ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA (INC.)

SUBMISSION TO WESTERN AUSTRALIAN DEPARTMENT OF COMMERCE CONSULTATION ON IMPROVING THE INTERACTION BETWEEN RESIDENTIAL TENANCY LAWS AND FAMILY VIOLENCE RESTRAINING ORDERS

15 December 2016

ABOUT THE ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA ('ALSWA')

ALSWA is a community based organisation which was established in 1973. ALSWA aims to empower Aboriginal peoples and advance their interests and aspirations through a comprehensive range of legal and support services throughout Western Australia. ALSWA aims to:

- Deliver a comprehensive range of culturally-matched and quality legal services to Aboriginal peoples[1] throughout Western Australia;
- Provide leadership which contributes to participation, empowerment and recognition of Aboriginal peoples as the First Peoples of Australia;
- Ensure that Government and Aboriginal peoples address the underlying issues that contribute to disadvantage on all social indicators, and implement the relevant recommendations arising from the Royal Commission into Aboriginal Deaths in Custody; and
- Create a positive and culturally-matched work environment by implementing efficient and effective practices and administration throughout ALSWA.

ALSWA uses the law and legal system to bring about social justice for Aboriginal peoples as a whole. ALSWA develops and uses strategies in areas of legal advice, legal representation, legal education, legal research, policy development and law reform.

ALSWA is a representative body with executive officers elected by Aboriginal peoples from their local regions to speak for them on law and justice issues. ALSWA provides legal advice and representation to Aboriginal peoples in a wide range of practice areas including criminal law, civil law, family law, and human rights law. ALSWA also provides support services to prisoners and incarcerated juveniles. Our services are available throughout Western Australia via 14 regional and remote offices and one head office in Perth.

BACKGROUND

In October 2016 the Western Australian Department of Commerce published an Options Paper, *Improving the Interaction between Residential Tenancy Laws and Family Violence Restraining Orders*. This paper was prepared in response to a recommendation of the Law Reform Commission of Western Australia (LRCWA) in its final report, *Enhancing Family and Domestic Violence Laws* (2014). Recommendation 33 of the LRCWA's report stated:

> That the Department of Commerce undertake a review of the interaction of the *Residential Tenancies Act 1987* (WA) and family and domestic violence protection orders to consider whether any reforms are necessary or appropriate to accommodate the circumstances of tenants who may be subject to or protected by a family and domestic violence protection order.[2]

The stated aim of the Options Paper is to 'support a victim of family violence to remain in the home, wherever it is appropriate and safe to do so, rather than further victimising them by forcing them to leave their home'.[3] ALSWA supports this aim and highlights that many of its clients are Aboriginal women who are homeless as a consequence of family violence.

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1 In this submission ALSWA uses the term 'Aboriginal peoples' to refer to 'Aboriginal and Torres Strait Islander peoples'.

2 Western Australia Department of Commerce, *Improving the Interaction between Residential Tenancy Laws and Family Violence Restraining Orders*, Options Paper (October 2016) 2.

3 Ibid.

According to the AIHW Annual Report on SHS 2014-15, in Western Australia, family and domestic violence continues to be identified as the main reason for seeking assistance for nearly a third of clients who access specialist homelessness services.[4]

ALSWA SUBMISSION

The Options Paper covers five key areas and ALSWA provides its response to each of these areas and specific questions below.

1. Termination of a tenancy agreement based on family violence

The Options Paper explains that if family violence occurs, it can be difficult for one or both parties to terminate their tenancy agreement. Problems arise for victims who may be required to continue to pay rent for 21 days (if the tenancy has no fixed term) or until the tenancy agreement can be terminated (if the tenancy is for a fixed term). In addition, the victim must find sufficient funds to cover the cost of new premises. Where both the victim and perpetrator are joint tenants, and the victim wishes to remain living in the property, the only way to remove the perpetrator from the tenancy agreement is to terminate the whole agreement. The victim is then left with the uncertainty of whether a new tenancy agreement can be made. It is further noted that if a perpetrator is prohibited from residing in the premises because of a restraining order, the perpetrator remains liable for rent until such time as the tenancy agreement is terminated.

The Options Paper proposes that the *Residential Tenancies Act 1987* (WA) (RTA) should be amended to allow a tenant or resident who is a victim of family violence to apply to the Magistrates Court to terminate the agreement and for the court to have the power to make any of the following orders:

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

ALSWA supports this proposed reform so long as the court has the discretion to weigh up the relevant factors and competing considerations to determine the most appropriate outcome in the circumstances.

