



University of  
South Australia

# Impact of Tenancy Laws on Women and Children Escaping Violence

**Final Report for Department of Social Services**

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## Glossary

<b>ABS</b>	Australian Bureau of Statistics
<b>ACAT</b>	Australian Capital Territory Civil and Administrative Tribunal
<b>AFDVDRN</b>	Australian Domestic and Family Violence Death Review Network
<b>AIHW</b>	Australian Institute of Health and Welfare
<b>ALRC</b>	Australian Law Reform Commission
<b>AVO</b>	Apprehended Violence Order
<b>CALD</b>	Culturally and Linguistically Diverse
<b>CCTV</b>	Closed-Circuit television (also known as video surveillance)
<b>COAG</b>	Council of Australian Governments
<b>CPI</b>	Consumer Price Index
<b>DFVPA</b>	Domestic and Family Violence Protection Act
<b>DSS</b>	Department of Social Services
<b>DVO</b>	Domestic Violence Order
<b>DVTN</b>	Domestic Violence Termination Notice
<b>FDV</b>	Family and Domestic Violence
<b>FVPA</b>	Family Violence Protection Act
<b>FVO</b>	Family Violence Order
<b>HREC</b>	Human Research Ethics Committee
<b>IPV</b>	Intimate Partner Violence
<b>MH</b>	Mental Health
<b>NCAS</b>	National Community Attitudes towards Violence Against Women Survey
<b>NCAT</b>	NSW Civil and Administrative Tribunal
<b>NAHA</b>	National Affordable Housing Agreement
<b>NPAH</b>	National Partnership Agreement on Homelessness
<b>PAWS</b>	Pet and Women’s Safety
<b>PFVO</b>	Police Family Violence Order
<b>PSS</b>	Personal Safety Survey
<b>PTS</b>	Post Traumatic Stress
<b>QCAT</b>	Queensland Civil and Administrative Tribunal
<b>RTA</b>	Residential Tenancy Act
<b>RTAACT</b>	Residential Tenancy Act Australian Capital Territory
<b>RTANSW</b>	Residential Tenancy Act New South Wales
<b>RTANT</b>	Residential Tenancy Act Northern Territory
<b>RTRAA</b>	Residential Tenancies and Rooming Accommodation Act



<b>RTATAS</b>	Residential Tenancy Act Tasmania
<b>RTAWA</b>	Residential Tenancy Act Western Australia
<b>RTAVIC</b>	Residential Tenancy Act Victoria
<b>RTDRS</b>	Residential Tenancy Dispute Resolution Service
<b>RURLTA</b>	Revised Uniform Residential Landlord and Tenant Act
<b>SACAT</b>	South Australian Civil and Administrative Tribunal
<b>SHLH</b>	Staying Home Leaving Home
<b>SHSC</b>	Specialist Homelessness Services Collection
<b>URLTA</b>	Uniform Residential Landlord and Tenant Act
<b>VCAT</b>	Victorian Civil and Administrative Tribunal



## Executive Summary

This background study was undertaken to better understand the Australian legal context within which victims/survivors of family and domestic violence (FDV) manoeuvre in order to stay, to leave and to find new housing.

This report was commissioned in acknowledgement of the fact that, in 2015–16, some 106,000 people experiencing FDV sought assistance from homelessness agencies across Australia (Australian Bureau of Statistics 2018). These statistics remain of concern, with the Specialist Homelessness Service (SHS) Annual Report 2019–20 noting that 119,200 SHS clients had experienced FDV, equating to 41 per cent of all clients (AIHW 2020). Indeed, women and children experiencing FDV are a national priority group pursuant to the National Housing and Homelessness Agreement, which came into effect on 1 July 2018 (DSS 2020). At a Commonwealth and state and territory government level, the *National Plan to Reduce Violence against Women and Their Children 2010–22* aims to ‘strengthen safe and appropriate accommodation options and supports for women and their children escaping violence, including specialist women’s services’ (COAG 2011). Under the National Plan, the Commonwealth, state and territory governments agreed there was a need to undertake a national survey to inform the development of national tenancy principles. This research is in response to this acknowledged need.

In undertaking this project, the research team set out to collect data and produce a report that:

- identifies common or ongoing issues with current tenancy laws experienced by women and their children who are experiencing violence and are seeking to leave the abusive relationship
- identifies any common elements within tenancy laws or practice that assist women and their children who are looking to leave an abusive relationship
- enables the development of a more comprehensive overview of tenancy-related issues across Australia, and
- includes proposals for national principles for residential tenancies legislation to progress Action 3.3(e) of the Third Action Plan (2016–2019) of the *National Plan to Reduce Violence against Women and Their Children*.

## Evaluation Approach

The methodology combined an online survey, interviews with key informants and a comprehensive review of tenancy legislation across Australian jurisdictions. It examined responses to tenancy law from key international jurisdictions to provide a broader understanding of the issues faced by women and children when escaping FDV while living in residential rental premises. The research plan received approval from the Human Research Ethics Committee (HREC) of the University of South Australia.

The online survey was used to ascertain the problems and ongoing issues with current residential tenancy laws and to identify ways of assisting women and children with an easier transition from a violent relationship to a safe living environment. The study also sought to gain insight into how FDV affects the housing outcomes of victims/survivors, and where they turn for advice and assistance when needed. The data were collected at a time when several Australian jurisdictions had already amended, were reviewing or had prepared amendments to residential tenancies legislation to take heed of FDV issues.

Twenty-four semi-structured telephone or face-to-face interviews were conducted with key informants between September and November 2018. Interviews were conducted with personnel from tenant, homelessness and shelter peak bodies; legal services; and women’s and family violence organisations. The interviews uncovered how current tenancy laws affect women and their children escaping FDV, what is working well, and what could be improved.

The findings from the surveys and the interviews are discussed in Chapters 1 and 2 of this report.

A review into each Australian state and territory's residential tenancies legislation and, in some cases, legislation focused on FDV, was undertaken with the aim of identifying the legal barriers faced by women and children seeking to end a tenancy because of FDV. Searches of legal databases were undertaken for relevant legislation and bills, with a focus on provisions relating to legislative responses to FDV in the private rental sector. Searches of government websites were undertaken for key policy documents pertaining to the status of legislative reviews. All relevant state and territory legislation was reviewed generally and then considered specifically in relation to seven key issues for consideration:

1. What are the consequences if X wants to terminate the lease immediately and vacate the premises? Alternatively, would it be possible for X to stay in the home, yet remove the violent partner from the lease?
2. Will X bear any responsibility for:
  - (a) outstanding rental, including for the remainder of the term, or
  - (b) any repairs to the property?
3. What effect will this have on the security deposit?
4. Could X be the subject of an adverse listing on a residential tenancy database?
5. Could X encounter discrimination in finding another rental property?
6. Are there any other factors, such as a family pet, that could affect X's willingness to leave?
7. Can X change locks and install security devices for protection?

Each of these questions is elaborated upon in Chapter 3.

Legal databases were also used to research residential tenancy legislation from the United States (US) and Canada to provide an analysis of pertinent international responses. These jurisdictions were considered because of the comprehensive consideration of FDV in many US states, while portions of some analogous Canadian legislation have already been incorporated into some Australian legislation—particularly Western Australia.<sup>1</sup> Reference was also made to US and Canadian law journals and grey literature, including provincial government publications, that examined relevant legislation and policy considerations. The consequent findings are discussed in Chapter 4.

## Overview of the Report

### Chapter 1: Introduction

Chapter 1 provides an overview of FDV in Australia and considers the prevalence of FDV, the precarious nature of alternative accommodation and the risk of homelessness and heightened risk of homelessness in vulnerable groups—particularly Aboriginal and Torres Strait Islander women and refugee/migrant women.

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<sup>1</sup> Refer to the discussion above in the report considering Part V, Division 2A of the *Residential Tenancies Act 1987* (WA), titled 'Special Provisions about Terminating Tenant's Interest on Grounds of Family Violence'.

### *Prevalence*

The prevalence of FDV in Australia was reviewed in light of its role in housing and homelessness for women and children escaping violence. Survivors/victims of FDV in Australia are often affected by the tendency for the general population, landlords and police officers to fail to understand the circumstances in which FDV occurs; the options available to them in escaping abuse; and the barriers in maintaining adequate housing. To provide effective responses to assist women and children to end the cycle of FDV, greater understanding of the challenges faced by survivors/victims is needed, as well as the additional challenges faced by Aboriginal and Torres Strait Islander women and women from refugee and asylum seeker backgrounds.

### *Family and Domestic Violence and Homelessness*

One in six Australian women have been subjected to physical and/or sexual violence by a current or previous cohabiting partner since the age of 15 (ABS 2017), one in four women have experienced emotional abuse, and one in five have been sexually assaulted/threatened (AIHW 2018a). The cycle of FDV 'is extremely challenging to break without external support systems and interventions, as well as legislation which supports the rights of survivors' (Schwan & Robart 2018). The cycle of violence against women and their children continues to cost the Australian economy an estimated AU\$26 billion per annum (AIHW 2018a).

There are few options for women and children who have experienced FDV to remain in the family home with the perpetrator, to remain in the home with the perpetrator removed, to leave the home until the perpetrator is removed, or to leave the home permanently (Spinney 2012, p. 4). FDV remains one of the leading causes of homelessness. On Census night<sup>2</sup> in 2016, 116,427 Australians were homeless, which was a 4.6 per cent increase since the 2011 Census (AIHW 2018b). Over 100,000 women and children<sup>3</sup> sought homelessness services in 2016–17 because of FDV (AIHW 2018a).

Women affected by FDV-related homelessness may be more likely to cycle in and out of homelessness, and this may be because they attempt to return to and reconcile with the perpetrator of the violence (Tually et al. 2008). The transition from leaving a situation of FDV to finding safe, alternative accommodation can be perilous; severe violence, including the murder of these victims by the perpetrator, most often occurs around this time (Daoud et al. 2016, p. 221). Thus, the victims/survivors of FDV may be forced to seek increasingly unsafe and unsuitable shelter, which may mean living in a car or on the streets.

### *Family and Domestic Violence among Aboriginal and Torres Strait Islanders and Refugees/Migrants*

FDV is disproportionately experienced by Aboriginal and Torres Strait Islander women and their children, with high rates of family violence being interrelated with the history of colonial settlement and the multiple intergenerational traumas affecting Aboriginal communities (Blagg et al. 2018, p. 64). In remote areas, Aboriginal and Torres Strait Islander communities experience overcrowded housing conditions; discrimination, racism and exploitation by landlords; limited access to basic housing infrastructure (including cultural adequacy, habitability, affordability and accessibility of housing); and legal insecurity of tenure and social injustices, which intersect with social and health outcomes (Zufferey & Chung 2015, p. 19).

To provide stable housing and sustainable tenancies for Aboriginal and Torres Strait Islander women, Cooper and Morris (2003) argue that outreach services, enhancing service access, providing practical

<sup>2</sup> Census data include people in supported accommodation for the homeless, people in temporary accommodation, people 'sleeping rough' and people living in severely crowded dwellings (defined as requiring four or more extra bedrooms to accommodate the residents) (ABS 2018).

<sup>3</sup> 72,000 women and 34,000 children.

support, service collaboration (across housing, finance, social security, legal, medical and education sectors) and case management are crucial. This involves increasing the supply of culturally appropriate crisis accommodation and temporary and long-term affordable housing, as well as finding and retaining contact with homeless Indigenous women and their children (Cooper & Morris 2003).

Refugee and migrant women's experiences of family violence are often very different from those of Australian-born women (Vaughan et al. 2016, p. 2). Their capacity to seek—and receive—assistance is mediated by a number of factors, including their immigration status, community and family connections, locally-available service system, and local context (e.g., the size of their community in that neighbourhood or region) and place-based (e.g., geographical) contexts. Vaughan et al. (2016) recommend immigration policies be amended to recognise that perpetrators of family violence can include any family member, including non-sponsors. They also advocate for expanded access to the family violence exception to include persons on non-partner visas (e.g., students, partners of students, fiancées) (Vaughan et al. 2016, p. 5). They recommend that training, information and multilingual resources on FDV be provided to women and service providers.

## Chapter 2: Overview of the National Survey on the Impact of Tenancy Laws on Women and Children Escaping Violence

Chapter 2 examines the findings of the national survey. The two study methods used—an online survey with women about their experiences of housing tenure in contexts of FDV, and interviews with key informants—provided a rich source of information. The survey and interviews uncovered who women turn to for housing, legal and other support; how economically insecure some women are after they leave; and the experience of others who can save a small fraction of their income. Of consequence for this report, there was evidence that the various Residential Tenancy Acts (RTAs) and related legislation, such as that addressing FDV, can make life difficult for women and children fleeing FDV. The survey and interviews also provided suggestions for potential solutions that could enhance the transition from violence in a house to a safe and affordable home. It was also revealed that few women who left their housing because of FDV had strong knowledge of the range of potential services and protections available to them. To a large measure, women fleeing FDV relied upon informal resources—including family and friends—to make the transition away from the perpetrator. Overall, the women's responses suggest significant resource constraints in the sector and critical gaps in the provision of services. These challenges are further exacerbated for women and their children from Aboriginal and Torres Strait Islander backgrounds and Culturally and Linguistically Diverse (CALD) backgrounds.

## Chapter 3: Review of Residential Tenancy Legislation by Australian Jurisdiction in Relation to Women and Children Escaping Violence in Their Homes

Chapter 3 is a lengthy chapter supported by tables and annexures. Under the Australian Constitution, the states and territories bear responsibility to legislate in relation to residential tenancies, as well as FDV. Therefore, the research necessitated examining the many and varied approaches to addressing the seven pivotal questions posed when a victim/survivor of FDV is considering terminating a residential lease. The chapter provides an overview for the sake of brevity, but is supported by a comprehensive jurisdiction specific review in Annexure 1.

In summary, although there are varied approaches, most states and territories provide that a victim/survivor of FDV can terminate a residential lease in circumstances of FDV without incurring expenses that may otherwise deter a victim/survivor of FDV from 'breaking' a lease, such as being responsible for the rental for the remainder of the term. The RTAs also provide the option for a victim/survivor of FDV to opt to remain in the premises, to the exclusion of the perpetrator of the FDV, and assume full responsibility for the lease.

These results can be achieved through a variety of means, depending on the jurisdiction. Some jurisdictions still require that a termination order be pursued in a court or tribunal—a process that may deter victims/survivors of FDV from seeking relief because of reluctance to engage with the judicial system and/or face the perpetrator of the FDV in court proceedings. In such cases, orders may already have had to be obtained to support the application to terminate a lease. While, in some cases, such orders can be obtained in one hearing, the reluctance to engage is a significant detriment to a victim/survivor of FDV using available processes. In other jurisdictions, the process may be slightly simpler, as a domestic violence termination notice (DVTN) or similar document may be served directly to the landlord. However, in some cases, the notice must be supported by orders that can only be obtained through the judicial system. Two states, Western Australia and New South Wales (NSW), have introduced a procedure by which a landlord can be served with a termination notice that is supported by a declaration from certain prescribed ‘competent’ persons, who can verify that the victim/survivor of FDV is experiencing FDV. Interestingly, such a process has also been used in Queensland during the COVID-19 emergency.

Other issues arise as a result of early termination of a residential lease. Obviously, there is concern where a victim/survivor of FDV may fear she will have to pay for damage to the premises that has occurred as a result of the FDV or that a security deposit will not be returned. Such considerations may deter a victim/survivor of FDV because, to maintain the tenancy if she stays or enter another tenancy if the lease is terminated, a security deposit will be essential. Indeed, unexpected expenses or the lack of a security deposit could result in women and their children experiencing FDV being unable to afford alternate accommodation and become homeless. Again, although most jurisdictions address expenses and the fate of the security deposit, the approach is non-specific and, in most cases, left to the jurisdiction of a court or tribunal. The Victorian amendments will provide for a more exacting process, which, it is suggested, is beneficial to provide more certainty to a victim/survivor of FDV contemplating terminating a residential lease. Another concern is the possibility of being the subject of an adverse listing on a tenancy database. Again, each of the jurisdictions addresses this issue, although, as is discussed, there remains some inconsistencies and the procedure of being removed from a database after being (deliberately or inadvertently) listed can be arduous.

Victims/survivors of FDV may also be the subject of discrimination in obtaining a new lease because of bias against people experiencing FDV or because of the difficulties renting with a pet. Domestic pets can be a significant barrier for a victim/survivor of FDV to leave an abusive environment because, if she was to leave, the perpetrator may harm the pet; there are difficulties in taking a pet to refuge accommodation; and there is general reluctance to rent to tenants with pets.

Finally, the chapter discusses the victim/survivor of FDV’s rights in relation to enhancing the security of the premises. At present, the RTAs take a very landlord-centric focus on the issue of alterations, including locks and security. Therefore, a victim/survivor of FDV must, in most cases, obtain the landlord’s consent to make alterations and will have to ‘make good’ the premises (i.e., remove the alterations) upon leaving the premises. This places a considerable personal, financial and safety burden on a victim/survivor of FDV, which has been addressed to some point in some of the RTAs, yet needs to be addressed in the state and territory legislation.

While there has been legislative reforms in the past, which have provided significant improvements to residential tenancies, further reforms are needed to ensure appropriate responses to the problems faced by women and children experiencing FDV in a rented home. For many women, the private rental market—and tenancy legislation—exerts an important influence on their process of change.

