *Long fixed-term residential tenancy agreements in New South Wales* (January 2017), 1.

⁸⁰ Tenants' Union of NSW, Submission to Fair Trading NSW, *Long fixed-term residential tenancy agreements in New South Wales* (January 2017) 3.

In response to the Victorian Residential Tenancies Act review, Tenants Union of Victoria, submitted that introducing optional longer fixed-term agreements will not likely improve tenants' security of tenure.⁸¹ The Tenants Union of Victoria argued that the most effective way to improve security of tenure for tenants is to limit the circumstances in which lessors can end tenancies by again, removing the ability of a lessor to terminate a tenancy without ground.⁸²

Recommendation (Part 2.2, Question 7): Tenancy WA recommends that Option B (use of fixed term agreements prohibited in all circumstances) be implemented.

Recommendation (Part 2.2, Question 7): In the alternative, Tenancy WA recommends that Option C (fixed term tenancies permitted in only limited circumstances) be implemented.

7.4 Question 8: Can you think of other ways to address this issue? Please provide as much detail as possible.

See discussion above.

7.5 Question 9: What do you think would be the cost implications of the different options? Please provide as much information if possible.

Tenancy WA does not have the appropriate economic and financial expertise to comment in detail on the cost implications of the different options.

7.6 Question 10: If Option D is pursued, for how many years should the option to renew the agreement apply? For example, three years, five years? Should there be an initial trial period if this option was pursued?

Recommendation (Part 2.2, Question 10): Tenancy WA recommends against Option D. If Option D is to be implemented, then there should be an initial trial period in order to properly assess its impact.

Why: Option D is potentially too prescriptive and inflexible. By mandating a prescribed length extension option lessors and tenants are presented with a limited choice which may not reflect the actual interests of either. Such a model reduces flexibility and choice for both tenants and lessors.

⁸¹ Tenants Union of Victoria, *Response to Heading for Home Residential Tenancies Act Review Options Discussion Paper* (February 2017) 9.

⁸² Tenants' Union of NSW, *Submission to Fair Trading NSW, Long fixed-term residential tenancy agreements in New South Wales* (January 2017) 1.

7.7 Tenant Voices - length of tenure

Set out below are tenant comments from the Make Renting Fair survey on length of tenure. For more information on survey results see **Annexure A** of this Submission.

I would like more security. I asked the landlord for a 2 but preferably 5 year lease. However, he said he will only give me a one year contract and then review it at the end of the year. I am scared that he will not renew the lease and it will be hard to find another rental in this catchment area where my children go to school. And I don't want to disrupt them as they go through high school. I also want security of long term tenure because this house is near my family and we love being close to them after having lived away from Australia for many years. Also I want security because we are making connections with neighbours and have joined local community groups. That enriches our lives but it takes effort and time and I don't want to lose that if we have to move. Not forgetting the practicalities - I also want a much longer lease because moving is expensive and finding a new rental and going through the associated paperwork is time-consuming and demoralising.

Length of lease means I'm always uncertain of how long we can settle into a house... community. I would like the option to have a very long lease so that there's no need to update addresses for six people, you can feel it's a home , not just someone else's property and we are lucky to live there.

It suits our needs at the moment as my partner is buying. But when we didn't have that on the horizon, six month and one year leases caused a lot of instability for us. We would have loved a three year lease or something and not have to move every year.

We have been in the house for over 4 years on a year by year lease never knowing when we would have to leave.

I like doing year by year. I do worry that the Landlord won't renew the lease after the year is up though.

We want to sign for another 12 months but have been moved to a periodic lease because the owner is considering selling. we have been in limbo for 3 months

We are long term renters, last rental was for 8 years opens up too many changes when only able to sign for 1 year

It was an absolute nightmare process and the fees for breaking lease were absolutely ridiculous she zapped us for everything and there was no consideration for my situation (falling pregnant) I was stressed through the whole process and it made me never want to rent again.

We also struggled to get our child into school with short term leases and were not given a permanent place.

We asked for a shorter lease or rolling lease as we were looking for a house and were told no. When we bought a house and had to break lease the estate agent was awful. She threatened to take us to court. We spent so much money. I hope I never have to rent in WA ever again.

They hold the power, you exercise your rights and they just get rid of you at the end of the lease, so you are penalised heavily financially for speaking up.

I wouldn't resign the lease until maintenance was carried out, hence going on a periodic lease and being evicted without reason. So I had to move house.

I am very concerned about being homeless again. Renting stability seems to have changed a lot over the years. It feels a lot more precarious, more stressful, more invasive, more controlling of individual rights and privacy, more conscious of living at the whim of others. Leases should be more like commercial leases - at least five years long...

First opportunity to secure more than 1 yr lease! They should offer 1, 2, 5, 10 yr leases....
we've moved almost every year for one reason or another. So unstable!