In regard to this proposal, the Options Papers seeks feedback on four specific questions.

Question 1.1

When deciding whether to require a lessor to enter into a tenancy agreement with the applicant, what factors, if any, should the court be required to take into account? For example,

- the ability of the applicant and any proposed co-tenant to maintain their obligations under the new agreement;
- any reasonable objections of the lessor;
- the views of any co-tenants;
- any eligibility criteria (e.g public housing or community housing eligibility criteria);
- relative hardship of the applicant and the lessor.

ALSWA suggests that in addition to the relative hardship of the applicant and the lessor, the court should also be required to take into account the hardship likely to be suffered by the applicant's children. Further, it is suggested that the court should be required to take into

4 Department for Child Protection and Family Support, *Homelessness in Western Australia* (March 2016) 14.

account the length of any legal exclusion of the co-tenant. For example, a co-tenant may be excluded from the property for a short period under a police order or for a longer but limited period under an interim violence restraining order. In these instances, the court should consider whether the excluded co-tenant has or intends to object to a final order being made (or in the case of a police order whether the victim intends making an application for a violence restraining order at the expiration of the police order). Depending on the circumstances, it may be appropriate to adjourn the application to terminate the tenancy until after the final hearing of any restraining order application. Of course, it will always depend on what is appropriate in the circumstances and whether the victim wishes to enter into a new tenancy with the lessor or, alternatively, wishes to terminate the tenancy and move elsewhere.

The Options Paper also asks whether this list should be exhaustive or whether the court should be given discretion to consider any other relevant factors. ALSWA is of the view that discretion is vital because it is very difficult to pre-determine all of the possible relevant factors in complex cases involving family violence.

Question 1.2

> Who should be entitled to make an application under this provision? For example,
> - a person protected by a restraining order only if they are listed as a tenant on the tenancy agreement;
> - a person who acts as guardian in relation to a child; or
> - the Housing Authority in respect of a social housing tenancy agreement.

ALSWA has reservations about limiting the right to apply to terminate a tenancy agreement to an applicant who is protected by a restraining order. If the aim is to protect victims of family violence and to enable them to remain living in their home safely or leave the tenancy for a safer option, then a broader view should be taken. There should be discretion to enable a victim of family violence to apply to terminate the agreement irrespective of whether a violence restraining order is in place. For example, a perpetrator co-tenant has been sentenced to imprisonment for an assault against the victim co-tenant. The victim wishes to terminate the tenancy immediately and move interstate. It would be unreasonable to expect her to apply for a violence restraining order first in order to achieve sufficient standing to apply. Furthermore, many victims of family violence do not wish to obtain a violence restraining order and the regime should be sufficiently flexible to enable other evidence or information about the existence of family violence to be taken into account. This will be particularly relevant for cases where the victim wishes to terminate the agreement and move to a different location.

Further, the reforms are expressed to apply only to a victim of family violence yet the Options Paper recognises that a perpetrator who is precluded from residing in the premises because of a violence restraining order will be liable for rent until such time that the tenancy agreement is terminated. For this reason, it would also be appropriate for the RTA to provide that a tenant who is prohibited from residing in the premises (because of a restraining order) should also be entitled to apply for a termination of the tenancy agreement. This does not necessarily mean that a perpetrator should be automatically relieved of responsibility for the tenancy; however, there should at least be a mechanism for the perpetrator to be heard. Otherwise, he or she may be precluded from residing in the premises for months or years and remain jointly liable for the rent even in circumstances where that individual would not be required to financially support the resident tenant under Family Court orders.

For any application to terminate a tenancy agreement on the basis of family violence, the other party (ie, either the victim co-tenant or the perpetrator co-tenant) should be joined as a party to the proceedings unless to do so would place the safety of the victim at risk. As soon as an

application is first heard, the court should be required to consider whether the other party should be joined to the proceedings.

Question 1.3

When should a person be able to make an application under this provision? For example,

- only when a final restraining order is granted;
- when an interim restraining order is granted;
- if family violence can be proven to have occurred/be occurring, whether or not an application has been made for an interim or final restraining order.

Why?