It is only recently that the interplay between residential tenancy law and tenants experiencing violence in the home has been acknowledged. Traditionally, landlord–tenant law was based on the classical contract notion of two parties of equal bargaining power negotiating the terms of the lease. This unsatisfactory situation was criticised in the *Commonwealth Commission of Inquiry into Poverty*, which concluded that common law rules were inappropriate in a residential tenancy context and that

remedial legislation was required to protect the rights of tenants. Until recently, ‘breaking’ a lease, even in circumstances of FDV, could lead to adverse consequences for a tenant, such as being required to pay rent for the remaining term of the lease, potential loss of security deposit and listing on a tenancy database, which has significant effects on victims/survivors finding new rental accommodation. Over the past decade, all Australian states and territories have sought to address the plight of tenants escaping violence in their homes. While, principally, RTAs deliver these safeguards, some jurisdictions use family violence legislation. Legislative responses are inconsistent across jurisdictions, with some states and territories providing more comprehensive responses than others. Legislation in most jurisdictions establishes a process where FDV survivors/victims can terminate a residential lease and address, to some extent, issues relating to responsibility for outstanding repairs, return of the security deposit and listing on tenancy databases.

Residential tenancy legislation, as it relates to the effect of FDV on women, has been reformed in several states and territories. There is growing recognition among lawmakers of the need for change, though more remains to be achieved. It is also clear that significant differences remain between jurisdictions, and that while there may be a growing congruence in the broad direction of the relevant legislative frameworks, variation in the detail of legislation often exerts a significant influence. This report reviewed each state and territory’s residential tenancies legislation and, where relevant, FDV legislation to gain an understanding of the issues faced by women and children when escaping FDV. The report considers a scenario where a survivor/victim of FDV seeks to escape an abusive partner by leaving their rented property. Legislative responses for each state and territory are examined by considering this scenario with the eight key issues listed in the evaluation approach considered. The findings are summarised for the purpose of the executive summary, but are elaborated upon in Chapter 2 of this report.

*(1) What are the consequences if a FDV victim/survivor wants to terminate a lease to which she is a party and vacate the premises?*

Most of the RTAs and related legislation allow persons experiencing FDV the option to leave the premises through termination of the residential tenancy agreement or to remain in the property, to the exclusion of the perpetrator, and assume the obligations under the lease.

In relation to termination of the lease, the various states and territories provide for a range of positions, including no provision for outright termination in the event of FDV, the need to obtain various orders prior to seeking a court or tribunal order to terminate the lease, and streamlined procedures permitting termination upon notice to the landlord accompanied by declaration.

Most jurisdictions require tenants experiencing FDV to engage with the police or with the court or tribunal process. Two states, Western Australia and NSW, have amended their RTAs with a declaration procedure that can bypass the need to engage with the police or judicial system. A tenant experiencing FDV can terminate a lease directly with the landlord upon presentation of a certificate or declaration signed by certain persons, such as a medical practitioner. Interestingly, Queensland has adopted this practice through special provisions introduced to address tenancy issues and COVID-19. The Queensland provisions are not scheduled to continue beyond 30 April 2021. It is suggested throughout this report that it would be useful to consider adopting a similar process nationally, as such a procedure dispenses with the need to navigate more formal legal processes, which may otherwise deter victims/survivors of FDV from terminating a lease. This process also allows the lease to be terminated with minimal formality. It avoids the need for the person experiencing FDV to engage with the police or courts and tribunals, and is thus more efficient and less stressful in circumstances where timely action is required to ensure the safety of victims/survivors and their children.

The report also notes that it would be useful for each state and territory to adopt uniform legislative provisions and evidentiary requirements. As discussed, the efficiency and timeliness of terminating the lease in circumstances of FDV varies between jurisdictions. This places greater barriers in some

jurisdictions in comparison with others, and adds to the difficulties confronting women and their families forced to move between states to avoid the perpetrator. More uniformity could be achieved through jurisdictions developing mirror provisions that adopt best practice.

*(2) In the case of (1), will the FDV victim/survivor bear any responsibility for:*

- (i) Outstanding rental, including for the remainder of the term, or*
- (ii) Any repairs to the property?*

All tenants who are party to a lease are jointly and severally liable for obligations under the lease, including the payment of rent and repairs to the premises. A FDV survivor/victim could therefore be held responsible for unpaid rent or damage for which they were not responsible. This has a significant effect on the ability of the survivor/victim of FDV to afford new accommodation. Expenses such as unpaid rent and damage are usually deducted from the security bond, which dilutes the funds available to the victim/survivor when seeking new accommodation. While most jurisdictions make provision for relief from liability for expenses for a person experiencing FDV, the degree of relief differs. Some jurisdictions refer only generally to disposal of the security deposit, while others provide courts and tribunals with discretionary powers in providing an equitable resolution.

This report suggests that a FDV victim/survivor be released from obligations for unpaid rent or damage to the premises for which they were not responsible. The landlord can proceed against the perpetrator to be compensated for unpaid rent and damage. In many cases, this may be a fruitless exercise; however, pursuing the FDV victim/survivor for losses may undermine their efforts to re-establish themselves. If the FDV victim/survivor is leaving the premises, the court or tribunal should have the flexibility to provide tailored solutions, such as allowing the FDV victim/survivor to take all or part of a bond.

*(3) Security deposits*

The refund of the security deposit is a key consideration for tenants because, if there is only a partial refund or no refund at all, a tenant may be unable to access funds to pay for another security deposit on a new property.

*(4) Could the FDV victim/survivor be the subject of an adverse listing on a residential tenancy database?*

The issue of tenancy databases can also be a concerning factor for FDV survivors/victims seeking to leave circumstances of FDV. Tenancy databases are used to electronically collect and store information about a tenant's rental history. These data are made available to lessors and agents to determine a tenant's rental history, including rent arrears and breaches (Australian Law Reform Commission, 2008). A listing on a tenancy database can prevent persons from obtaining a new rental property. Legislation in all jurisdictions contains provisions stating the grounds upon which a listing can be made; however, there is no uniform approach to tenancy issues resulting from FDV.

*(5) Could the victim/survivor encounter discrimination in finding another rental property?*

It is foreseeable that landlords and agents may discriminate against persons who have experienced FDV because of concerns that violence may 'follow' the survivor/victim to the new property, with disruption or damage ensuing. While state and territory equal opportunity legislation does not refer to discrimination against persons experiencing FDV, it would be an onerous task to prove discrimination if legislation was amended to provide such protections. Other RTAs and related legislation in Australia fail to expressly address discrimination in these circumstances. As will be discussed in this report, the exception is s 56A *Residential Tenancies Act 1987* (WA), which prohibits

discrimination against a tenant or prospective tenant where they have experienced or been exposed to FDV. It is also necessary to pay heed to issues arising where there is discrimination against a perpetrator where a lease is terminated or that person is excluded from the premises.

*(6) Can the presence of a domestic pet affect the FDV victim/survivor's preparedness to leave the premises?*

A family pet can affect the preparedness of FDV survivors/victims to leave the premises, and the circumstances of companion animals residing in violent domestic circumstances are often overlooked in discussions about FDV. Many FDV survivors/victims will not leave abusive circumstances because, even though the individual may be able to leave, they may be unable to take a pet. Abuse of an animal comes within the definition of FDV in some jurisdictions; however, legislation in Australia provides minimal responses to the issue compared with international jurisdictions.

*(7) Can a FDV victim/survivor enhance security through, for example, changing the locks or installing security screens or devices?*

A person experiencing FDV needs secure premises to maintain privacy and safety. In most cases, the RTAs require the consent of the landlord prior to changing locks or making alterations to enhance security—a step that may hinder the tenant's ability to secure the premises in a timely manner. Legislation in all jurisdictions places obligations on the landlord regarding the security of the premises. Generally, the landlord or tenant cannot alter, remove or add any lock (or, where relevant, security device) without gaining the consent of the other before doing so. Legislation in some jurisdictions permits locks to be changed in the event of an emergency or where the premises are subject to various orders. Proposed Victorian amendments provide for enhanced security standards of locks across all rental properties. Western Australian amendments dispense with the need for the survivor/victim to obtain consent to change locks and security devices where there is a risk of violence or the lease of a tenant has been terminated and the victim/survivor takes over the lease. Amendments in these jurisdictions will enhance flexibility for tenants in these circumstances and should be considered a model for amendment in other jurisdictions.

## Chapter 4: International Comparison

Legislative responses from the US and Canada were reviewed and used to inform recent Australian amendments. These jurisdictions were chosen because of the variety of legislative strategies adopted in relation to residential tenancy and FDV in the US. Moreover, legislation in various Canadian provinces has relatively recently been the subject of significant amendments that adopt more efficient processes for terminating a lease in circumstances of FDV. The legislation in British Columbia and Alberta has been used as a model for amendments to the relevant laws in Western Australian and NSW.

### *The United States*

In the US, landlord and tenant laws are influenced at federal, state and local levels of government; however, state laws are the primary instrument. The *Uniform Residential Landlord and Tenant Act* (URLTA) provides states with model legislation in relation to issues pertinent to residential tenancy law. The *Revised Uniform Residential Landlord and Tenant Act* (RURLTA) was introduced in 2015, and incorporates provisions about, *inter alia*, tenants affected by domestic violence. The model law has a broad definition of domestic violence. However, when adopting the model law, individual states are free to define the term as they choose. Some states have very broad definitions, while some are more limited. Many states have adopted the original URLTA and have subsequently adopted the revised



version. Those states that adopt the model law are free to alter the terms of the model law. As a result, there have been varied responses to FDV in a residential tenancy context.

Article 11 addresses the effect of domestic violence, dating violence, stalking or sexual assault on residential leases.<sup>4</sup> It provides for:

- i. early termination of a lease in circumstances of domestic violence where there has been appropriate verification<sup>5</sup>
- ii. no liability on a victim for rental after the date of termination<sup>6</sup>
- iv. the opportunity to change locks and security devices without the landlord's consent<sup>7</sup>
- iv. termination of the perpetrator's lease with, and in some circumstances, without a court order.<sup>8</sup>

The US model law provides for early termination through various orders, evidence of a conviction and third-party verification. This closely resembles the procedures required in Australia, including the third-party verification option, which reflects new laws in NSW and Western Australia. There has been considerable use of these provisions throughout the US, although fewer states have adopted the verification process. Notice periods are generally longer than in Australia and can be up to 30 days.

Under US laws, landlords may pursue lost rental and expenses to cover repairs through the usual avenues, and, interestingly, in many states, landlords have considerable rights to sue the perpetrator directly for consequential losses. There are rights for a landlord to unilaterally terminate a perpetrator's lease, without a court order, where there is concern regarding domestic violence.

Regarding changing locks and security devices, in most states, the landlord has this responsibility and notice periods can be significant. This is a concern for persons experiencing FDV. Some states provide for a more proactive response from the landlord and, in a few cases, the tenant can change the locks where the landlord has not responded.

In many states, it is a defence against eviction that a person has experienced FDV. It is also worth noting that there are widespread prohibitions regarding discrimination against persons experiencing FDV. The US provisions are noteworthy too for the emphasis on the privacy and confidentiality of victim/survivor information.

### Canada

Several Canadian provinces have introduced legislative protection in relation to tenancy matters affecting persons experiencing FDV. Quebec, Manitoba and Nova Scotia were the first jurisdictions to address the issue.

The Civil Code of Quebec provides that, where a person experiencing FDV is of the belief that they or their children are in danger from a spouse, former spouse or third party, they must provide a sworn document stating the relevant circumstances of FDV, which is forwarded to the Public Prosecutors Office. If the decision is in their favour, the victim/survivor can serve the attestation on the landlord with a notice of termination. Notice periods vary between one and two months.

In Alberta, victims/survivors of domestic violence can terminate a tenancy early without financial penalty, pursuant to the *Residential Tenancies (Safer Spaces for Victims of Domestic Violence) Amendment Act 2016*, *Termination of Tenancy (Domestic Violence) Regulation 2016* and amendments to the RTA Ministerial Regulation. This legislation is applicable in circumstances where the safety of a

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<sup>4</sup> 1101–1109.

<sup>5</sup> 1102–1104.

<sup>6</sup> 1102.

<sup>7</sup> 1106.

<sup>8</sup> 1108.

tenant, dependent child or protected adult is at risk. This model is very similar to the model used in the Western Australian amendments. Under the *Residential Tenancies Act 2004*, a tenant may terminate a tenancy by giving notice in accordance with s 47.3(2) if, because of domestic violence, the tenant believes that his or her own safety, the safety of a dependent child of the tenant, or the safety of a protected adult who lives with the tenant is at risk if the tenancy continues.<sup>9</sup>

Alberta adopts a certification process. To obtain a certificate, the victim/survivor must obtain various protection orders or obtain a statement from a list of professionals who can confirm that the victim/survivor is experiencing FDV. Alternatively, the FDV victim/survivor can seek a statement from a professional affirming the tenant has reported a risk to the safety of the tenant, dependent child or protected adult.<sup>10</sup>

A designated authority, the Safe Places Processing Centre, receives an application form and issues the certificate to a victim/survivor of domestic violence. The certificate confirms that there are grounds to terminate the tenancy and is used by the tenant to give notice to their landlord that they are terminating the tenancy. Upon receipt of the certificate, it can be forwarded with the notice to the landlord. In circumstances where a lease is terminated because of a certificate being issued, the tenancy of all parties to the lease will be terminated.<sup>11</sup> A landlord can enter into a new lease with the other tenants, but does not have to.

In 2016, the *Residential Tenancies Act 2006*<sup>12</sup> in Ontario was amended to reduce the notice period to 28 days for victims/survivors of sexual or domestic violence. The legislation lists several instances where an order or a statement is required to terminate the lease; there is also an opportunity to fill in an online form and a tenants statement about sexual or domestic violence. A tenant may terminate a tenancy by giving notice of termination to the landlord if the tenant or child residing with the tenant is deemed to have experienced violence or another form of abuse.

While there are similarities between the Canadian and Australian responses, Canadian provinces have generally progressed further than most Australian jurisdictions. In designing the new Western Australian provisions, the Albertan legislation was of considerable influence. There are some issues to note.

In the Albertan framework, in particular, filing the declaration with a third party means that the relevant government department has a dataset on the numbers of people using the process. This is useful in compiling statistics on FDV and the number of tenants availing themselves of the service, thus informing the need for, and direction of, dissemination strategies.<sup>13</sup> British Columbia too provides for similar provisions to those in Alberta.<sup>14</sup>

## Chapter 5: Conclusion and Policy Implications

The report concludes with a review of the contents of the findings of the surveys and interviews, and makes suggestions for responses based on the 'Four Pillars of Women's Safety'. Some recommendations are also made in relation to reform of the legal framework as it affects victims/survivors of FDV seeking to terminate a residential lease. The discussion in Chapter 5 forms the basis of the resulting key principles prepared for this report.

<sup>9</sup> Section 47.3(1).

<sup>10</sup> Section 47.4(4).

<sup>11</sup> Section 47.3 (5).

<sup>12</sup> S.O. 2006, c 17.

<sup>13</sup> *Residential Tenancies Act 2004*, Chapter R-17.1, Part 4.1.

<sup>14</sup> *Residential Tenancy Act* [SBC 2002], Chapter 78, s 45.1.

## Key Findings and Principles

1. FDV remains one of the leading causes of homelessness throughout Australia.
2. There is a necessity for better protection for victims/survivors of FDV and their children. People experiencing FDV need access to safe and secure housing.
3. FDV creates complex economic issues for women and their children. It affects their financial security, accommodation, legal issues, physical and psychological health, transport, migration, employment, social security and child support.
4. There is a general lack of understanding among property managers, landlords, police officers and the general population in relation to the challenges faced by survivors/victims of FDV, thus impeding effective implementation of responses to assist women and children to end the cycle of FDV. This is especially the case in relation to Aboriginal and Torres Strait Islander women and refugee and migrant women and their children.
5. Until recently, ‘breaking’ a lease—terminating a lease before the end of the agreed term—could lead to adverse consequences for a tenant, even in circumstances of FDV. In such cases, the tenant could be required to pay rent for the remaining term of the lease, face potential loss of a security deposit (bond) and face listing on a tenancy database, thus impeding the victim/survivor from finding new rental accommodation.
6. Currently, Australia’s RTAs and some FDV statutes allow tenants experiencing FDV the option to leave the premises through termination of the residential tenancy agreement, or remain in the property, to the exclusion of the perpetrator, and assume the obligations under the lease.
7. Legislative responses are inconsistent across jurisdictions, with some states and territories providing more comprehensive responses than others. Therefore, tenants experiencing FDV must navigate different procedures depending on their home jurisdiction, meaning that some tenants receive far more comprehensive protections than others do.
8. The process should ideally include a declaration procedure, which could be used instead of a court procedure to stay in the house, yet exclude the perpetrator.
9. Legislation in most jurisdictions provides for a process where outstanding issues regarding the lease—such as liability for outstanding rental, repairs and return of the security deposit—can be addressed. Unfortunately, some processes are more efficient than others and, in some jurisdictions, the processes are complex and potentially lengthy.
10. At present, the response by Western Australia and NSW is the most efficient and effective means for a tenant experiencing FDV to break a lease or require a violent tenant to vacate. Recent amendments to the *Residential Tenancies Act 1987* (WA) and *Residential Tenancies Act 2010* (NSW) provide that tenants can end a tenancy directly with the landlord or agent with a short period of notice or with immediate effect. This enables tenants experiencing FDV to terminate a residential tenancy agreement, as long as the landlord is served with a DVTN accompanied by a certificate or declaration by a ‘competent person’ that the tenant or a dependent child is experiencing FDV. Competent persons are defined within the legislation or by regulation and include a diverse group of professionals and persons experienced in FDV issues. This development is significant because, unlike in most other states and territories, a person experiencing FDV in Western Australia and NSW will not necessarily have to navigate the law enforcement or court system before the tenant experiencing FDV can terminate the lease.
11. While there are similarities between the US, Canadian and some Australian responses, several US states and provinces have generally progressed further than Australian jurisdictions.

