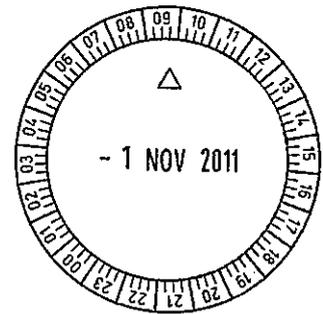




Commissioner for Children and Young People
Western Australia

PUBLIC



All enquiries

Telephone: (08) 6213 2218
Email: lorilee.beecroft@ccyp.wa.gov.au
Our reference: 11/8672
Your reference:

Hon. Adele Farina MLC
Chairman
Standing Committee on Uniform Legislation and Statutes Review
GPO Box A11
Perth WA 6837

Dear Ms Farina

Residential Tenancies Amendment Bill 2011

I write to provide comment on amendments related to the Residential Tenancies Amendment Bill 2011 that have the potential to impact on children and young people. While I acknowledge that the period for receiving public comment on this Bill has closed, this matter has only recently been drawn to the attention of my office. I would welcome the opportunity to provide further comment.

Role of Commissioner for Children and Young People WA

I was appointed as Western Australia's (WA) inaugural Commissioner for Children and Young People in December 2007 pursuant to the *Commissioner for Children and Young People Act 2006* (the Act).¹ Under the Act my role is to advocate for the half a million Western Australian children and young people under the age of 18, having specific responsibility for advocating for, promoting and monitoring their wellbeing.

In performing my functions under the Act the best interests of children and young people must be my paramount consideration.

I am required, under section 19(b) of the Act, to promote the participation of children and young people in the making of decisions that affect their lives, and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity.

I am also required, under section 19(g) of the Act, to monitor and review written and draft laws that affect the wellbeing of children and young people.

¹*Commissioner for Children and Young People Act 2006*, Western Australia, Available: http://www.austlii.edu.au/au/legis/wa/consol_act/cfcaypa2006418/

Caring for the future growing up today

In the role of Commissioner, I travel extensively throughout Western Australia consulting widely with government and non-government agencies as well as with children and young people and their families in metropolitan, regional and remote communities.

It is from this perspective that I make my submission to the Inquiry.

Overview

I appreciate that the stated purpose of this Bill is to amend the Residential Tenancies Act 2011 and various other Acts to achieve greater balance between the rights and obligations of tenants and lessors and enhance the clarity and effectiveness of the legislation.²

However, I believe that some proposed amendments have the potential to have an adverse impact on children and young people and I wish to draw your attention to these.

Disruptive behaviour management strategy

Part 3 of the Bill, 'Amendments relating to terminating social housing tenancy agreements' contains proposed amendments that will allow the Department of Housing (DoH) to respond to antisocial behaviour in social housing tenancies, as well as when a tenant is no longer eligible for social housing or where the tenant has been offered alternative housing and refuses that offer. These provisions include allowing DoH to apply directly to the Magistrates Court to terminate a tenancy without first issuing a breach notice.

I am concerned that this amendment has the potential to impact negatively on children and young people whose parents' leases are terminated as a result of anti-social behaviour or visitors to their household.

Families who are subject to lease terminations on the basis of anti-social or disruptive behaviour are often experiencing disadvantage on a number of fronts. These families may require, and should have access to, a range of supports in order to manage and successfully maintain their tenancies.

Consideration must also be given to how these amendments may disproportionately impact on Aboriginal children and young people.³

² Department of Commerce 2011, *Explanatory Memorandum Residential Tenancies Amendment Bill 2011*, Government of Western Australia, p. 2, accessed 25 October 2011, <<http://www.parliament.wa.gov.au/web/newwebparl.nsf/iframewebpages/Legislative+Council+-+Current+Committees>>.

³ The *Finding A Place Inquiry*, conducted from 2003-2004 found there were many areas where the policy and practice of the Department of Housing and Works tended to provide greater difficulties for Aboriginal people in either gaining or maintaining tenancies. The Commissioner for Children and Young People acknowledges that the EOC and DoH have been actively involved in implementing the recommendations of the Inquiry and that while complaints continue to be reported to the EOC, they have decreased over time.

It is my view that DoH must have regard for the best interests of the child, as outlined in the Convention on the Rights of the Child,⁴ when making decisions to terminate leases on the basis of anti-social behaviour.

I wish to emphasise the following key principles in relation to children and young people:

The best interests of the child

In accordance with Article 3.1 of the Convention on the Rights of the Child, I am firmly of the view that the best interests of the child shall be a primary consideration in all legal and administrative matters concerning children. While this does not necessarily mean that the best interests of the child will always override other important considerations (eg, the protection or safety of members of the community),⁵ this principle should be explicitly recognised in this Amendment Bill.

The right to be heard

Children and young people have a right to be heard and involved in decisions that affect their lives. Article 12.1 of the Convention on the Rights of the Child provides that a child who is capable of forming his or her views should be provided with the right to express those views in matters affecting the child and that those views should be given due weight in accordance with the age and maturity of the child. Article 12.2 provides that a child should be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child (either directly or through a representative).⁶

I also note that:

Discrimination against tenants with children

Clause 53 amends s 56(3) to remove the ability for a person to refuse a tenancy on the grounds that children are to live in the premises where the premises are the principal place of residence of the owner or where the person appointed to manage the premises resides in the adjoining premises.

This amendment is supported.

⁴ *Convention on the Rights of the Child*, accessed 27 October 2011, <<http://www2.ohchr.org/english/law/pdf/crc.pdf>>.

⁵ It has been observed by the Australian Human Rights Commission that Article 3.1 of the Convention on the Rights of the Child provides 'for a child's interests to be *among* the first considerations rather than requiring them to be the first considered or favoured. There are circumstances in which the community or other parties might have an equal or even superior interests so that a child's interest may not prevail': Australian Human Rights Commission, *The Best Interests of the Child*, Human Rights Brief No. 1.

⁶ *Convention on the Rights of the Child*, accessed 27 October 2011, <<http://www2.ohchr.org/english/law/pdf/crc.pdf>>.

Minors

Clause 56 amends s 59(a) to 59(f) to define a minor (for the purpose of this section) as a person who has reached 16 years of age but has not yet reached 18 years of age. The section provides that a minor may enter into a residential tenancy agreement and may have an agreement enforced against them.

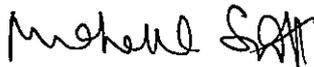
Again, I draw your attention to the Convention on the Rights of the Child (Articles 12.1 and 12.2) and emphasise the importance of these principles in the context of this proposed change.

Conclusion

In its deliberations, I encourage the Committee to consider my legislation assessment guidelines *Improving legislation for children and young people*. These guidelines have been published to help government agencies and others assess draft legislation from the perspective of children and young people's wellbeing, with the intent of producing laws that better meet their needs and interests.

I would be happy to discuss these matters with you further or provide additional comments on subsequent drafts of these amendments.

Yours sincerely



MICHELLE SCOTT

Commissioner for Children and Young People

31 October 2011