As explained above, ALSWA does not consider that the right to apply to terminate the tenancy agreement should be restricted to circumstances where a restraining order has been granted. A recent review of tenancy laws in New South Wales observed that amendments introduced in 2010 to provide protection to victims of family violence, have not been effective in practice. One issue raised is that a requirement for a victim of family violence to have obtained a final apprehended violence order before a tenancy can be terminated is ineffective because of the length of time it can take to obtain a final order; many victims do not apply for an apprehended violence order in case the violence escalates; and if the victim is no longer living in the property it is unlikely that a final order will exclude the perpetrator.[5] ALSWA recommends that the provisions enable an application to be made at any time and, as stated earlier, whether there is an interim or final violence restraining order in existence will be one of a number of factors to be taken into account.

Question 1.4

Are there any other issues in relation to termination of a tenancy agreement that need to be raised?

Many of ALSWA's clients reside in social housing premises and are, therefore, subject to social housing tenancy agreements. Part V Division 3 of the RTA includes special provisions about terminating social housing tenancy agreements. For example, s 71 deals with applications by the lessor to terminate the agreement and lists a number of non-exhaustive factors to be taken into account. For example, s 71(3C) provides that the court is to take into account any serious adverse effects the tenancy has had on neighbouring residents. ALSWA submits that whether the tenant or a co-tenant has been subjected to family violence during the term of the tenancy should also be listed as a relevant factor. Furthermore, s 73 enables a lessor to apply to a court to terminate an agreement (without any requirements for notice to be first be given) on the basis that the tenant has intentionally or recklessly permitted serious damage to the premises. Section 75A enables a social housing tenancy agreement to be terminated by a court if the court is satisfied that, among other things, the tenant has caused or permitted a nuisance; or 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.

ALSWA recommends that these provisions should expressly refer to the need to take into account the extent to which the relevant behaviour was a consequence of family violence committed against the tenant. Further, these provisions must be able to work in conjunction with the proposed amendments discussed above that are designed to enable a tenant to apply to terminate the agreement because of family violence. For example, if a social housing lessor applies to a court to terminate the tenancy, the tenant should also have the right to apply for

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5 New South Wales Fair Trading, *Residential Tenancies Act 2010 – Statutory Review* (June 2016) 29–30.

the various orders available such as an order that the tenancy agreement is terminated and replaced with a new tenancy with the victim as sole tenant.

2. Recognising certain persons as tenants

Section 59C of the RTA deals with the recognition of certain persons as tenants under a tenancy agreement. It provides that a person who is not a tenant but is occupying residential premises may apply to the court to be recognised as a tenant under the tenancy agreement or to be joined as a party to any proceedings before the court relating to the premises or both. In addition to the power to order that the person is recognised as a tenant or as a party to proceedings, the court may order that the tenancy be continued on such terms and conditions as it thinks appropriate.

Although this provision was inserted in 2013 for the purpose of dealing with situations where the named tenant dies and the surviving resident had no legal right to continue with the tenancy, it is noted in the Options Paper that this provision would enable a victim who is not named on the tenancy to apply to be recognised as a tenant and this would enable the court to allow the victim to remain in the premises and exclude the perpetrator pursuant to a restraining order. This option, however, does not enable the perpetrator to be removed from the tenancy agreement.

Question 2.1

> Should section 59C of the RTA be retained so that it can continue to operate as a standalone provision for its original intended purpose, but also in conjunction with the other proposed amendments outlined in this paper? If not, why not?

ALSWA suggests that in order to ensure clarity and certainty, the RTA should be amended to expressly provide that an occupant may apply to a court to be recognised as a tenant in circumstances where the existing tenant is prohibited from residing in the premises under a violence restraining order. This would then allow the newly named tenant to apply to terminate the existing agreement and seek a new agreement in the name of the new tenant alone.

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

As the Options Paper observes, joint tenants are jointly and severally liable for all debts to the lessor including debts arising from damage to the property and unpaid rent. For tenants who are victims of family violence, liability for these debts may be exceptionally unfair and result in further disadvantage in terms of accessing safe housing. The Options Paper proposes that the RTA should be amended 'to enable a Magistrate, when determining an application to terminate a residential tenancy agreement due to family violence, to also assign liability for rent and damages owed to the lessor as at the date the agreement is terminated'.[6] It is also proposed to provide the court with the power to determine the disposal of a security bond in accordance with the allocation of liability for the debt. For example, if the Magistrate determines that the perpetrator co-tenant is liable for the debt and both the perpetrator and victim contributed equally to the security bond, the Magistrate can order that the perpetrator's share of the bond be paid to the lessor and the victim's share paid towards a new tenancy agreement or directly to the victim.