12. It would be beneficial to identify best practice from each Australian jurisdiction in relation to terminating residential tenancies in instances of FDV, and consider introducing mirror legislation in each state and territory to ensure consistency of process throughout Australia.
13. More services should be made available online to avoid a victim/survivor's need to engage with the legal system. This removes the need for the person experiencing FDV to deal directly with the landlord, the court or tribunal system, and even the perpetrator of the FDV. The system used in several Canadian provinces would be a useful innovation, whereby the equivalent of a DVTN can be served through an online process. On a related note, recent reforms in Western Australia provide for restraining orders and like orders to be obtained online. An additional benefit is that the online system provides the opportunity to compile a useful dataset to better inform public awareness of the issue.
14. It is important to acknowledge that the reform of legislation will only have a real effect on the wellbeing of women and children fleeing FDV if steps are taken to ensure effective implementation.
15. At its core, a key issue underscoring these findings is the availability of appropriate and affordable housing in Australia. The lack of housing stock, including social housing, coupled with the need for safe and decent accommodation for women and children experiencing FDV, remains a key challenge for government.

Proposals for national principles for tenancy legislation were based upon these research findings. These proposals provide guidance to respond to Action 3.3(e) of the Third Action Plan 2016–2019: 'Develop national principles for tenancy legislation to ensure consistency across jurisdictions for women who are experiencing violence'.

## Key Principles for Tenancy Management and Legislative Intervention Affecting Family and Domestic Violence Victims/Survivors and Perpetrators

After consideration of these findings, we have designed the following principles, which underpin the key actions recommended in this report. These principles are based on the overriding considerations of the safety and future wellbeing of women and their children who live in rented accommodation and are experiencing FDV.

The principles seek to provide the most efficient framework to provide women and their children with the option to:

- i. terminate a tenancy in circumstances of FDV, or
- ii. maintain an existing tenancy, yet remove the perpetrator from the tenancy agreement.

In so doing, the key principles and recommended actions seek to enable women to re-establish a safe home environment, rebuild their lives with a minimum of financial and reputational ‘baggage’ and receive timely and appropriate support throughout this process.

### **1. Focus on the safety, privacy and confidentiality of tenants escaping FDV.**

- 1.1 Maximise the safety of women and their children experiencing FDV through adopting best-practice legislative amendments.
- 1.2 Provide sufficient appropriate and targeted information, support and wrap-around services to underpin the legal framework.
- 1.3 Include provisions to take account of the discrete experiences encountered by Aboriginal and Torres Strait Islander women, CALD women and women with other vulnerabilities.

### **2. Develop residential tenancy legislation in each Australian state and territory that reflects a nationally consistent and coherent process, enabling women and children fleeing FDV to do so quickly and safely.**

- 2.1 FDV is a leading cause of women’s homelessness. Potential for legal intervention exists along the continuum of accessing, sustaining and exiting from housing tenancies.
- 2.2 In some Australian jurisdictions, legal procedures regarding termination of a lease in circumstances of FDV remain complex and, even with expedited processes, can be confusing, can be time-consuming and may require engagement with the judicial system. However, they are critically important because they can determine a woman’s right to remain in the home or leave.
- 2.3 Residential tenancy legislation should provide women experiencing FDV with a real choice of whether to terminate a lease or remain in the rented premises. Once a decision is made, procedures to achieve this end need to be accessible and efficient.
- 2.4 The procedures introduced in Western Australia and NSW that provide for service of a DVTN supported by a certificate or declaration from a competent person (a professional person who is cognisant of the tenant’s circumstances) provide for a more efficient process to terminate a lease in circumstances of FDV.
- 2.5 Such procedures should, so far as possible, minimise the woman’s engagement with the legal or judicial system.
- 2.6 Such residential tenancy reform should adopt best practice and be nationally consistent.

- 3. Address the economic and reputational security of women accessing, obtaining or exiting tenancies.**
  - 3.1 Termination of, or deciding to remain in, a tenancy in circumstances of FDV gives rise to issues that could affect a woman's financial circumstances and/or ability to access or obtain rental accommodation in the future.
  - 3.2 All state and territory residential tenancy legislation should, so far as possible, emphasise the economic security of women accessing, obtaining or exiting tenancies due to FDV.
  - 3.3 To this end, residential tenancy legislation should provide for consistent and flexible processes regarding return of security deposits and payment for rental arrears and repair. Although the interests of the landlord are an important consideration, such processes should not unduly disadvantage the woman experiencing FDV, prevent her from finding safe accommodation or undermine financial independence.
  - 3.4 Although states and territories have adopted legislation to ensure that women escaping FDV cannot be listed on tenancy databases for FDV-related issues, such provisions should be reviewed regularly to ensure the provisions address practice within the relevant industry.
  - 3.5 Discrimination in relation to a tenancy for reasons of having experienced FDV should be prohibited within the legislation.
- 4. Consider the perpetrator's ongoing accommodation and encourage behavioural change to enhance the safety of women and children.**
  - 4.1 The circumstances of the perpetrator must be taken into consideration. If a perpetrator is transient or homeless, this is likely to increase the risk to families.
  - 4.2 Legal and welfare services should give due weight to ensuring that the perpetrator obtains accommodation in the wake of the lease termination.
  - 4.3 In establishing a safety net around women and children experiencing violence, monitoring the perpetrator and, ideally, encouraging behavioural change in the perpetrator is essential.
  - 4.4 Anti-discrimination provisions prohibiting discrimination involving FDV should be included in legislation and extend to the perpetrator.
- 5. Communicate any changes to legislative provisions and procedures to real estate employees and property managers, FDV support workers, police, lawyers and the general population.**
  - 5.1 Introduce or, if already available, enhance education programs directed at the challenges faced by survivors/victims of FDV and the role that tenancy management can play in ensuring prioritisation of safety, privacy and confidentiality.
  - 5.2 Education programs should be:
    - (a) developed to ensure adequate consideration of Aboriginal and Torres Strait Islander women and refugee and migrant women and their children
    - (b) compulsory for persons commencing employment in property management and real estate organisations
    - (c) updated regularly to reflect developments in law and practice.
  - 5.3 Where possible, integrate legal, property industry, welfare and service responses.

**6. Be inclusive of landlords during the development and implementation of legislative provisions and procedures.**

6.1 Landlords and persons working in the residential tenancy arena may have concerns about what could be perceived as a potential loophole that could be used to terminate a lease. Such circumstances could also be suspected of causing the landlord to be left 'out of pocket'. Therefore, the landlords and other relevant stakeholders should play a significant role in deliberations about proposed amendments.

6.2 Information and educative programs should be implemented from the beginning of any reform process.

6.3 Such programs can demonstrate that, in many circumstances, the most efficient and cheaper option for landlords where tenants are experiencing FDV may be the early termination option, rather than through the courts or via the abandonment procedure.

## Key Actions for Tenancy Management and Legislative Intervention affecting Family and Domestic Violence Victims/Survivors and Perpetrators

Several key actions are recommended to enable the development of a uniform, best-practice response to the central issue of early termination of residential leases in circumstances of FDV and related matters, such as security deposits and rental arrears. These actions should be included in any proposal for national principles for tenancy legislation to progress Action 3.3(e) of the Third Action Plan.

### **1. Develop national principles for tenancy legislation to ensure consistency across jurisdictions for women who are experiencing violence. The differing approaches of the states and territories should be addressed as a matter of priority through jurisdictions developing mirror provisions or a uniform national response that adopts best practice.**

1.1 Appropriate representatives of state and territory government should convene as a matter of priority to assess the existing regime in their jurisdiction regarding terminating a lease in circumstances of FDV. In so doing:

- (a) Feedback should be obtained from appropriate organisations (support groups, community legal centres) and the relevant court or tribunal regarding issues arising in circumstances of lease termination in FDV circumstances. This can assess need within the jurisdiction and inform deliberations on amended legislation (if required).
- (b) Local legislation should be re-examined, especially in comparison with amendments throughout Australia. The experience of implementing similar laws—such as consideration of the laws in several Canadian provinces and certain US states—should be considered.
- (c) Best-practice examples should be identified and incorporated into legislative amendments to ensure national consistency.

1.2 All jurisdictions should consider ‘best-practice’ responses in relation to terminating a lease (whether fixed-term or periodic) in circumstances of FDV.

1.3 In considering ‘best-practice’ responses, amendments should consider particularly the approaches adopted in Western Australia and NSW (based on models in Alberta, British Columbia and Ontario, Canada), namely:

- (a) Service of a notice terminating a lease and supporting evidence (such as a certificate or notice) should be made directly to the landlord.
- (b) Termination of the lease effective immediately, or at a maximum within seven days, upon service of the notice and supporting documentation.
- (c) To provide supporting documentation, a certificate confirming the tenant is experiencing FDV should suffice. The certificate should be authorised to be granted by a broad cross-section of persons familiar with an individual’s circumstances of FDV, including managers of refuges, social workers and general practitioners. The persons listed in the Western Australian and NSW legislation provides a comprehensive list that should be used for guidance.
- (d) This process should minimise the need for a person experiencing FDV to have to engage with the perpetrator of the violence.
- (e) Any legislative reform processes need to be both sympathetic to the victims/survivors and easily implemented.



**2. Any legislative reform should be accompanied by an evidence-based education program for landlords, property managers and other stakeholders in the property industry.**

2.1 It is likely that these proposals may unsettle landlords (especially small ‘mum and dad’ investors) concerned that tenants may be able to ‘break’ their lease with relative ease and the landlord may experience resultant loss. In doing so, the program should:

- (a) Inform these stakeholders through face-to-face community meetings, electronic updates and a designated webpage. Western Australia’s education program for landlords and stakeholders in the property industry could be used as a guide.
- (b) The relevant state or territory government department overseeing the amendment should have carriage of the education program.
- (c) The program should emphasise that the proposals are likely to be of benefit to the landlord through a cost analysis comparing alternative processes, such as abandonment or the court process.
- (d) The program should also include statistics (for example, no significant rise in lease terminations after introduction of the legislation) and experiences from international jurisdictions already using a similar legislative scheme.

**3. All state and territory legislation should be amended to provide for, specifically and in a timely fashion, the division of security deposits and other financial, repair and incidental issues remaining after termination.**

3.1 Review and amend existing legislation to better set out liability for and procedures concerning:

- (a) refund of all or a portion of the security deposit
- (b) assessing responsibility for unpaid rent
- (c) assessing responsibility for repairs.

3.2 All state and territory residential tenancy legislation should provide for the release of persons experiencing FDV from obligations for unpaid rent or damage to the premises for which the victim/survivor was not responsible. The landlord can proceed against the perpetrator to be compensated for unpaid rent and damage. In many cases, this may be a fruitless exercise; however, pursuing the FDV victim/survivor for losses may undermine the victim/survivor efforts to re-establish themselves.

**4. Discrimination against both the victim/survivor and the perpetrator should be prohibited in all relevant legislation.**

4.1 Adopt legislation akin to that in Western Australia that prohibits discrimination against a tenant or prospective tenant on the ground that a person has, or may have, experienced or been exposed to FDV.

4.2 Extend protections to the perpetrator too by prohibiting discrimination where a tenant has been convicted of a charge relating to family violence. This assists in ensuring the perpetrator is housed—a significant safety precaution.

**5. Adopt consistent provisions regarding the landlord’s obligations and the tenant’s rights regarding the security of the premises.**

5.1 Generally, the landlord or the tenant cannot alter, remove or add any lock (or, where relevant, security device) without gaining the consent of the other before doing so. Legislation in some jurisdictions permits locks to be changed in the event of an emergency or where the premises are subject to various FDV orders. Therefore, a national framework should incorporate:

- (a) the right to permit locks to be changed and/or security devices installed in an emergency (including circumstances of FDV), without the consent of the landlord (this should be addressed in each jurisdiction)
- (b) that any such alterations are to be at the expense of the tenant and the tenant will restore the premises upon leaving.

## **6. In any deliberations, state and territory representatives could consider the efficacy of designing or recalibrating existing systems to be completed online so far as possible.**

6.1 In this way, only the most contentious matters would need to go to a court or tribunal, thus reducing emotional distress and expense while minimising the prospect of encountering the perpetrator. Considerations could include:

- (a) The efficacy of the introduction of a certificate process. Without the need to obtain a court or tribunal order first, communications could be achieved directly with the landlord or property manager online.
- (b) Disputes regarding bonds or repairs could, for the most part, be addressed through an online system.
- (c) An online system would enable statistics to be kept in relation to the number of these lease terminations.

## **7. Improve the availability of accommodation for perpetrators who are removed from the home to ensure the safety of women and children in their homes.**

7.1 Enabling the perpetrator to 'move on' with their life can, in some cases, reduce the likelihood of further instances of FDV. Therefore, measures should be considered and introduced to:

- (a) rehouse perpetrators to avoid homelessness
- (b) enhance behavioural change.

7.2 As noted in 4(2) above, legislation should state that persons should not experience discrimination through involvement in a FDV situation.

## **8. Enhance and diversify support programs**

8.1 Develop strategies to enhance the awareness and understanding of legislative provisions and process by key stakeholders, including landlords, property managers, police and court officials.

8.2 Introduce or enhance targeted support programs for persons at risk of losing an existing tenancy. Such measures are a cost-effective early intervention.

8.3 Tenancy support workers can assist with rental assistance, information, brokerage services and developing positive relationships with local landlords and agents.

8.4 Tenant support programs are also effective in assisting Aboriginal and Torres Strait Islander people to sustain their tenancies, linking them to external support programs, meeting their non-housing needs and avoiding homelessness.

## Chapter 1: Introduction

This project was undertaken in response to a brief from the Department of Social Services (DSS) that called for research into the experiences of women and children fleeing violence in the home and the ways in which they have been affected by current tenancy legislation.

This report was commissioned in acknowledgement of the fact that, in 2015–16, some 106,000 people experiencing family and domestic violence (FDV) sought assistance from homelessness agencies across Australia. At a government level, the *National Plan to Reduce Violence against Women and Their Children 2010–22* aims to ‘strengthen safe and appropriate accommodation options and supports for women and their children escaping violence, including specialist women’s services’.<sup>15</sup> This research was undertaken in response to this acknowledged need.

In undertaking this project, the research team set out to collect data and produce a report that:

- identifies common or ongoing issues with current tenancy laws experienced by women and their children who are experiencing violence and are seeking to leave the abusive relationship
- identifies any common elements within tenancy laws or practice that assist women and their children who are looking to leave an abusive relationship
- enables the development of a more comprehensive overview of tenancy-related issues across Australia, and
- includes proposals for national principles for tenancy legislation to progress Action 3.3(e) of the Third Action Plan.

One important part of this project was the completion of a national survey of women affected by domestic violence who have had experience with current tenancy law. This data-collection exercise was included in this research to build on the feedback received by the COAG Advisory Panel on Reducing Violence against Women and Their Children.

This chapter provides a summary of the prevalence of FDV in Australia. It includes information on mainstream perceptions of FDV, including that of the police. It goes on to explore the intersections between housing, homelessness, and FDV.

### Prevalence of Family and Domestic Violence in Australia

According to the ABS<sup>16</sup>:

- one in six Australian women have been subjected to physical and/or sexual violence by a current or previous cohabiting partner since the age of 15 (ABS 2017)
- one in four women have experienced emotional abuse, and
- one in five have been sexually assaulted/threatened (AIHW 2018a).

These statistics do not include other forms of violence, such as financial abuse, technology facilitated abuse and religious/spiritual abuse.<sup>17</sup> Family, domestic and sexual violence can happen repeatedly, with 54 per cent of the women who have experienced current partner violence experiencing more than one violent incident (ABS 2017). Moreover:

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<sup>15</sup> This was overseen by the Housing and Homelessness Data Working Group, which was funded under the Third Action Plan.

<sup>16</sup> This source is likely to under-report the incidence of FDV. The absence of a consistent definition of FDV is a major gap in the research literature, and this absence means there is no consistent identification method used to capture incidents across jurisdictions and services, such as emergency departments and disability, justice and health services (AFDVDRN 2018, p. 38; AIHW 2018a, p. 101).

<sup>17</sup> For example, preventing a person experiencing FDV from attending a place of worship or complying with the tenets of their faith.

between 1 July 2010 and 30 June 2014 there were 152<sup>18</sup> family and domestic violence homicides and at least 107 child survivors of homicide who had a parent kill and/or be killed (AFDVDRN 2018, p. 26). In 2014–15, on average, almost eight women were hospitalised each day after being assaulted by their spouse or partner, and from 2012–13 to 2013–14 approximately one woman per week was murdered by a current or former partner (AIHW 2018a).

Although only some aspects of FDV, such as physical and sexual violence, are deemed criminal offences, any behaviour that causes the victim/survivor to live in fear is unacceptable (Mitra-Kahn, Newbigin & Hardefeldt 2016). While FDV potentially has major effects on women's ability to access housing and leave violent relationships, economic abuse may not be recognised as violence by some. As Cortis and Bullen (2016, p. 11) note, 'economic abuse may not be recognised as violence by women, police or domestic violence practitioners, or may be hidden or difficult to measure and monitor, especially as cultural conventions treat income and wealth, and intra-household distributions, as private matters'.

The cycle of FDV 'is extremely challenging to break without external support systems and interventions, as well as legislation which supports the rights of survivors' (Schwan & Robart 2018). However, not breaking the cycle of violence against women and their children continues to cost the Australian economy an estimated AU\$26 billion per annum (AIHW 2018a).

## Definitions of Family and Domestic Violence

Definitions of FDV are contested. The laws, policies and definitions of domestic violence vary between (and within) each Australian jurisdiction (Mitra-Kahn, Newbigin & Hardefeldt 2016). There are limited examples of definitions of 'family violence' or 'domestic violence' in the criminal laws of Australia. The *National Plan to Reduce Violence against Women and Their Children 2010–2022* (National Plan) defines domestic violence as:

acts of violence that occur between people who have, or have had, an intimate relationship. While there is no single definition, the central element of domestic violence is an ongoing pattern of behaviour aimed at controlling a partner through fear ... In most cases, the violent behaviour is part of a range of tactics to exercise power and control over women and their children and can be both criminal and noncriminal. Domestic violence includes physical, sexual, emotional and psychological abuse (Council of Australian Governments [COAG] 2011, p. 2).

Family violence is a broader term that refers to 'violence between family members, as well as violence between intimate partners'. The term 'family violence' is widely used to identify the experiences of Aboriginal and Torres Strait Islander people because it includes 'the broad range of marital and kinship relationships in which violence may occur' (COAG 2011, p. 2). The term 'family violence' is used because our commonly shared understanding of domestic violence has emerged from a cultural focus on intimate relationships between adult partners, which is too narrow to take account of the historical experiences of Indigenous people and their current life situation. There is an ongoing need to acknowledge that Indigenous people are affected by colonising policies and practices, cultural dispossession and dislocation, and the effect of the ongoing removal of family members such as children (Olsen & Lovett 2016, p. 17).

Recommendation 6.1 of the 2010 report *Family Violence—A National Legal Response* (Rec 6-1) argued that Australian states and territories should adopt into criminal legislation the term family violence, and that it:

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<sup>18</sup> 121 cases of males killing female partners; 28 cases of females killing male partners (17 were victims/survivors of violence and killed their abuser); and three cases of males killing a male intimate partner.

should be defined as violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. Such behaviour may include but is not limited to:

- (a) physical violence;
- (b) sexual assault and other sexually abusive behaviour;
- (c) economic abuse;
- (d) emotional or psychological abuse;
- (e) stalking;
- (f) kidnapping or deprivation of liberty;
- (g) damage to property, irrespective of whether the victim owns the property;
- (h) causing injury or death to an animal irrespective of whether the victim owns the animal; and
- (i) behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(h) above (ALRC 2010).

## Mainstream Perceptions of Family and Domestic Violence

### National Community Attitudes towards Violence against Women Survey

Violence against women is often perceived as related to ‘some men being unable to manage their anger’ (VicHealth 2013). The *National Community Attitudes towards Violence against Women Survey (NCAS)* is the longest-running survey of community attitudes towards violence against women in Australia. The Office for the Status of Women conducted the first survey in 1995, while the second and third waves were conducted in 2009 and 2013 by the Victorian Health Promotion Foundation (VicHealth), funded by the DSS. The NCAS was last conducted in 2017 by Australia’s National Research Organisation for Women’s Safety (ANROWS) and ANROWS is due to conduct the NCAS again in 2021 (also funded by the DSS).

The NCAS provides a snapshot of community attitudes to violence against women over time to plan for violence prevention policy and programs. The survey collects information through telephone interviews with over 17,500 Australians, aged 16 years and over. The 2017 survey found that knowledge and attitudes are improving in most areas investigated by the NCAS, yet some findings remain concerning. Some positive findings include:

- most Australians have accurate knowledge of violence against women and do not endorse such violence
- most Australians support gender equality and were more likely to do so in 2017 than in 2013 and 2009
- Australians were more likely to understand that violence against women involves more than just physical violence in 2017 than they were in 2013 and 2009
- Australians were less likely to hold attitudes supportive of violence against women in 2017 than in 2013 and 2009
  - if confronted by a male friend verbally abusing his female partner, almost all survey respondents said they would be bothered (98 per cent) and the majority said they would act (70 per cent) and would have the support of all or most of their friends if they did act (69 per cent).

Some concerning findings include:

- there continues to be a decline in the number of Australians who understand that men are more likely than women to perpetrate domestic violence
- a concerning proportion of Australians believe that gender inequality is exaggerated or no longer a problem
- among attitudes condoning violence against women, the highest level of agreement was with the idea that women use claims of violence to gain tactical advantage in their relationships with men
- one in five Australians would not be bothered if a male friend told a sexist joke about women.

## Police and the Criminal Justice System

Despite decades of law reform, codes of practice, strategies and training, there remains persistent negative attitudes within police forces around Australia to victims/survivors of FDV (Segrave, Wilson & Fitz-Gibbon 2018). Segrave, Wilson and Fitz-Gibbon (2018) argue that the survivors of FDV are generally considered a 'burden' within policing and that such call-outs are considered a 'low-status task'. Too often, according to the authors, the crime is associated with 'soft' policing within organisations still 'rooted in a masculine policing ethos'.

Research from the perspective of victims/survivors of FDV found that generally the attitudes and culture of the police are gendered and damaging, and include an emphasis on victim blaming. However, FDV is so pervasive in Australian society that the majority of general duty police officers 'just seem to get domestic<sup>19</sup> after domestic' during their shift (Segrave, Wilson & Fitz-Gibbon 2018, p. 104). The statistics support this statement, with the number of domestic violence offenders apprehended by police in Australia totalling one in five of all offenders prosecuted by the police (ABS 2017, cited in Morgan, Boxall & Brown 2018).

In the minds of police officers, 'deserving victims' of FDV were 'drowned out for the most part by a steady procession of imposters, liars and timewasters, presenting what were regarded as highly suspect claims to victim status' (Segrave, Wilson & Fitz-Gibbon 2018, p. 105). Segrave, Wilson and Fitz-Gibbon's (2018, p. 110) research indicates that police officers experience significant pressure to respond quickly to incidents, and they reported 'time and recourse constraints as impacting upon their work'. It appears that police officers are not appropriately resourced and managed to effectively deal with domestic violence, with ongoing time pressures reducing their capacity to take effective action.

It is estimated that an overwhelming majority (between 70 and 90 per cent) of women in prison are victims/survivors of FDV and, despite Aboriginal and Torres Strait Islander women comprising two per cent of the broader Australian female population, they account for one-third (34 per cent) of female prisoners. Victims/survivors of FDV are often incarcerated because of their experience of FDV, including substance misuse to numb the trauma, taking the blame for a violent partner, self-defence after enduring abuse, and preferring to live in the relative 'safety' of prison. An additional reason for the increased incidence of incarcerated women is the misidentification by police of who is the primary aggressor in a FDV incident, with women inappropriately named as respondents on family violence intervention orders. The woman can then sometimes be charged by police for breaching the order, even accidentally. A second phenomenon of concern is the growing number of FDV perpetrators 'gaming the system' and applying for intervention orders during family law proceedings out of spite or to gain advantage. Once women have even a minor criminal record, they are more reluctant to call the police for fear of being arrested. The effect of being named on an intervention order leads to mistrust of police, especially for Aboriginal and Torres Strait Islander women (Gleeson & Baird 2018).

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<sup>19</sup> Colloquial term for FDV.

## Housing and Family and Domestic Violence

Women and children who have experienced FDV have few options: remain in the family home with the perpetrator, remain in the home with the perpetrator removed, leave the home until the perpetrator is removed, or leave the home permanently (Spinney 2012, p. 4). Many victims/survivors of FDV, especially those with children, return to their abusers, couch surf, or live in a car or van, with their homelessness invisible and unreported (Gander & Johannson 2014, p. 5). In 2012, the Personal Safety Survey (PSS) found 37 per cent of women who experienced partner violence temporarily separated during the relationship and, of these, some 52 per cent moved away from home.

The findings of a national survey of women ( $N = 658$  respondents) conducted in Australia from October 2013 to February 2014 found that housing tenure for women escaping FDV changed over time. While living with a violent partner, more women jointly owned a house (42 per cent) or were in a private rental property (36 per cent). Upon separation, women most often left the home/property, of which one-third went to stay with friends or family, while a small group (10 per cent) accessed a women's shelter. After experiencing FDV, just over one-quarter were able to secure a private rental property (27 per cent), although the quality of this housing was rarely satisfactory (Zufferey et al. 2016). While 21 per cent of the women surveyed regained some stability and security through home ownership after leaving the relationship, over two-thirds reported an increase in housing costs. The majority of respondents attributed the costs to a former partner's debts, damage to property, the need for enhanced security measures and the effect of re-establishment costs. Nearly 70 per cent of respondents reported that their housing costs had increased on separation, while only 10 per cent reported a decrease in their housing costs (Zufferey et al. 2016). It was notable that very few women accessed crisis services, possibly because of the survey being a population sample, not a sample from services. However, 84 per cent of respondents had contact with a professional for their psychological and emotional wellbeing, 63 per cent experienced post-separation violence, and 42 per cent had to make significant geographical moves to escape the perpetrator (Zufferey et al. 2016).

In Canada, Daoud et al. (2016, p. 219) undertook in-depth interviews in 2010–11 with 41 eligible women and found that a housing solution is crucial for women to start their recovery from FDV. As noted by Daoud et al. (2016, p. 222), while housing stability is important for women's health after experiencing FDV, 'housing alone cannot address the wide range of complex needs' of survivors/victims. They emphasised the complexity of needs among victims/survivors and called for 'multi-sectoral interventions to tackle their social determinants of health' (Daoud et al. 2016, p. 222).

## Homelessness and Family and Domestic Violence

The law, legal process, and policies of housing and legal services agencies are implicated in what can quickly become a downward slide into homelessness for victims of domestic violence (Gander & Johannson 2014, p. 6).

FDV remains one of the leading causes of homelessness. On Census night<sup>20</sup> in 2016, 116,427 Australians were homeless, which was a 4.6 per cent increase since the 2011 Census (AIHW 2018b). Over 100,000 women and children<sup>21</sup> sought homelessness services in 2016–17 because of FDV (AIHW 2018a). Analysis of the SHSC<sup>22</sup> data from 2012–13 to 2016–17 indicates tenancy assistance services

<sup>20</sup> Census data include people in supported accommodation for the homeless, people in temporary accommodation, people 'sleeping rough' and people living in severely crowded dwellings (defined as requiring four or more extra bedrooms to accommodate the residents) (ABS 2018).

<sup>21</sup> 72,000 women and 34,000 children.

<sup>22</sup> The Specialist Homelessness Services Collection (SHSC) is an online data-collection and storage system that collects information monthly from the organisations funded under the National Affordable Housing Agreement (NAHA) and the National Partnership Agreement on Homelessness (NPAH). The 2015–17 NPAH funded approximately 180 programs and

are in demand because there has been a significant increase in the proportion of clients who identify themselves as needing assistance to sustain their tenancy, prevent tenancy failure or avoid eviction—from 29 per cent in 2012–13 to 33 per cent in 2016–17 (AIHW 2018b). One of the main limitations of these data is that they are limited to those who are (or who are at risk of becoming) homeless, where domestic violence has been flagged as the main cause of homelessness. In 2011–12, some 50.8 per cent of persons at risk of homelessness were placed in jeopardy because of FDV, up from 46.8 per cent of cases in 2012–13 (Mitra-Kahn, Newbiggin & Hardefeldt 2016).

One qualitative study suggested that only 10 per cent of respondents reached out to services (Sharam 2008). However, the small sample size (only 23 respondents) means that these findings are suggestive, rather than definitive. There nonetheless remains a clear implication that women who are homeless, or who are at risk of being homeless, may not gain access to formal services.

FDV-related homelessness can differ from other forms of homelessness, as the women affected may be more likely to cycle in and out of homelessness, and this may be because they attempt to return to and reconcile with the perpetrator of the violence (Tually et al. 2008). The transition from leaving a situation of FDV to finding safe, alternative accommodation can be perilous. The women are often overwhelmed by loss of home, partner and sometimes children, and statistics reveal that severe violence, including the murder of these victims by the perpetrator, most often occurs around this time (Daoud et al. 2016, p. 221). Thus, the victims/survivors of FDV may be forced ‘to seek increasingly unsafe and unsuitable shelter, which may mean living in a car or on the streets. Many simply remain hidden from view, relying on their wits, prostitution, and crime to keep a roof over their heads’ (Gander & Johannson 2014, p. 8).

FDV creates complex economic issues for women and their children. It affects their financial security, accommodation, legal issues, physical and psychological health, transport, migration, employment, social security and child support. A key aspect of economic security and wellbeing is women’s access to safe, affordable housing options. Post-separation, women experience problems in finding safe, affordable and appropriate accommodation because of their financial insecurity and poverty (Cortis & Bullen 2016; Gander & Johannson 2014, p. 5). In addition, the relocation and storage costs associated with leaving the family home are substantial.

The Australian Government is responsible for government programs designed to reduce violence against women nationally through the implementation of the *National Plan to Reduce Violence against Women and Their Children 2010–2022*. The federal government works in partnership with state and territory governments and other key stakeholders. The states and territories carry law-enforcement responsibilities in relation to tenancy issues and the policing of domestic, family and sexual violence. Governments across Australia fund non-government organisations to support people who are homeless or at risk of homelessness, and specifically target groups such as women and children experiencing FDV (Dunkley & Phillips 2015).

## Aboriginal and Torres Strait Islander Women

FDV is disproportionately experienced by Aboriginal and Torres Strait Islander women and their children. Aboriginal and Torres Strait Islander women are 32 times more likely to be hospitalised because of family violence than are non-Indigenous women, while Aboriginal and Torres Strait Islander children are seven times more likely than non-Indigenous children to be the victims/survivors of substantiated cases of child abuse or neglect. Two in five Aboriginal and Torres Strait Islander homicide victims (41 per cent) were killed by a current or former partner, compared with one in five non-Indigenous homicide victims (22 per cent) (AIHW 2018a).

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services focusing on women and children experiencing FDV. Two out of five people (around 40 per cent) who receive assistance from a specialist homelessness agency were experiencing FDV (AIHW 2018b).



The greatest social issues for many Aboriginal and Torres Strait Islander communities are basic housing, education, employment and health, contributing to considerable socioeconomic pressures on families (Olsen & Lovett 2016). Olsen and Lovett (2016) argue that Indigenous women often have a negative perception of the legal system because of previous interactions with criminal justice and the perceived risks associated with a child being removed and placed into state protection. They may be unaware of or unwilling to engage with the legal system to protect themselves, and consequently might not use the protections available to them within tenancy law or family law.

There are additional service barriers for Aboriginal and Torres Strait Islander women experiencing family violence, which include:

- limited Indigenous-specific survivor/victim support services
- few Indigenous staff within general services
- few services in remote communities and country towns, and
- limited services that assist with basic needs, such as telephones, transport, financial assistance and housing (Olsen & Lovett 2016, p. 21).

In remote areas, Aboriginal and Torres Strait Islander communities experience overcrowded housing conditions; discrimination, racism and exploitation by landlords; limited access to basic housing infrastructure (including cultural adequacy, habitability, affordability and accessibility of housing); legal insecurity of tenure and social injustices, which intersect with social and health outcomes (Zufferey & Chung 2015, p. 19).

When examining the sustainability of tenancies, Aboriginal and Torres Strait Islander people tend to have tenancies of shorter duration, compared with non-Indigenous tenancies, and this may reflect overcrowding and the fact that Aboriginal and Torres Strait Islander households are significantly more likely to be evicted than non-Indigenous households (Flatau et al 2009). Both factors contribute to high levels of unmet housing need (Flatau et al. 2005). An adequate supply of mainstream public housing dwellings could reduce barriers inhibiting access and improve the sustainability of mainstream public housing tenancies (Flatau et al. 2005).

To provide stable housing and sustainable tenancies for Aboriginal and Torres Strait Islander women, Cooper and Morris (2003) argue that outreach services, enhancing service access, providing practical support, service collaboration (across housing, finance, social security, legal, medical and education sectors) and case management are crucial. This involves increasing the supply of culturally appropriate crisis accommodation and temporary and long-term affordable housing, as well as finding and retaining contact with homeless Indigenous women and their children (Cooper & Morris 2003).