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6 Western Australia Department of Commerce, *Improving the Interaction between Residential Tenancy Laws and Family Violence Restraining Orders,* Options Paper (October 2016) 8.

ALSWA fully supports this approach.

Question 3.1

> Is it necessary to give the court the power to make an order granting the lessor access to the premises to make an assessment of damages for the purpose of this provision, or are existing right of entry provisions in section 46 of the RTA sufficient?

ALSWA has no comments in relation to this question.

Question 3.2

> Are there any other issues in relation to assignment of liability under the agreement and disposal of security bond that need to be raised?

ALSWA has no comments in relation to this question.

4. Listing on a tenancy database

Residential tenancy databases (RTDs) (sometimes referred to as 'blacklists') are used by landlords and real estate agencies to screen prospective tenants. Obviously, if a victim of family violence is listed on a RTD as a result of family violence this is likely to cause further problems for the victim in accessing appropriate and safe accommodation alternatives.

Section 82E of the RTA provides that a person can only be listed on a RTD if:

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

Further, s 82J provides that a person may apply to a court for an order for information on a RTD to be removed or partially removed or for information not to be listed. The court can make such an order if satisfied that the information is inaccurate, incomplete, ambiguous or out-of-date or if the inclusion of the information is unjust in the circumstances, having regard to:

- the reason for the listing;
- the tenant's involvement in any acts or omissions giving rise to the listing;
- any adverse consequences suffered, or likely to be suffered by the tenant because of the listing;
- any other relevant matter.

A similar provision exists in Queensland; however, the legislation contains an example:

> *Y is listed on a tenancy database for a reason relating to damage caused to premises by Y's spouse in the course of an incident of domestic violence. Because of the listing, Y cannot obtain appropriate and affordable accommodation.*

The Options Paper notes that s 82E could be used to list a victim of family violence, even if they were seeking to have the tenancy agreement terminated under the proposed new provisions. Further, it is observed that some jurisdictions provide that the court has the power to make an order prohibiting a listing of a tenant on a RTD if the court is satisfied that the victim did not cause the breach and the nature of any breach resulted from an act of family violence against the tenant. It is proposed that the RTA is amended to this effect.

ALSWA notes that the New South Wales review of tenancy laws has recommended that the applicable legislation in that jurisdiction should be amended to 'prohibit landlords and agents from listing a tenant on a tenancy database where they are aware the tenant's breach or debt is the result of domestic violence and the tenant in question was not the perpetrator of the violence'.[7] It is not stated what type of information should be provided to satisfy a landlord or agent that a breach or debt is the result of family violence.

ALSWA agrees that amendments should be made to the RTA to ensure that victims of family violence can apply to a court to have details removed from a RTD where the breach of a tenancy agreement resulted from family violence. ALSWA also considers that there should be a provision in the RTA to prohibit a landlord or agent from listing the details of a person on a database where they are aware that the breach arose in circumstances of family violence. This removes that obligation on the victim to make an application to the court. As explained further below, the Western Australian Housing Authority accepts family violence has occurred upon receipt of certain information including a support letter from a professional, family member or friend. ALSWA considers that this should apply to a landlord or agent so that if a victim of family violence provides the relevant specified information to a landlord or agent they are precluded from listing the details of the victim on the RTD.

Question 4.1

> Is it necessary to give the court any further guidance when making a decision under this proposed provision? If so, what should that guidance be?

ALSWA has no comment on this question.

Question 4.2

> Are there any other issues in relation to listing on a RTD that need to be raised?

Section 82B of the RTA provides that Part VIA 'does not apply to a residential tenancy database kept by an entity (including a government department of this State, another State or Territory) for use only by that entity or its officers, employees or agents'. Accordingly, any reforms to Part VIA will have no impact on internal databases or records of the Western Australia Housing Authority. These internal records or databases can be accessed by the Housing Authority when assessing applications for public housing. ALSWA highlights that many of its clients will fall within the ambit of the Housing Authority's policies rather than the provisions of the RTA that deal with residential tenancy databases for private rental agreements.