Blagg et al. (2018, p. 64) argue that high rates of family violence are interrelated with the history of colonial settlement and the multiple intergenerational traumas affecting Aboriginal communities. Reversing these effects would require a process of ‘decolonisation’ that would oversee the expansion of Aboriginal and Torres Strait Islander-owned and place-based enterprises and services, and help create a position of cultural security that is embedded in community healing and the prioritisation of Indigenous forms of knowledge. This transition would require enhanced resource and other commitments from the police and health, mental health, disability, children’s protection, housing and FDV services, and other services, to change current asymmetries in power relationships (Blagg et al. 2018, p. 64).

## Women from Culturally and Linguistically Diverse Communities

‘Culturally and linguistically diverse’ is a term used by government and non-government agencies to refer to individuals and groups from different religions, races, language backgrounds and ethnicities. The definitional breadth and heterogeneity of this concept means that it can refer to:

1. language skills (i.e., women who speak English as a second language)

2. immigration status (i.e., women who have entered Australia from non-English-speaking countries)
3. settlement status (i.e., length of time since arrival in Australia from non-English-speaking countries; community and cultural ties, such as women who were not necessarily born in a non-English-speaking country, but live in culturally diverse communities with strong cultural ties), and
4. any combination of the above (Mitra-Kahn, Newbiggin & Hardefeldt 2016, p. 8).

While not making any recommendations addressing tenancy laws, Vaughan et al. (2016, p. 2) highlight that refugee and migrant women's experiences of family violence are often very different from those of Australian-born women. Their capacity to seek—and receive—assistance is mediated by a number of factors, including their immigration status (e.g., visa situation), community and family connections, locally-available service system, local context (e.g., the size of their community in that neighbourhood or region) and place-based (e.g., geographical) contexts. Vaughan et al. (2016) recommend that immigration policies be amended to recognise that perpetrators of family violence can include any family member, including non-sponsors. They also advocate for expanded access to the family violence exception to include persons on non-partner visas (e.g., students, partners of students, fiancées) (Vaughan et al. 2016, p. 5). They recommend that training, information and multilingual resources on FDV be provided to women and service providers. Box 1 below provides more insights into the difficulties confronting women from migrant backgrounds affected by FDV.

**Box 1: The Path to Nowhere**

The 'Path to Nowhere' Report examines the issues for women on temporary visas experiencing violence, as well as their children. During the month of August 2018, the National Advocacy Group on Women on Temporary Visas Experiencing Violence developed an online survey for service providers to submit data about women on temporary visas experiencing violence with whom they had worked or who had sought assistance from them.

There were at least 387 women on temporary visas experiencing violence accessing support services in Australia, with more than 351 children or dependants. Around one-quarter (24 per cent) of these women were living in crisis accommodation and around one in 10 (11 per cent) were living in temporary accommodation.

One in 10 of these women were living at home with the partner, which may increase their risk of experiencing further violence. Crisis and long-term housing were the services most needed by clients that organisations were unable to provide, followed by financial assistance (National Advisory Group on Women on Temporary Visas Experiencing Violence, p. 4).

In a comprehensive and data-rich study, Ziersch et al. (2017) researched the housing, inclusion and health experiences of people from refugee and asylum seeker backgrounds. Their focus was on persons who had lived in South Australia for seven years or less. Although only 13 per cent of respondents were working and only one-third felt happy with their financial situation (Ziersch et al. 2017, p. 49), the researchers found that their interviewees had successfully negotiated the complex housing market (including home ownership), had built meaningful lives in neighbourhoods and reported community connections that gave them satisfaction, had made strong local contributions (such as volunteering) and had hope for the future (Ziersch et al. 2017, p. iii). However, three-quarters of the sample (423 people) experienced at least one type of housing issue, such as poor condition of the house, inadequate heating or cooling, difficulties with house size and layout, problems with maintenance and affordability, and the effects of short rental tenancies (Ziersch et al. 2017, pp. xi, 9). Some felt unsafe and socially isolated in their neighbourhoods (e.g., not close to schools, church, transport, community centres, etc.); 22 per cent experienced discrimination on the basis of their



ethnicity, religion and skin colour; and over 80 per cent stated that housing conditions affected their health and wellbeing (Ziersch et al. 2017, p. iii). Ziersch et al. (2017) provided insights into failures within housing and labour markets that do not adequately include people from refugee and asylum seeker backgrounds. These challenges are compounded by legal barriers and the effects of FDV on women in these communities.

## Conclusion

This chapter has outlined the prevalence of FDV in Australia and its role in housing and homelessness for the women and children experiencing and escaping this violence. Survivors of FDV in Australia are often affected by the tendency for the general population, landlords and police officers to fail to understand the victims/survivors and their circumstances, while appearing to excuse the perpetrators of violence. Aboriginal and Torres Strait Islander women and women from refugee and asylum seeker backgrounds face additional challenges that reflect the history of colonisation in Australia and the degree of isolation many migrant women feel in this country.

## Chapter 2: Overview of the National Survey on the Impact of Tenancy Laws on Women and Children Escaping Violence

This chapter discusses the two study methods—an online survey with women about their experiences of housing tenure in contexts of FDV, and interviews with key informants. The need to engage directly with women who had been affected by FDV and had subsequent problems with tenancy arrangements was a requirement of the brief released by DSS, but also reflects good research practice in better understanding the impact of current arrangements by speaking to those most directly affected. The chapter also examines the findings of the interviews and the survey and draws makes findings regarding barriers to women affected by FDV leaving a residential tenancy.

### Online Survey

One important part of this project was the completion of a national survey of women affected by domestic violence who have had experience with current tenancy law. This data-collection exercise was included in this research in order to build on the feedback received by the COAG Advisory Panel on Reducing Violence against Women and Their Children.

The survey revealed that few women who left their housing because of FDV had a strong knowledge of the range of potential services and protections available to them. In large measure, women fleeing FDV relied upon informal resources—including family and friends—in order to make the transition away from the perpetrator. Overall, the women’s responses suggest significant resource constraints in the sector and critical gaps in the provision of services. These challenges are further exacerbated for women and their children from Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse (CALD) backgrounds.

### Survey Instrument and Participant Recruitment

The main objective of the online survey was to ascertain the problems and ongoing issues with current residential tenancy laws and to identify ways of assisting women and children with an easier transition from a violent relationship to a safe living environments. The study also sought to gain insight into how FDV impacts on the housing outcomes of victims/survivors, and where they turn for advice and assistance when it is needed. The data was collected at a time when several Australian jurisdictions either had just made changes to their Residential Tenancy Act, or were reviewing the legislation.

The online survey was uploaded onto SurveyMonkey in September 2018 and promoted through various organisations<sup>23</sup> newsletters and social media sites. Some organisations approached to assist with participant recruitment declined. The Local Government Association was also asked to promote the survey through local government areas.

The recruitment of women into the survey took some time, and a subsequent Ethics approval was applied for (and approved) to directly recruit from the sample used in an earlier study. This prior research was undertaken by two of the research team (Moulding and Zufferey) in 2013-14 and investigated the impact of domestic violence on women’s housing, employment and mental health. Many participants in this prior survey had provided their contact details and agreed to be contacted if further studies arose. An email was drafted and sent to those women and the responses to the online survey improved.

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<sup>23</sup> Including tenants unions; shelter groups; legal services; migrant services; and councils of social services

In mid-January 2019, the University of South Australia's HREC Executive Officer received several complaints from men who claimed the online survey was discriminatory as it focused on women and children and failed to take account of the abuse experienced by men in the home. A local government in Western Australia, which had promoted the survey on their Facebook page, was criticised for assisting because of the perceived sexist nature of the research. The survey link was shared to the Facebook page of Domestic Violence Awareness Australia (a men's rights advocacy group) and several self-identified men completed the survey. On advice from the DSS, the survey was closed to stop further complaints and 'protest' survey completions.

A total of 149 people started the online survey. After removing those who identified as male ( $n = 32$ ), those who answered N/A to all questions ( $n = 4$ ), and those who stopped the survey at the section about 'your experiences of family and domestic violence' ( $n = 35$ ), the remaining 78 surveys were analysed.

## Demographic Variables: Online Survey Respondents

Table 1 provides a description of the characteristics of the survey sample. The majority of respondents were aged between 35 and 54 years of age (67 per cent). Just over half of respondents were divorced or separated (54 per cent). In terms of birthplace, this study has not been able to present the experiences and views of women from the non-English speaking population, with 90 per cent of respondents born in Australia, UK and Scotland.

Key characteristics not covered in Table 1 included:

- 99 per cent of respondents spoke English at home
- 9 per cent of respondents identified as being from an Aboriginal and/or Torres Strait Island background
- 90 per cent were Australian citizens and five per cent were permanent residents (one per cent of respondents were a provisional visa holder and one per cent were a temporary resident), and
- slightly over half (51 per cent) of the respondents had children under 16 years of age living with them.

**Table 1: Characteristics of the respondents (n = 78), %**

Characteristic	Per cent	Characteristic	Per cent
<b>State/territory residing</b>		<b>Region/country of birth</b>	
Northern Territory	1	Australia (includes external territories)—includes 9 per cent identifying as Aboriginal and/or Torres Strait Islander	82
Queensland	12	UK, Channel Islands & Isle of Man + Scotland	8
NSW	15	Western Europe	3
Australian Capital Territory (ACT)	1	New Zealand and Pacific Islands	5
Victoria	10	Central and West Africa	1
South Australia	28	Northern America	1
Tasmania	3	<b>Do you have long standing physical or mental health conditions/disabilities lasting 12 months or more?</b>	
Western Australia	27	Yes	49
Fiji (Australian citizen escaping partner)	1	No	51
Homeless	1	<b>Type of housing currently living in</b>	
<b>Age (years)</b>		Separate house	68
25-34	15	Unit/apartment/flat	12
35-44	35	Semi-detached/row/terrace/townhouse	8
45-54	32	Women's shelter	5
55-64	15	Caravan/camper/cabin	5
65-74	1	Ancillary dwelling (i.e., granny flat)	3
75-84	1	<b>Tenure of current housing</b>	
<b>Relationship status</b>		Renting privately	42
Divorced / separated	54	Outright owner/joint owner/paying off a mortgage	35
Married or de facto & living with spouse	23	Renting publicly	10
Never married	14	Living with parents/family	6
Committed relationship and living apart	6	Women's shelter	3
Not stated	3	Other	4
<b>Household's main source of income</b>		<b>Tenure of housing while experiencing FDV</b>	
Wages and salary	64	Renting privately	58
Government pension or benefits	32	Outright owner/joint owner/paying off a mortgage	22
Superannuation or investments	1	Renting publicly	4
Nil	1	Living with parents/family	4
Not stated	1	Not stated / don't know	9
		Other	4

Table 2 presents the description of respondents' current employment status where they were able to select multiple options. Approximately two-thirds of respondents were employed either full time, part time, casually or were self-employed. Correspondingly most respondents were earning wages and salaries (64 per cent).

**Table 2: Current employment status (n = 89)**

Employment status	Number
Full time employment	33
Part time employment	13
Unemployed	9
Casually employed	8
Home duties	8
Self-employed	5
Student	4
Retired	2
Disability pensioner	2
Other / prefer not to answer	5

## In-depth Interview Participants

Semi-structured, telephone or face-to-face interviews were conducted with 24 key informants between September and November 2018. Informed consent was given in writing prior to the interview. Most of the interviews were audiotaped and were between 18 and 34 minutes in duration.

Interviews were conducted with personnel from tenant, homelessness and shelter peak bodies, legal services, and women’s and family violence organisations. The interviews uncovered how current tenancy laws impact on women and their children escaping FDV; what is working well; and what could be improved. It is instructive to refer to responses in the informants own words in relation to two pivotal questions:

- In what ways has FDV affected your housing situation?
- How could women and children be better supported to live in housing that is free from violence and that suits their needs?

Tables 3 and 4 provide extracts from the interviews in the informants’ own words. Issues raised have been incorporated throughout the main body of the report.

**Table 3: In their own words—In what ways has FDV affected your housing situation?**

Now bankrupt, poor credit rating, poor lease rating.
I've had to move, leave my possessions and start over.
I used to be a homeowner but have now lost everything. In my financial settlement I lost my home however, I had to look at it as a possession in order to move on. I preferred to be safe and healthy rather than argue over bricks and mortar. I was reliant on others (my adult children) to give me a roof over my head for quite some time which can be absolutely soul destroying. In my early years, I was not able to sign a lease for any great length of time and so have been rather unsettled most of my life despite having a decent income so affordability has not been an issue (usually) although I know it is for others. I am no longer in a position to be able to purchase my own property and I now have no security. I am too old to enter into such a large mortgage and even rural properties are quite expensive to purchase. So, I guess domestic and family violence has had a huge impact which I could talk about forever.
Having to leave.
House gets smashed up his family are in town and get involved, his family then go after my kids, he refuses to give me money to [pay for] rent and food.

<p>It has affected my whole damn life. I left 11 years ago next month and I am still dealing with his shit, mainly via the kids and through child support—financial abuse, anyone?!</p>
<p>I moved out of our rental place and stayed at friends' places, before going overseas to travel to be away from the abusive partner.</p>
<p>I agreed to a totally unfair property settlement and received no child support for two children to stay safe. This resulted in limited financial resources with which to house myself and two children. My health was affected impacting on my earning capacity. I live in older style public housing.</p>
<p>It made me homeless for 4 years.</p>
<p>In the NT [Northern Territory], where I came to be safe as per police advisement: Special housing for my circumstances was advertised (via internet from Vic.) with 8-year-old picture perfect interiors, but were beyond habital [sic] upon arrival. I was 'told' to then stay in a hotel by the landlord/agency that falsified rental conditions (stayed at hotel 3 weeks believing they would find suitable accommodation/ rental &amp; pay hotel—they didn't). Please understand a lot of paperwork went into this subsidised property for women in my circumstances (the mattress had sex and blood stains, the shower &amp; toilet were broken and the cooktop hobs were melted, cleaners had been but cockroaches were everywhere). And I paid bond and 6 month's rent from Melbourne in advance.</p>
<p>I gave up a beautiful two story house to stay in a 50 year old disability house when I'm not even disabled. Housing Trust refused to help and said I was not homeless as I had emergency accommodation in Scotty's Motel.</p>
<p>I ended up homeless with nothing but a couple of things in a plastic bag, so sad. Couch surfing until ended up back in family home with step-parent who abused me as a child. No other options for months until I got together enough money for bond. Worst time of my life. And the guy walked away with everything.</p>
<p>I left a property I owned empty for over 6 months to avoid him knowing my whereabouts.</p>
<p>I was able to move back to my previous rented property but I had my own income, family support and no children. The violent partner was not my ex-husband and I have been single since that last relationship many, many years ago.</p>
<p>We struggled to pay rent due to financial abuse, and struggled to secure a rental due to having four children.</p>
<p>I moved into a garden shed &amp; a factory; I lived with friends; I lived with homeless people.</p>
<p>Having to go from owning to renting although for me that only lasted a few years before I could buy again.</p>
<p>As I had no rental history I found it very hard to actually get a place for us to live. It was my brother who provided financial backing to actually secure the house we now live in. My former partner has commenced family law proceedings which prevents me from selling assets, leaving us very vulnerable to financial stress and difficulties. Our situation is often quite bleak in a financial sense.</p>
<p>Restriction on where we could go/location &amp; what we could afford. Met with further stalking/ harassment in first couple of years when moving away. Pushed below poverty line after being left with his debts to pay &amp; having him &amp; his friends infiltrate my workplace by way of email/in person interviews &amp; cyberstalking. Kept isolated by fear of security issues or being messed &amp; meddled with.</p>
<p>I live in a tiny space. That's all that I can afford. At 53 we have literally nothing. I'll never have a house of my own.</p>
<p>I haven't been in a DV [domestic violence] situation for over 20 years (lucky me). But when I was, I was continually borrowing money and moving house because rent was unpaid. I ran out of people who could vouch for me and people who I could ask monetary assistance from.</p>
<p>I had to leave the house I lived with and move in with my parents an hour away. My daughter was sick and I had to travel to therapy, work and school. It was isolating and expensive.</p>
<p>I spent a lot of money paying rent for a property the perpetrator would not let me stay in. I now live in public housing, which I would have anyway because of health issues, but ironically being granted public housing was delayed because of DV. I had been living with the perpetrator, and the Housing Authority told me to find anywhere I could to rent even if it was in the same small town as the perpetrator even if it meant I had to remain in a relationship with him. They gave an undertaking that it would not affect my place on the waiting list in any way. I followed their advice and ended up paying rent for a place I couldn't safely leave the perpetrator to live in. The Housing Authority then went back on their undertaking and left me in violence for years. It was a difficult fight to get given public housing at all.</p>
<p>I am living at 10% of the lifestyle I had while married. Once I gained employment after 5 years of looking for work and up skilling I was able to purchase a small place for myself and start again at 55.</p>
<p>6.5 years after leaving, I still try and move every 12-18 months as the abuser finds my house and threatens me. Hard to find a place with limited income and children and pets.</p>



My family where unsupported [sic] me unless I paid then to rent I was treated like a tenant not a family member.
It damaged my relationship with my family for a long while e.g., allowing me to move back into the family home.
I now have to live with my parents due to being in debt from the violent relationship I cannot afford to live out of home.
My children and I were left homeless and were forced to live temporarily with relatives when we relocated to escape the perpetrator of the violence.
In my former marriage and divorce the psychological damage was immense. It impacted on my ability to fight for what I was legally entitled to. The female lawyer I had washed her hands of me because I was too frightened to go against what my ex told me I should get. I didn't qualify for Centrelink as assets were in my name including shares which I never benefited from. I therefore, though blessed to have assets (the family home), lost about a third in counselling, medical costs, relationship debt, my confidence to negotiate housing and to obtain a job. I could not afford to rent. I had to sell the house to pay the debt on the car.
I've had to move further away from work and everyone I know to be able to afford the rent as it was too high in the area I was previously living.
Had to leave my home and EVERYTHING I own. Was a home owner and since leaving (9 years ago) have been in rented accommodation.
Getting on financial feet with small children and having money cut off from ex. Being able to afford rent and bond deposits in the initial stages.
Had to move countries, move house, put possessions in storage and sleep on a mate's couch, as I couldn't afford two rents.
I'm homeless and can't afford to rent and lost my kids.
Forced me to move when I didn't want to.
Homeless for a period to time—living in a women's shelter for several weeks with infant until further accommodation could be found
Relationship abuse, double life situation, devastating!! Lead to 4 years of living in car, house sitting, couch surfing with a child & dog before finding a co-op house. Suffered PTS for 5 years. Then the co-op was run by a controlling bully for 5 years...became an association thank goodness.
No money.
It left me fearing for my life because I was financially and emotionally not able to leave the rental property for 12 months after the intervention order was in place. As a renter I am already treated in a way that shows I have very little rights, they are not as important as the owners and I must live with the uncertainty of renting that is influenced by a range of real estate agents whose agenda has nothing to do with my safety, my dignity or my self-efficacy as a human being and everything to do with protecting a third party's profit.
I was homeless for about 4 weeks, living with friends and relatives. I am having to pay a lot more money in rent and have had more financial stress because of having to pay a larger bond, moving fees, electricity/gas/mail redirection fees, etc.
I can't get rental now because my tenant record is terrible it also has an impact on my son.
My ex-partner is still on the lease because I was told a full exit inspection needs to be done and new lease drawn up to take him off it. I am worried I'll be forced into 12mth leases I can't commit to and need shorter terms available.
See above. It was really hard to find a place to rent. I have gone on to be able to find work and buy my own home. That's so hard to do now, so options for people on a single income need to [be] changed to make tenancy secure and reasonable.
It's made it very hard to maintain rental properties due to the history of past rental experiences, and damages to homes. Also having not always able to pay went due to partner's drug addiction and violence.
I incurred costs due to damages he did in multiple homes or that his pet cat caused. I had to take time off work to repair these items etc. he would not work and relied on my finances, so although I worked long hours, I was never able to save anything and my wages went into a joint account. At the end of the relationship he withdrew what was left in that account leaving me unable to pay rent (\$420 per week for 2 months). I was lucky to be accepted for a very small cheap rental (known drug house) at a cost of \$220 per week. Due to ongoing MH issues due to FDV I have had to reduce my work hours again leaving me struggling to pay rent and other bill incurred due to my ex.

Near bankrupt
No real estate will rent me a house and give me no reason why not.
Homeless, living in cramped conditions with parents with my 2 children. Cannot find affordable property as yet. Been knocked back for properties I have applied for. Driving my kids to their school which takes 25 minutes each way. Kids are stressed, I am stressed.
Unfavourably.
Limited housing options now. Currently living in a women's refuge with no foreseeable options.
Damages to property—no security feeling unsafe—housing maintenance very poor.

**Table 4: In their own words—How could women and children be better supported to live in housing that is free from violence and that suits their needs?**

More secure and safe housing available Australia wide.
Availability, accessibility in safe neighbourhoods.
<p>Women's shelters are a great place to get them started again and to find support however, the length of time women can stay is very short and inadequate for being able to regroup. From a tenancy perspective, the Department of Housing needs to provide more residences which should be available for such circumstances or at the very least, provide rental payments for up to 3 months for those who must seek private rental arrangements as affordability is a huge restrictor for most. Remember that it's not only women and children who are affected. Men are also victims of family and domestic violence and this also needs to be reflected and considered or else we are allowing a vulnerable group to go unsupported. Victims need to feel confident that they are supported in order to make the break in the first place. It simply needs to be legislated that leases can be broken without penalty in certain circumstances. Unfortunately, whatever we do will be open to abuse from a small number of people so there should be some onus on burden of proof (police/medical reports etc.) as there is a risk that investors will stop renting to victims and of creating an additional group of 'homeless' people who will be at further risk of predatory activities when in such a desperate situation.</p>
Have group / share common areas housing. Individual homes in a safe/gated environment e.g., over 50s housing.
Have local services that are not related to his family nor Aboriginal housing staff based in town not in Northam more support for my kids in town emergency money to flee town available at all times not having to ask for it thru Northam.
Shoot the perp?! Make child support payable by the government who then get it back from the payer, so they can't just stop paying. Increase the rate of Newstart and rent assistance. Don't assume that everyone is renting when the shit hits the fan! Make it easier to access public housing and increase the amount of public housing available i.e., make what already exists liveable.
The government could start a scheme for people to buy investment properties to provide long-term rentals for survivors of domestic violence and their children. The scheme/rents should be subsidised by the government in some way. The houses should be new houses in some of the areas where the government are rebuilding suburbs like St. Clair and West at West Lakes. Women and children leaving violence should not have to live in old, poorly maintained houses in low socioeconomic areas.
Tenancies not allowing perps in and checking in to make sure that's being enforced.
Quite honestly—A rental advocate for rape & domestic abuse survivors who can check all is above board, true and correct in advance of committing to falsehoods.
It's not about supporting the women it's about fixing the perpetrators heads, and for people to stop sympathising and blaming women for the abuse they suffer.
Single women with pets and kids are always the last one's landlords want to rent to, regardless of violence etc. its sex discrimination. The way of the world! And women don't expect any better. Educate women about their rights and implement audits of real estate agents by an independent body—at the moment they regulate themselves! No accountability! Why would they change?
Giving priority to these people by landlords as part of law.
More emergency housing—for emergency short-term help.

<p>I really do not know. This is a social and legal issue and many laws need to be changed. Until women are financially independent and childcare is free and available to women who are financially vulnerable. A medium to high income household does not mean the woman has this level of income or access to the household income.</p>
<p>Assistance to find and secure a house. In WA the option of Bond Assistance cover's the 4 weeks bond, plus 2 weeks in advance as a loan. In NSW it only covered 3 weeks of the bond, there for there was an excess amount of money necessary in emergency situations.</p>
<p>More security. Secret addresses. Better Police cover.</p>
<p>Not being penalised for limited history in their own names.</p>
<p>Gated communities—Registered property managers/agents of white ribbon or DV orgs that assist victims.</p>
<p>Having support for non-government housing as not everywhere has public. We need safe, affordable housing.</p>
<p>More investment opportunities from the private sector for public housing.</p>
<p>A Security system would have kept me safe and supported his stalking. He still stalked me on home detention.</p>
<p>I live in public housing and have been abused and terrorised since I got here. I was put into a building where seven out of my nine neighbours were criminals, and despite speaking to Housing staff about my desperate situation they placed more dangerous criminals in the units immediately next to mine—one a meth-addicted sex offender just released from prison. Despite my right to quiet enjoyment under the tenancy act, Housing refused to act, or even action my complaints. Eventually nearby residents went with me to my MP, who went to the Minister for Housing. This forced the Housing Authority to do what they should have, and the violent sex offender was evicted. However, resentful staff then told that tenant that I was responsible for his eviction (a breach of policy and a tenant's right to privacy) leading me to being terrorised by groups of his violent associates who threatened me with rape and murder and attempted to force their way into my unit on a number of occasions. I attempted suicide and ended up having a complete breakdown and did not leave my unit for years—not even going to a supermarket or doctor for desperately needed medical treatment. A bit of care in choosing safer neighbours or properties for women leaving violence would help.</p>
<p>Apprehending and imprisoning the perpetrators under laws that don't diminish the behaviour because they are in a relationship. Knowing who they can call or talk to if safe to do so. Having access to funds that can pay the bond and rent in advance. That is what kept me in my situation—no money to get out with. It is hard to live free from violence when the offender is still out there in the street and your kids have to spend the weekend with him.</p>
<p>An awareness that having low income and pets doesn't mean we aren't good tenants.</p>
<p>Better access for women with pets too.</p>
<p>More services, more funding for those services, more/better education to property managers and landlords.</p>
<p>The creation of more public and community housing, the promotion of private rental properties available to women in these situations with more flexible rental arrangements, government departments taking a more integrated approach to housing and violence.</p>
<p>I can't really comment on this having not entered a residential tenancy. I do feel your study could have the scope at some time to include those women who have been impacted as I have :)</p>
<p>More information and knowledge.</p>
<p>Access to an interest free bond loan, regardless of financial circumstance.</p>
<p>Affordable housing in locations near schools and doctors and child care with access to information on support services and interest free loan schemes, good will etc.</p>
<p>Knowing help is available and readily available.</p>
<p>Better security. Empathy.</p>
<p>More choice available, I'm in a very small house not suitable for my needs. Also child support payment should not be counted as income, especially for low income earners. 15% of Child Support was counted as income effectively charging a child rent!! Treating a person with trauma as a respectable, intelligent member of a dysfunctional society, not the other way around. More streamlined access to the minefield of contacts &amp; organisations needed to remedy their lives, such as case workers as guides.</p>
<p>They need to know what their rights are, not by a pamphlet but by a phone call or personal letter. A person to intervene on their behalf with real estate agents and landlords. Education for the agents and land lords. Renters to be supported to exercise their rights without detrimental backlash from agents etc. a system that enables those most disaffected to have their say.</p>

Make more priority housing available. Have easier access to transfer bonds.
Cheaper rentals available. Also, a database, app or something for women looking to share in similar situations that don't want to go to refuges with their children.
Make them pet friendly. Near public transport. Understanding property managers etc. Longer time between inspections. Leniency to store belongings in garage/carport etc.
Privacy protection is vital. Minimum standards for housing should include security measures such as doors, windows, locks etc. It won't keep a perpetrator out but will help people to sleep a little better. Make long-term tenancy a real option. No such thing as a three month tenancy. Community support that is non-judgemental and genuinely supportive. Make Tenancy advice extremely accessible. Real estate agents and landlords need to be legislatively obliged to provide a good standard of accommodation with long leases and rent control to CPI max and ideally less. Breaking a lease owing to threats should be streamlined, along with moving assistance.
Making more available housing and services.
More services, funding for brokerage, books not being closed on services, more assistance for people with mortgage not just jobless people.
To listen to their needs and give them a chance to get themselves a good name for credit.
Provide security on property and have an escape plan.
Remove my partner (who was violent) from the house.
Support with gardening. Fencing and security. Reduce bills for women experiencing financial hardship.

## Conclusions from Primary Data

Primary data was collected on the lived experience of women and children fleeing violence in the home. The processes of the Ethical Conduct of Research ensured that the data were collected in an appropriate and respectful manner. but could not buffer the research from the concerns of one small, aggrieved group. Despite this fact, a substantial volume of high-quality data was collected, and these outcomes are now discussed in the main body of the report.

## Survey Results and Interviews Outcome

This section of Chapter 2 focuses on the outcomes of the online survey and interviews with staff of organisations working in FDV and housing policy, services, and advocacy. The survey was uploaded to Survey Monkey in September 2018 and provides insights into women and children's experience of FDV and their housing situations, and into informants' views of the problems facing women and children. The survey uncovers who women turn to for housing, legal and other support; how economically insecure some women are after they leave, and the experience of others who can save a small fraction of their income. The section on the online survey concludes with a discussion of the issues with Residential Tenancy Acts (RTA) that make life difficult for women and children fleeing FDV. We also hear from the women with respect to their suggestions of potential solutions that could enhance the transition from violence in a house to a safe and affordable home.

## Online Survey and Interview Results

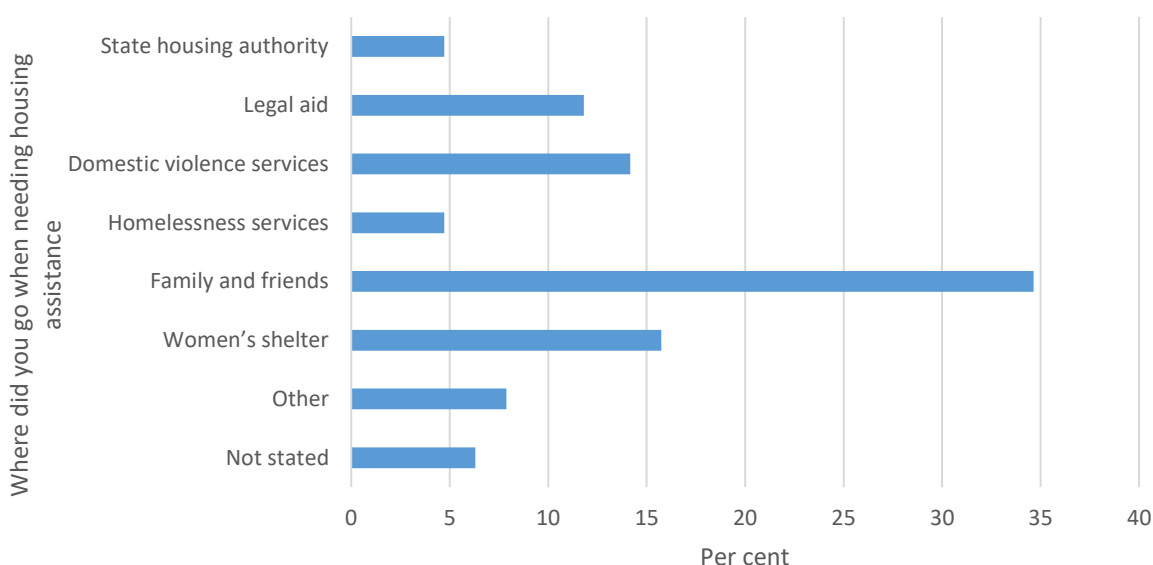
### Housing

At the time they were experiencing FDV, 58 per cent of respondents were living in private rental properties and 22 per cent were living in dwellings as the outright owner, joint owner or paying off a mortgage.

Table 1 in the previous chapter outlined the housing situation of respondents at the time they completed the survey, which in most instances was after they had experienced FDV. At the time they

completed the survey some 42 per cent were renting privately and 35 per cent were the outright owner, joint owner or paying off a mortgage. Those renting public housing increased from 4 per cent while experiencing FDV, to 10 per cent at the time of the survey. Over 80 per cent of respondents had to move out of their home because of FDV.

Respondents were asked where they would go to access housing information or accommodation. Figure 2 shows that the majority of respondents (35 per cent) would turn to their family and/or friends when in need of housing assistance. Others approached women’s shelters (16 per cent) or domestic violence services (14 per cent) when seeking housing assistance, and 12 per cent of respondents sought housing assistance from a legal aid organisation. Counterintuitively, few respondents approached homelessness services (5 per cent) or state housing authorities (5 per cent) when seeking housing assistance.



**Figure 1: When you were experiencing, or leaving, violence in the home, where have you gone when needing housing assistance (information or accommodation)? Tick all that apply (n = 127), %**

The survey asked respondents ‘In what ways has family and domestic violence affected your housing situation?’ Two-thirds (67 per cent) answered this question, with the full responses provided in Appendix 1. One of the more succinct responses to the way FDV had affected the women’s housing situation was ‘**unfavourably**’. Some women had experienced homelessness and very few had managed to rebuild their lives. Many women still experienced bouts of homelessness and housing insecurity decades after FDV first impacted their wellbeing. Older women in particular lamented that they will ‘**never have a house of my own**’ and they were ‘**no longer in a position to be able to purchase my own property and I now have no security**’.

Our informants from the housing and FDV sector made the following observations:

- There is a chronic shortage of appropriate, affordable and safe housing for women and children, especially if on low income;
- Private rental housing means ‘precarious tenancies’ plus limited security and housing market and system issues as well as competitive and expensive on top of housing costs that rise faster than wages/benefits. And there is also discrimination;
- Public housing is needed in greater volume. There is a limited housing stock and individuals may receive only ‘one offer’ and women must accept an offer (even if not safe);

- Social housing is better—but more is needed, access is limited, there is a long wait and difficult to be transferred within and across community housing providers;
- Emergency accommodation is crisis focused and not prevention focus;
- Women have limited choices and quality and safety of housing that they can access;
- AirBnB is a problem because housing is provided for tourists, not locals, which results in increasing costs;
- Women in private rental and homeownership who ‘stay at home’ end up homeless or in crisis 12 months after separation due to all the resources being thrown into sustaining mortgage or rental; and
- Aboriginal and Torres Strait Islander women face overcrowding with other family members coming to their home. There can be family violence within that home which puts women’s tenancies at risk.

## Mobility and Geography

Fifty per cent of respondents had to move to a different geographical location, interstate or overseas because of their experience of FDV.