The Housing Authority's eligibility policy provides that applicants for public housing must repay any existing debt (or enter into arrangements to pay) to the Housing Authority before housing assistance can be provided.[8] Furthermore, a history of disruptive behaviour, property damage, property abandonment or other tenancy breaches are taken into account when assessing a future public housing application.[9] However, specified staff are able to use their discretion to depart from the standard policy requirements.[10] Furthermore, the Housing Authority's *Family and Domestic Violence Policy* states that previous tenant history shall not limit an applicant's right to priority assistance although it may impact on the type of assistance provided or conditions placed on assistance.

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7 New South Wales Fair Trading, *Residential Tenancies Act 2010 – Statutory Review* (June 2016) 31.
8 Housing Authority WA, *Rental Policy Manual*, 28.
9 Housing Authority WA, *Rental Policy Manual*, 31.
10 Housing Authority WA, *Discretionary Decision Making Policy*.

The *Family and Domestic Violence Policy* provides that the Housing Authority requires one or more of the following to establish the occurrence of family and domestic violence:[11]

- contact details of, or support letters from, two professional sources such as a support agency, social worker, lawyer, doctor or psychologist;
- support letter from a family member or friend;
- possession of a current VRO or court documentation relating to a recent lodgement of a VRO;
- Supporting documentation or information from police.

It is further stated that, in exceptional circumstances, written evidence may not be available or appropriate and if the Housing Authority is satisfied 'after interviewing the applicant that they are genuinely seeking priority assistance due to family and domestic violence, further evidence may not be required'.

ALSWA is concerned that in practice the Housing Authority does not adequately recognise the existence of family violence as a factor leading to the accumulation of a debt for unpaid rent or damage or as a contributing factor to 'disruptive behaviour' for Aboriginal victims of family violence. In relation to this issue, please see case study and further discussion below. Victims are thereby disadvantaged in accessing future public housing. ALSWA recommends that the Housing Authority policy should be amended to ensure that victims of family violence are not prejudiced by a negative past history with social housing tenancies and that there is a mechanism for victims to apply to have the Housing Authority's records amended to reflect the existence of family violence as the cause or a contributing factor to past debt, damage or disruptive behaviour.

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

The Options Paper acknowledges that physical safety is crucial for victims of family violence and, therefore, victims may need to change locks, install security cameras, sensor lights and alarms or undertake other security measures to provide adequate safety.

Section 45 of the RTA provides that it is a term of every residential tenancy agreement:

> (a) that the lessor must provide and maintain such means to ensure that the residential premises are reasonably secure as are prescribed in the regulations; and
> (b) that any lock or other means of securing the residential premises must not be altered, removed or added by a lessor or tenant without the consent of the other given at, or immediately before, the time that the alteration, removal or addition is carried out; and
> (c) that the lessor or the tenant must not unreasonably withhold the consent referred to in paragraph (b).

A lessor or tenant who breaches s 45(b) without reasonable excuse commits an offence and the penalty is a fine of $20,000. The Options Paper suggests that changing locks immediately following the removal of a perpetrator of family violence from the home without first seeking approval from the lessor would most likely constitute a 'reasonable excuse'. Nonetheless, it is contended that reform is needed to provide certainty.

It is further discussed that the current provisions in relation to making alterations to the property may operate unfairly for victims of family violence.[12] In general terms, a residential tenancy

11 Housing Authority WA, *Rental Policy Manual*, 127.
12 Western Australia Department of Commerce, *Improving the Interaction between Residential Tenancy Laws and Family Violence Restraining Orders,* Options Paper (October 2016) 2.

agreement can provide that the tenant is not to affix any fixture or make any renovation, alteration or addition to the premises, or the agreement may specify that the tenant can undertake these actions but only with the consent of the lessor. In the latter instance, the consent of the lessor should not be unreasonably withheld.[13]

The Options Paper proposes that the RTA should be amended to make it clear that a tenant who has been subjected to family violence may alter the locks to any external doors and windows without first obtaining permission from the lessor. The tenant should be required to provide the lessor with a copy of the new key as soon as practicable after the locks have been changed.

In regard to alterations or fixtures such as security cameras or alarms, the proposal is to allow a victim of family violence to affix fixtures or make alterations that are necessary to improve the security of the premises so long as the cost is borne by the tenant; the work is carried out by a qualified tradesperson; and the tenant restores the premises to their original condition at the end of the tenancy if the tenant chooses to take the alterations/fixtures with them or if the lessor requires them to do so.

It is also proposed to prohibit a lessor or property manager from giving a copy of the new key to a perpetrator who has been excluded from the premises (even if the perpetrator's name remains on the tenancy agreement).