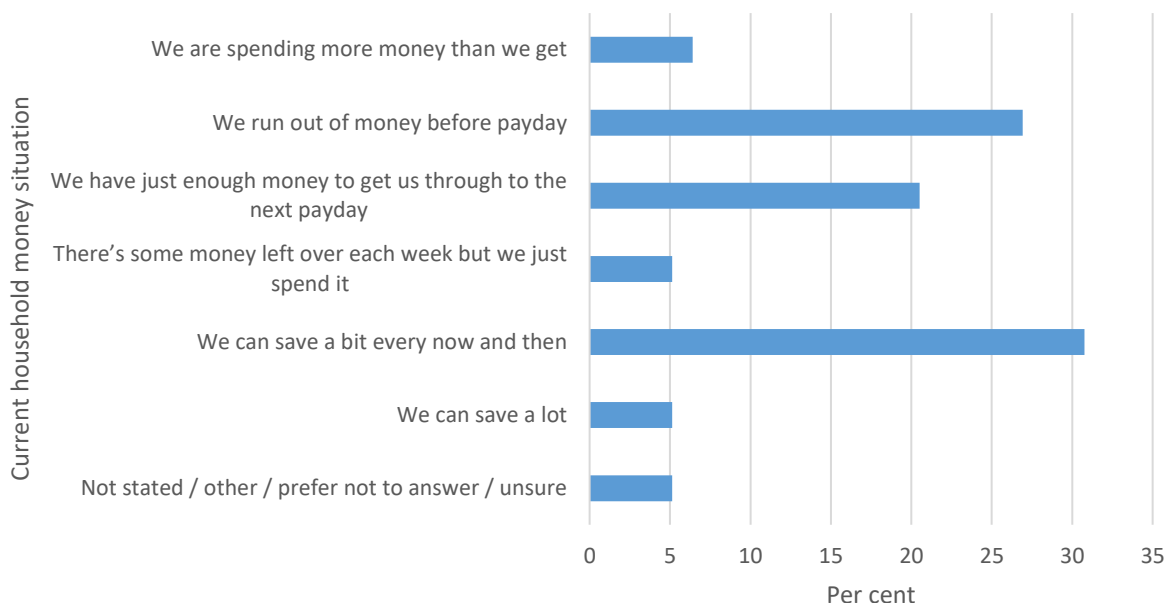
The absence of practical and financial support caused stress for women and their children as they sought to leave an abusive relationship, and when trying to get back on their feet and into secure housing. Several mentioned having to move to housing that was further away from family, friends and work, sometimes entailing long commutes and which ‘**was isolating and expensive**’. One respondent had to move overseas to escape the perpetrator. Others mentioned their sorrow at having to leave their long-term homes, their possessions and at becoming reliant on friends and family for a roof and the loan of some money.

Sector informants commented on:

- The fact that mobility factor needs to be factored in—women are forced to leave their residence time and time again;
- Locational safety from perpetrator in geographical areas with smaller population groups—some emergency accommodation options not suitable as perpetrators know where they are;
- For Aboriginal and Torres Strait Islander women in crisis leaving the home represents an emotional, physical, mental and spiritual upheaval. It is a huge decision for women to leave, ‘left everything they’ve known’, all they come with is ‘a candy stripe [\$2] bag’, trauma, sometimes the house is in their names and they are the one to leave and the perpetrator is still there, which creates financial insecurity. Achieving stability when in crisis is ‘not a quick fix’.

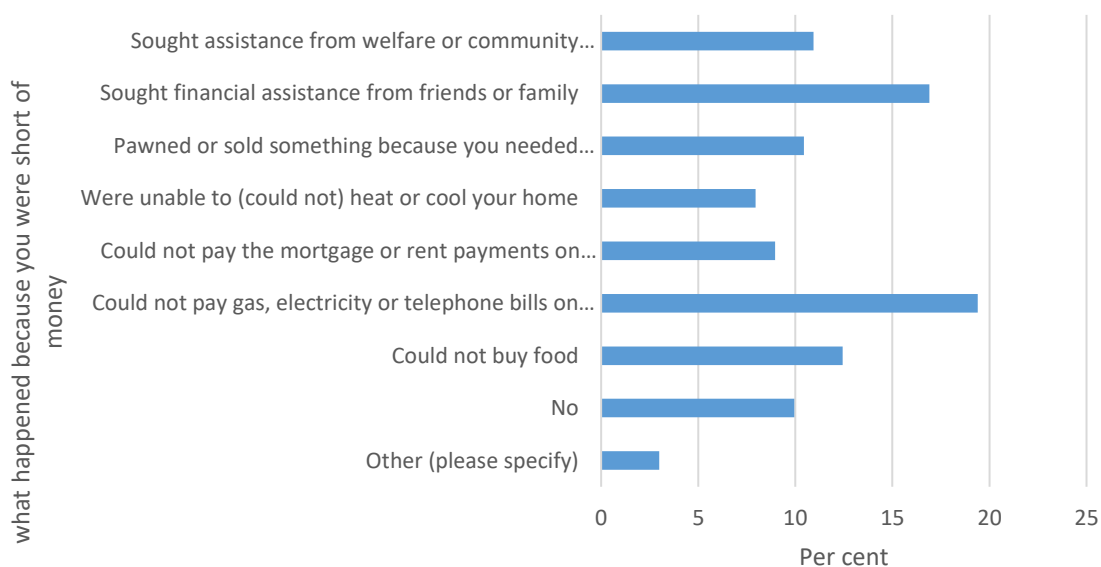
## Finances and Debt

Respondents were asked to select the options that best reflected their current financial situation. As shown in Figure 3, 31 per cent of respondents said they were able to save some money every now and then, and a fifth responded that they had just enough money to make it between paydays. Five per cent of respondents could save ‘a lot of money’, and another five per cent have some money left over each week. However, over one-quarter (27 per cent) of respondents ran out of money before payday, and a further six per cent of respondents spent more money than they get each week.



**Figure 2: Current household money situation (n = 78), %**

Respondents were asked about a range of financial situations for their household in the last 12 months and were able to select multiple options. Figure 3 shows that 19 per cent of respondents could not pay utility bills on time and 9 per cent could not pay their rent or mortgage on time. Twelve per cent of respondents could not buy food and eight per cent could not heat or cool their home. There was an even split of 10 per cent of respondents not experiencing any financial hardship in the 12 months prior to the survey, and 10 per cent who had pawned or sold something because they needed money. Help was sought from family and friends by 17 per cent of respondents. Two respondents selected all of the options regarding their financial situation.



**Figure 3: In the last 12 months have any of these happened to you because you were short of money? Tick all that apply (n = 201), %**

Fifty-one per cent of respondents could get access to \$500 in an emergency, 37 per cent could not access \$500, and 12 per cent of respondents did not know if they could access \$500 in an emergency.

Sector informants noted:

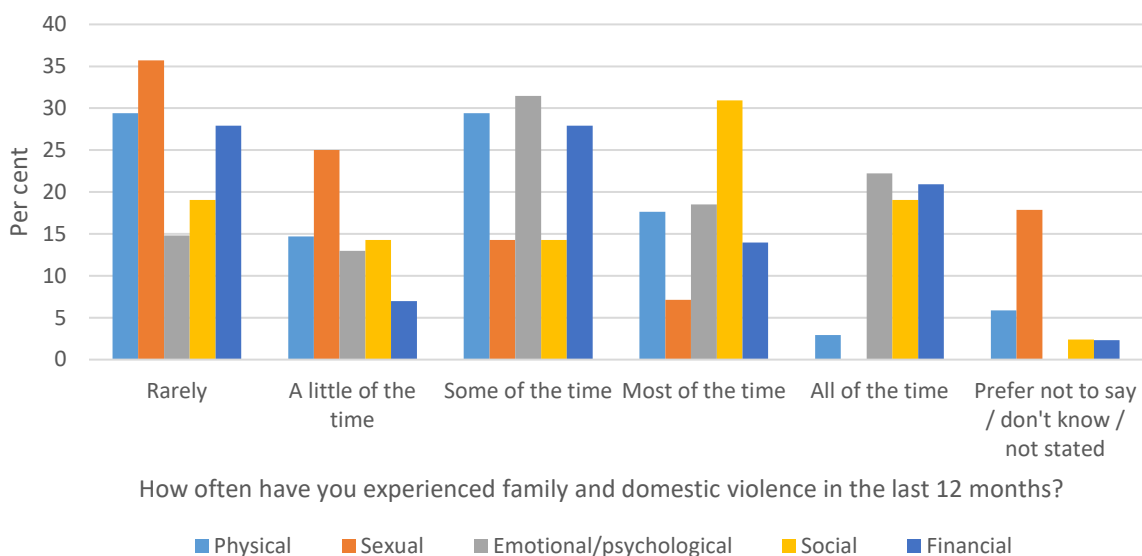
- Debts and evictions because of FDV are a major challenge as the financial barriers are huge. Financial and economic abuse affects housing. Financial issues associated with court fees and cost of housing can lead to bankruptcy;
- There are substantial financial burdens of family court fees, processes and perpetrators contesting orders;
- Damage to property, women being held responsible for damages and debts caused by perpetrators;
- Many affected women have low incomes because of Newstart. Leaving a relationship often means loss of income and housing;
- Women are often evicted due to rent arrears in FDV;
- Rental tenancy bonds and bond loans—women can lose bonds and get into debts and cannot get another bond;
- ‘Digital brokerage systems’ are a major risks for women fleeing FDV as funds are often sought for bonds, housing costs etc. And, ‘when people are desperate they will do anything to get an outcome in a real quick manner’ (Tually et al, 2017);
- Taking over tenancies adds to costs for women and there is little uptake when in crisis. The need to find safety, and deal with a range of risks is made more difficult by the fact that perpetrators not responsive to legislation;
- There is little capacity for women to get beyond the presumption of joint liability; and
- One issue is women on temporary, provisional, bridging, insecure and spousal visas, who are not residents/citizens, without income and not eligible for any government financial supports. The perpetrator can use that situation as part of the abuse against them. These women have no options, they are vulnerable, living in insecure or inappropriate housing, some are being supported by FDV services (for free). They are an especially vulnerable group of women who cannot access rental housing.

## Health, Violence, Safety and Support

As noted in Table 1, 49 per cent of respondents stated they had a physical or mental health conditions, or an impairment or disability that had lasted 12 months or more. The main health conditions mentioned by respondents were: depression (18 per cent); anxiety (14 per cent); and post-traumatic stress disorder (12 per cent).

Figure 5 highlights the types of FDV experienced by respondents in the last 12 months. The ‘not applicable’ response selection has been removed for ease of interpretation of the figure and is included in Table 5. As can be seen, sexual violence is the least reported type of FDV, although a sizeable proportion of women declined to respond to this question, more than for any other type of abuse. Nearly 70 per cent of respondents experienced emotional/psychological FDV. This is apparent in Figure 5 with nearly one-third (31 per cent) of respondents reporting that this happened ‘some of the time’ and a further 19 per cent responded that it occurred ‘most of the time’. Nearly one-third (31 per cent) also experienced social FDV ‘most of the time’. Over one-quarter (27 per cent) of respondents had experienced all listed forms of FDV to varying degrees.





**Figure 4: In the last 12 months, what types of violence have you experienced from a partner or family member? Tick all that apply (n = 78), %**

**Table 5: In the last 12 months, what types of violence have you experienced from a partner or family member? Not applicable response (n = 78), %**

Type of FDV—not applicable	Percentage
Physical	56
Sexual	64
Emotional/psychological	31
Social	46
Financial	45

An interim or final intervention order was in place when the respondent experienced FDV in 27 per cent of cases—71 per cent did not have an order in place at the time they experienced FDV. In 78 per cent of responses the perpetrator was a former cohabiting intimate partner, a further 10 per cent of respondents identified their current cohabiting intimate partner as the violent person, and six per cent stated a close family member (including son, daughter-in-law and father) inflicted the violence.

Eighty-five per cent of respondents did not receive any support from a community or other organisation to remain safely in their home. Of respondents who did receive support to remain in their home, most respondents nominated they had multiple supports, including a risk assessment (27 per cent); safety planning, including development of a safety plan (27 per cent); and a further 23 per cent answered they received case management and support.

Informants working in the housing and FDV sectors observed that:

- There is often a fear of leaving the relationship and disclosing the abuse because of subsequent risks to safety;
- Safety for women calls for specialist legal advice and integrated social supports;
- There is limited assistance for women who must move interstate for safety issues;
- There is scope for good respectful relationships/understandings between FDV and housing sectors; and

- Legislation does not cover women’s immediate safety needs ‘how to leave now’. They can become homeless with ‘nowhere to go’, stalked by perpetrators and must move again. This represents a huge disruption to women and children, who often forfeit their bonds and face adverse listing on tenancy databases.

## Discrimination

Many women who leave FDV are confronted by consequent discrimination in the housing market. The interviews with informants considered this issue in some considerable detail and noted that many women are:

- Discriminated against by landlords when they disclose they have a protection order or when they are seen to fit a less sought after category of tenant such as a single parents, large family, persons from a CALD background or Aboriginal families;
- Rental agencies often advise landlords in ways that are adverse to women and children fleeing FDV. Common messages include: ‘Choose this person. They don’t have children. They don’t have pets. They’re not students. They’re great’;
- If women have experienced FDV they are not seen as ‘ideal tenants’; single mothers on low income are commonly ‘screened out’ in private rental housing;
- Aboriginal and Torres Strait Islander—Discrimination compromises tenancies, even when women are good tenants, complaints of ‘we don’t want them here’. Women are already traumatized by FDV and the added trauma of confronting discrimination and racism in their day-to-day lives has a very negative impact. Especially when they did not experience this before when they were with their family and community.

## Information and Education

Informants working the domestic violence and homelessness sector had strong views on the need for better information and education. They noted that:

- Women do not know their rights;
- Women need to go through a tribunal, this takes time and is a bureaucratic processes;
- Some tribunal members do not understand FDV and need education so they deliver better outcomes for affected women and families;
- There is a need to improve consumer knowledge of rights under the law and tenancy advocacy information for private renters;
- It is important that legal services, crisis and domestic violence services are given supports and resources to case manage CALD women in a holistic way. All services need to be trained to work appropriately with CALD women;
- Police—do not feel equipped or trained to interact with CALD women, especially when there is need for an interpreter. Women seek to record an incident or apply for Apprehended Violence Order (AVO)—but that service is often not provided because police cannot locate or do not know how to access an interpreter, which has ‘huge ramifications’;
- Provision of information for CALD women in their own language is lacking; education campaigns for CALD communities about housing, FDV and relevant legislation are needed (e.g., ethnic radio stations etc.) is very much needed;
- Laws differ from jurisdiction to jurisdiction. FDV and tenancy laws are very complicated for women of CALD background. If recently arrived, language barriers, limited networks outside own communities and cultural and legislation differences impede access to appropriate advice. In community legal services the majority of clients are of CALD background and many are affected by FDV. Some services don’t have the resources to pay for interpreters—many

tenancy tribunals do not have interpreters, so individual women cannot interact with legal system in an equitable way. Moreover, women don't always seek legal representation;

- It is very difficult to navigate the system while 'under stress' and on a temporary visa;
- The vulnerability of CALD women is related to their housing. They are often in large families with 6-8 children and it is important for tenancy laws to enable women and their children to stay together in appropriate housing.

## Residential Tenancies

### *Issues: Bonds, Adverse Listings on Tenancy Databases, and Leases*

When asked if they were aware that they could obtain legal advice to assist with *rental agreements* 49 per cent of respondents were not aware they could access this assistance, with only 42 per cent were aware that they could obtain legal advice. Thirty-five per cent of respondents obtained legal advice. Of the 56 per cent who did not obtain legal advice most (37 per cent) did not know about the service and a further 24 per cent did not qualify for legal aid. Some (7 per cent) mentioned the distance to get the service was a hurdle, and for others time, shame, anxiety, fear and trust were also mentioned as barriers to obtaining legal advice.

Respondents were asked if they had stayed in a FDV situation because of difficulties with a tenancy lease. Thirty-five per cent stayed in a FDV situation because of fears around their housing. Of those who stayed in the FDV situation, 50 per cent stayed longer than 6 months; 11 per cent stayed for 4 to 5 months; 19 per cent stayed between 0 to 1 month; and a further 19 per cent stayed for 2 to 3 months. Just under half (49 per cent) did not stay in the abusive situation for this reason because of difficulties with a lease.

Seventeen per cent of the women reported that they had had their details listed for breaching the tenancy agreement (despite not offending). Just eight per cent of the women had sought removal of their details from the residential tenancy database. Nearly a quarter (23 per cent) of respondents did not know if their details were listed on a database, and 17. Half of the survey respondents had not had their details listed on residential tenancy databases for breaching their tenancy agreement despite the breach being caused by the perpetrator or someone else.

Nearly one-third (32 per cent) of the respondents to the survey have been liable to pay for damage to a rental property caused by a violent partner or family member. One-quarter (24 per cent) of the respondents had a landlord who imposed a lease breaking penalty and/or took a large portion of the bond.