As noted earlier, many Aboriginal people will be subject to a public housing tenancy agreement. The *Housing Authority Rental Policy* stipulates that a tenant may apply to the Housing Authority for permission to make improvements or additions to their public housing rental property. Tenants can request to carry out the work at their own expense or seek that the cost is met by the Housing Authority.[14] The policy further states that assistance to tenants who are victims of family violence may include the provision of additional security and a letter from the police or a refuge outlining the risk to the tenant will support the request for additional security.[15] It is stated that applicants whose safety is at risk will be given priority and a tenant may be referred to crisis accommodation until the work is completed.[16]

ALSWA agrees that it is important to enable tenants who are victims of family violence to act quickly to ensure their immediate physical safety. So long as the lessor is provided with a new key within a reasonable period of time, the lessor should not be disadvantaged in any way. ALSWA supports reforms to the RTA to enable a tenant who is a victim of family violence to change the locks to ensure that the perpetrator cannot enter the premises. However, this would need to be limited to circumstances where the perpetrator has been legally excluded from entering the premises (ie, via a police order, an interim violence restraining order or a final violence restraining order) or after the tenancy has been terminated and the victim has entered into a new agreement with the lessor. While a restraining orders is in force, the lessor should not be permitted to provide the new key to the excluded person.

Question 5.1

> Is it necessary to impose a timeframe, such as seven days, for a tenant to provide a key to the lessor?

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13 *Residential Tenancies Act 1987* (WA) s 47.
14 Housing Authority Western Australia, *Rental Policy Manual*, 70-71.
15 Housing Authority Western Australia, *Rental Policy Manual: Family and Domestic Violence Policy*, 128 & 131.
16 Housing Authority Western Australia, *Rental Policy Manual: Family and Domestic Violence Policy*, 131.

ALSWA considers that a seven-day period is reasonable but it should also be possible to extend that period by agreement with the lessor.

Question 5.2

> Should any permission for a victim of family violence to make alterations to premises be limited to security devices, for example, security cameras, alarms, security screens? Why or why not? If your answer is yes, what devices should be permissible?

ALSWA is of the view that a victim of family violence should be able to make necessary alterations to the premises to ensure the safety of the victim and any children residing in the premises. Assuming the above stipulations apply (ie, cost borne by tenant, work undertaken by qualified person and restoration of the property to its original state if requested by the lessor) there is no reason to limit the permitted alterations to security devices only. There may be other alterations or fixtures that improve safety which are not strictly classified as a security device such as a higher fence or improved lighting.

Question 5.3

> Are there any other issues in relation to altering locks and making alterations to premises that need to be raised?

ALSWA has no further comment on this question.

6. Other issues

Impact of past debts to Housing Authority

The Housing Authority may reject an application for a public housing tenancy on the basis of a previous history of disruptive behaviour, debt, property damage, property abandonment or other tenancy breaches.[17] Victims of family violence may apply for priority assistance; however, the tenant's previous history may be a factor in the type of assistance provided or conditions placed upon assistance.[18]

Under the Housing Authority's policy, tenants who are victims of family violence may not be held responsible for the cost of repairs resulting from wilful damage to the property so long as the damage has been reported to the police. This policy applies even if the damage was caused by another household member or non-household member. The policy states that a police report must be made as soon as possible after the damage has occurred and the damage must be reported to the Housing Authority as soon as possible.[19] The general policy is that if the damage is not reported to the police, liability for the damage will be divided equally between the co-tenants. However, there is some discretion where the matter has not been reported to the police. It is further stated that the Housing Authority will press charges for wilful damage and 'it is expected that the victim will collaborate with the Housing Authority in providing evidence. The Housing Authority will not require collaboration where it may put the victim at greater risk'. [20]

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17 Housing Authority WA, *Rental Policy*: *Eligibility relating to an applicant with an unsatisfactory history with the Housing Authority*, 31.
18 Housing Authority WA, *Rental Policy*: *Family and Domestic Violence Policy*, 127.
19 Housing Authority WA, *Rental Policy*: *Family and Domestic Violence Policy*, 130.
20 Housing Authority WA, *Rental Policy*: *Family and Domestic Violence Policy*, 131.

ALSWA considers that the application of the Housing Authority's policy in practice severely disadvantages victims of family violence. The following case study evidences many of the problems.

> *Z is an Aboriginal woman with three teenage children who escaped serious family and domestic violence perpetrated by her ex-partner and his family by moving out of the metropolitan area to stay with family. She is currently homeless and unable to obtain public housing due to a large debt with the Housing Authority. Z fled two Housing Authority properties as a direct result of family violence. Her ex-partner had managed to locate her at both of these locations and subjected her to further violent abuse. On each occasion, her ex-partner and his family caused damage to the properties after her escape. Further, rent arrears occurred as a result of her departure and she was forced to abandon furniture for which she had outstanding loans. The Housing Authority held her responsible for the debt because her name was on the residential tenancy agreement. While she requested family members to attempt to retrieve the furniture for her, none were willing due to their fear of violent repercussions.*
>
> *Z receives ongoing counselling to deal with the trauma of longstanding abuse and she also suffers from a physical health condition which requires regular medical attention. Her counsellor considers that stable accommodation is vital to ensure her ongoing physical and mental wellbeing; however, she is unable to obtain further public housing until the debt is paid. She currently makes regular contributions through Centrepay towards this large outstanding debt. Over the duration of her abuse, this woman rarely sought assistance from police or other agencies out of fear that it would aggravate the violence. She is reluctant to return to Perth, even for essential medical treatment due to extreme fear of the perpetrator.*

Some of the reforms proposed in the Options Paper may have alleviated the problems experienced by Z if they had been in existence at the relevant time (ie, by enabling Z to have the residential tenancy agreement terminated and responsibility for the debt assigned to the perpetrator). However, it is important that reforms also enable individuals with past debts to apply to a court for the debt to be waived and/or reassigned to the person responsible for the damage and the family violence. Accordingly, ALSWA recommends that the reforms are expressed to apply to individuals who have already accumulated debts as a result of past family violence.

Disruptive Behaviour Management Policy

For a number of years, ALSWA has been concerned about the impact of the Housing Authority's Disruptive Behaviour Management Policy (DBMP) on Aboriginal people. The Disruptive Behaviour Management Policy states that legal action to terminate a tenancy agreement can commence after the tenant has accumulated the required number of strikes during a 12-month period. For 'disruptive behaviour' (as distinct to 'serious disruptive behaviour'), if three strikes are accrued within 12 months, eviction proceedings will commence. The guidelines define 'disruptive behaviour' as 'activities that cause a nuisance, or unreasonably interfere with the peace, privacy or comfort, of persons in the immediate vicinity'.[21] One example listed for disruptive behaviour is 'domestic and family disputes which impacts on neighbours'.[22]

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21 Housing Authority WA, *Rental Policy*: *Disruptive Behaviour Management Policy*, 80.
22 http://www.housing.wa.gov.au/HousingDocuments/DBM_brochure.pdf.

The Equal Opportunity Commissioner has observed that the DBMP increases overcrowding because

> when families are evicted as a result of the strategy, their only option (other than being homeless) is to stay with relatives. These relatives are often also tenants of the Department. This frequently creates increased noise levels in these households and raises the potential for antisocial behaviour. In turn, this adds to the likelihood of additional complaints under the DBMS.[23]

It was recently observed in Parliament that in 2015–2016 there were 53 evictions under the DBMP and 51% of these tenants were Aboriginal people.[24]

While the Housing Authority's policies recognise family violence, ALSWA considers that many Aboriginal victims of family violence are disadvantaged by the DBMP. While ALSWA supports the intent of legislative reform as proposed in the Options Paper, it is equally important that the implementation of policies in practice sufficiently take into account the existence of family violence and do not operate to disadvantage Aboriginal victims.

CONCLUSION

ALSWA supports reforms to the RTA that will provide greater protection for victims of family violence and most importantly, in this context, enable victims and their children to reside safely in the family home or obtain alternative safe accommodation. Homelessness is a serious issue and frequently leads to other social and economic problems including risk of removal of children by the Department for Child Protection and Family Support and offending behaviour. ALSWA has represented one client recently who remained homeless for over five years as a result of family violence and her teenage daughter did not attend school for over two years because they were constantly moving from one relative's house to another or sleeping on the streets. Accordingly, ALSWA submits that legislative reforms should be accompanied by appropriate policy and practice reforms as well as supported by additional resources for alternative safe accommodation options for victims of family violence and their children.

Dennis Eggington
Chief Executive Officer
Aboriginal Legal Service of Western Australia (Inc)

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