Various issues around tenancies were considered by the housing and FDV informants and they noted:

- Many women face being adversely listed in tenancy databases;
- There is no provision for pets in housing legislation and women do not want to leave pets. The sector tried to bring in 'pet bond' but this is an extra cost for people on low incomes;
- No-cause evictions (e.g., in NSW) are a major difficulty for women affected by FDV;
- Biggest issues are 1) being able to leave tenancy early ; and 2) getting the partner taken off the lease and then getting locks changed, security camera installed etc.;
- There is a power imbalance between consumers and landlords in private market—no security for tenants, limited long-term leases—is there some way of regulating rent?;
- There are many practical hurdles to be overcome to implement legislative protections. For example, women need to have court orders (e.g., intervention order, AVO, family violence order, domestic violence order) to exclude someone from lease;
- Most women do not apply for court orders as they are not timely, responsive or practical for women in crisis. The burden of proof is on women and there are barriers for CALD and Aboriginal women. In reality there is considerable diversity in the experience of individuals

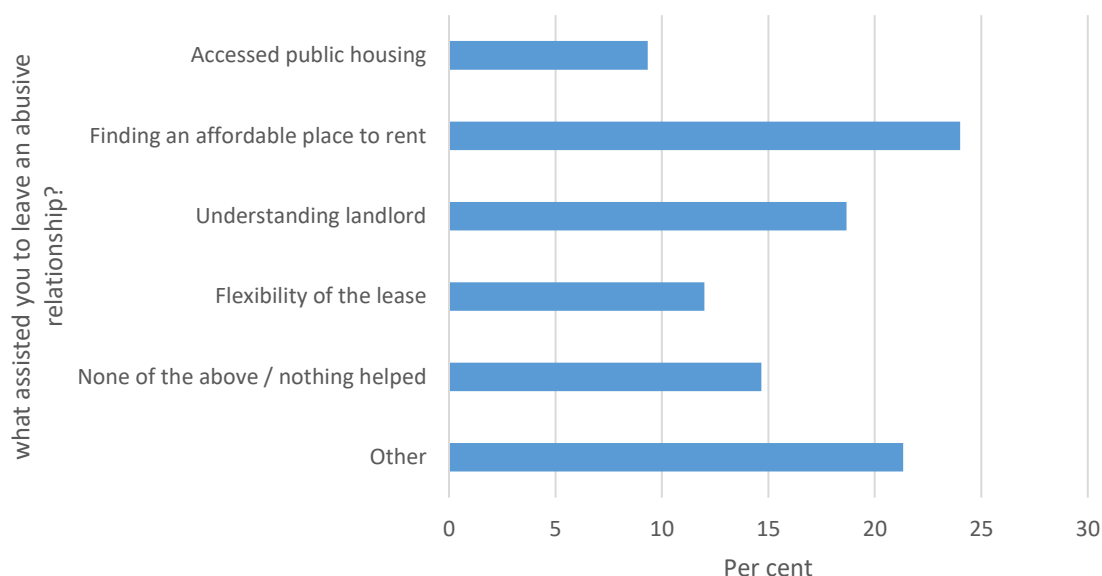
fleeing FDV. There is a need to recognise discrimination, safety issues, and the fact that the perpetrator can contest the court order. These impacts are compounded by fear and the absence of knowledge;

- Legislation needs to be monitored and proactively implemented (e.g., Tasmania has minimum standards, but no landlord has ever been charged for breaching it); and
- Different legislations—under different portfolios that ‘don’t match up’.

*Solutions: Information, Programs, and Affordable and Safe Housing*

The most important factor identified by respondents to assist women to leave an abusive relationship was securing an affordable place to rent (Figure 6 highlights these responses). One respondent stated that the ‘Property manager allowed me to extend the lease without my ex-partner’s signature. He is still on the lease’ and another simply stated ‘it was way more complicated than that’. One woman mentioned the complexity of understanding your rights as a tenant and community attitudes to FDV:

I was fortunate enough to be well informed. I had been in a women’s shelter many years ago and I am also a Criminology Student with a Legal Studies major. After many years of ‘finding out for myself’ (usually the hard way), I am confident about my legal rights and in being able to apply them, but this was not always the case. There is still a huge stigma around family and domestic violence, and I have found that it is still a taboo subject, particularly in the workplace. I work in local government but have also worked for state government and the attitude is, that the issue is an ‘inconvenience’ which is disappointing. Real estate agents tend to try to do the right thing by their tenants but sometimes they are hamstrung by their landlords who are not so flexible or understanding. I am able to read and interpret Acts and legislation, so I am luckier than many others I have met.

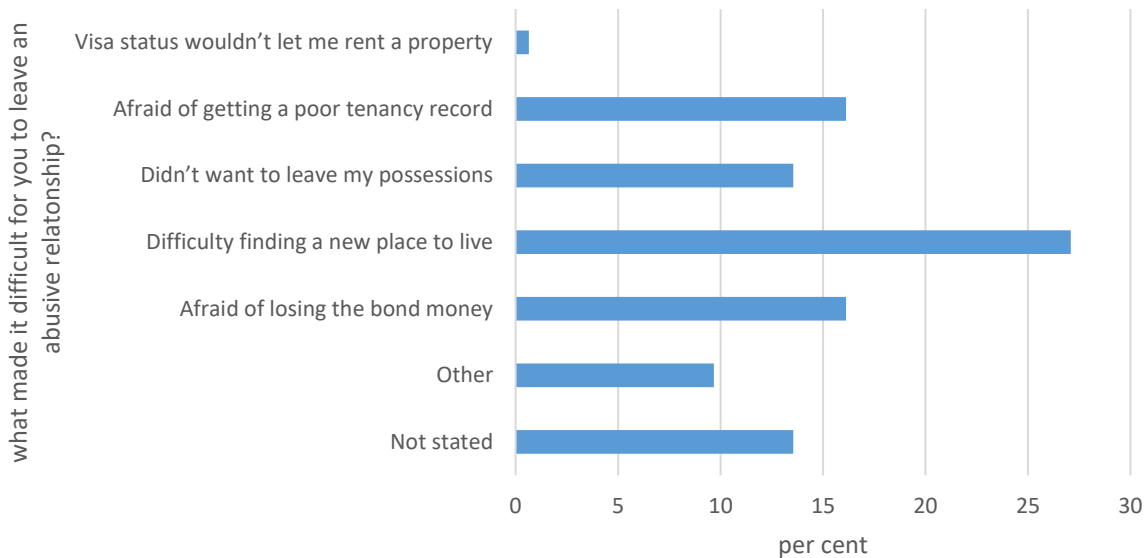


**Figure 5: What was it about residential tenancy rules that assisted you to leave an abusive relationship? (n = 75), %**

Respondents were also asked to list up to three things about residential tenancy rules that made it difficult for them to leave an abusive relationship (Figure 6). Over one-quarter (27 per cent) of respondents said that the main difficulty was finding a new place to live. Some mentioned the lack of finances to afford rent or to pay the bond up front made life difficult. Others mentioned discrimination

against single women in the rental market and only being able to afford isolated dwellings. The following statement also highlights the difficulty of renting if you do not have a rental history:

I had no recent private rental history could not get references to rent which meant that I wasn't able to be considered as a tenant for almost all properties. Hence, I rented an isolated, undesirable place too near the perpetrator to be safe but was then trapped because of the repeated 6-month leases. On a pension, I could not afford to break a lease and pay rent until they found a new tenant as well as pay rent for the new property, not to mention removalist costs.



**Figure 6: What was it about residential tenancy rules that made it difficult for you to leave an abusive relationship? (n = 155), %**

The sector informants were asked to offer their insights into key policy issues, including potential solutions for women and families fleeing FDV, ways to enhance cultural awareness, the steps need to improve housing and homelessness services, advocacy, and the scope for further legislative reform. Their responses to these topics are set out below:

**Solutions**

- There are potentially helpful models being implemented across Australia, one example being the Domestic Violence Prevention Council (ACT). While its current focus is on children and young people, this independent statutory body can, as it has in the past, extend to monitoring and inquiring into any issue related to FDV as requested by the Minister. The body is also working to develop an integrated response that provides a forum for government and non-government organisations to collaborate (Domestic Violence Prevention Council 2020);
- Some women decide to stay, so there needs to be good perpetrator programs to address men's behaviour change.

### *Cultural Awareness*

- This issue was considered by Victorian Aboriginal Legal Services (August 2015) in their consultation paper around Residential Tenancy Act Review. It is an important resource for further progress in this field;
- In South Australia, the Aboriginal Homelessness Managers Group has met with the government to:
  1. re-establish Aboriginal Housing Authority in SA (which was dissolved in 2007 and resulted in increased numbers of evictions, debts, limited access to fair social assessment and unskilled staff with respect to cultural knowledge etc.);
  2. introduce a review of tenancy laws from a cultural lens. There is a need for reforms that match the requirements of Aboriginal clients, that better overcrowding, cultural and family obligations, culturally appropriate housing, less inappropriate, debt, child removals etc.; and
  3. see implemented a transitional housing facility and cultural healing centre;
- There is a need for quality training in cultural competency and cultural safety awareness. There is a need for principals/cultural consultants in housing authorities as well as enhanced training for staff; and
- There is a pressing need for training in cultural awareness for FDV services and clients to understand their legal rights and expectations in tenancy, appeal processes etc.

### *Continued Legal Reforms and Their Implementation*

- Changes to RTA are applauded and necessary for women who want to terminate lease or stay etc. Provides more options. Women may want to stay 'safe at home', remove perpetrator—or may want to terminate lease due to safety issues.
- Law Council of Australia—Justice Project; Victorian Consumer Affairs—overview of legal reforms.
- Not all RTA reforms are before state parliaments (e.g., need to table in NSW). Do this; lots of advocacy and consultation—but not all states have implemented; some have passed reforms but not yet operationalised and implemented.
- Implementation of legislation needs to reflect reality of women's lived experiences.
- Regarding court orders requirements—informants advocated for using police or service provider statements as evidence of FDV for women, when applying through RTAs.
- Pet friendly reforms for residential tenants (see ACT).
- Nationally focused policies, legislation and cross-state agreements; conversations about national standards and processes—'why don't we nationalise our tenancy laws?'
- Regulatory systems require proper resourcing.
- There needs to be mutual recognition of orders across state boundaries for women fleeing FDV.
- Residential Tenancy Act in Tasmania covers private rental and long-term social, community housing and boarding house legislation sits within Act, but short-term accommodation such as homelessness and family violence shelters are exempt from the Act.

### *Advocacy*

- A Charter of Human Rights is needed across Australia;
- Tenancy Unions are needed in all parts of Australia;

- There is an ongoing demand for better advocacy, education and improvements in community awareness. There needs to be a focus on social, economic, cultural outcomes not just short-term political gains;
- Government should support ‘one stop shops’ for tenants with tenancy information and advocacy, consumer education, coordination of legal clinics, with advice and tenant advocacy that sit alongside consumer and business services;
- As stated by one government key informant: ‘We [government] only care when it gets to something we can legislate. Legislation is not necessarily the answer. Implementation is important’; and
- There remains a need for national level advocacy related to FDV, especially focused on tenancy laws and women on temporary visas.

### *Improvements in Housing and Homelessness Responses*

- Women in FDV may have a ‘home’, ‘they just can’t be in them’—keeping women in their own homes, especially in situations of home ownership, is important. There is a need for authorities to work with perpetrators, and to undertake security work on the property;
- There is a need for state and national Affordable Housing strategies that grow secure, safe, affordable and appropriate housing. More investment in more social housing. In particular, the National Rental Affordability Scheme is ending and this will take affordable stock out of the market. In addition there is a need to:
  - end ‘no-cause’ evictions
  - introduce price capping in market for rental
  - enforce minimum housing standards
  - address capital gains tax exemptions that drives investors into the market
  - increase Commonwealth Rent Assistance
  - increase income support—this is crucial to accessing housing;
- Housing choices and options need to be increased. There is a need for early intervention at the housing level before it gets to tribunal and there is also a need for the prevention of FDV and homelessness for women and children in FDV. Governments need to enhance the homelessness service system;
- FDV policies of public housing authorities need to be transparent and not discretionary, tenants need to be advised of their rights and processes in relation to FDV, in different languages;
- Real estate policies need improving. There should be engagement with and education of private landlords and the Real Estate Institute as they have little knowledge of FDV;
- Facilitation of transfers for women between housing providers so they can move if needed;
- For Aboriginal and Torres Strait Islanders, there is a need for strong and respectful relationships with supported housing providers who are culturally attuned.
  - Providers need good knowledge of FDV, need safe and suitable places without breaches of confidentiality. Housing supply needs to be self-empowering (e.g., ‘tenancy ready’, rights and responsibilities, parenting, practical assistance) activities and programs that women and children can engage in. There is a need for positive outcomes, so women can continue to make ‘strong and courageous and positive decisions for them and their children’.

### *Programs*

- Rapid Rehousing—need more properties that are affordable, safe, suitable, with mandatory safety standards such as lockable windows, safety equipment, etc. Community housing

providers should keep properties vacant to rapidly rehouse women but this raises demand-supply issues;

- One exemplar program is the Safer Families Grant Program (in the ACT) 2016. Set up costs of new housing—grants of up to \$2,000 are available for eligible Housing ACT Rental Bonds Loan Scheme applicants affected by FDV. The program is administered by Housing ACT and can be used to provide FDV victims with a wide range of supports beyond rental bond payments and with eligibility criteria that is income and referral based only;
- Assistance Beyond Crisis (ABC) in ACT 2017. No interest loan scheme (to be paid off in 3 years) or small grants from bank for women in FDV who are not eligible for low-income safety net;
- Rent Choice Start Safely, NSW. Rental subsidy to secure private rental, but subsidies taper off and expected to pay full rent after 3 years and ‘get a job’, which is not always realistic in the current housing and labour market;
- Safety planning for women, including the provision of equipment such as surveillance cameras, intensive case management; funding security for services;
- Improve perpetrator programs. One reportedly very successful perpetrator program is Kornar Winmil Yunti (KWY) in South Australia, but it works with very small proportion of men on AVOs.

## Conclusion

This chapter has presented the methodology used and the results of the online survey of women affected by family domestic violence, as well as the outcomes of the interviews of industry informants. Critically, the research finds few women had a comprehensive knowledge of the range of potential services and protections available to them. In large measure, women fleeing FDV relied upon informal resources—including family and friends—in order to make the transition away from the perpetrator. Overall, the responses suggest significant resource constraints on the sector and critical gaps in the provision of services. These challenges are further exacerbated for women and their children from Aboriginal and Torres Strait Islander or CALD backgrounds.



# Chapter 3: Review of Residential Tenancy Legislation by Australian Jurisdiction in Relation to Women and Children Escaping Violence in Their Homes

## Introduction

This chapter discusses how residential tenancy legislation, or other relevant Australian legislation, addresses the plight of a tenant experiencing FDV. After a discussion of the legislative framework regulating residential tenancies, the chapter considers an example scenario where a survivor/victim of FDV seeks to escape an abusive partner by leaving a rental property, a decision that may involve prematurely terminating a residential tenancy agreement. Alternatively, the tenant experiencing FDV may seek to exclude the perpetrator and remain in the premises, a decision that necessitates assuming all responsibilities under the lease. Several questions testing the scenario in the context of each state and territory's legislation are used to assess the effectiveness of various approaches. Each question is followed by key findings.

The purpose of this chapter is to provide an overview of the national legislative framework and highlight differences and similarities between jurisdictions and identify best practice. For conciseness, discrete legislative provisions are not discussed in depth although for ease of reference Appendix 1 summarises the relevant provisions in table form for each jurisdiction. The relevant legislation for each state and territory is discussed in more depth in Appendix 2.

## Residential Tenancy Acts in Australia

When experiences of FDV are recounted, people often ask: 'Why didn't she just leave?' (Anderson et al. 2003). In many cases for women in private rental, the response would be: 'Because she could not get out of her lease'. Until recently, 'breaking' a lease—even in circumstances of FDV—could lead to adverse consequences for a tenant such as the requirement to pay rent for the remainder of the term, the likely loss of the security deposit and a listing on a tenancy database. Tenancy databases contain details of tenants in instances where lease agreements have been breached and the tenant has vacated the premises owing more than the rental bond.<sup>24</sup> As the database is reviewed by landlords and property managers in determining whether a residential tenancy agreement should be entered into with a prospective tenant, leaving a rental property during the rental term has the potential to adversely affect the victim when applying for future tenancies.

In the past decade, all Australian states and territories have sought to address the plight of tenants escaping violence in their homes. Principally, the various RTAs are the vehicle for these safeguards, although in some jurisdictions family violence legislation is used.<sup>25</sup> Unfortunately, the response across the states and territories has not been consistent and the practical operation of the legislation exhibits varying degrees of effectiveness.

Nevertheless, provisions within legislation in most jurisdictions now sets out a process through which a tenant experiencing FDV can terminate a residential lease. This may mean that the survivor/victim's interest in the lease is terminated outright, so that she can leave premises. Alternatively, if she wants to stay, the perpetrator may be excluded from the premises and any interest in the lease discontinued. The survivor/victim can then assume the obligations under the lease.

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<sup>24</sup> For example: s 212 *Residential Tenancies Act 2010* (NSW).

<sup>25</sup> See Appendix 1.

Most of the legislation contains supporting provisions that address, to a greater or lesser degree, residual issues such as responsibility for any repairs outstanding on the property, the return of the security bond and listings on tenancy databases. It should be emphasised, however, that the legislation is not consistent; some jurisdictions deal with these issues, while others do not. Most of the legislation requires that a person seeking to terminate a lease, or stay and exclude the perpetrator, in circumstances of FDV must obtain an order from a court or a tribunal prior to commencing the process. Obtaining the evidentiary material, and navigating a court or tribunal process, can be confronting and time-consuming. In circumstances of FDV, it is essential that a tenant seeking to leave a violent situation can do so safely, promptly and is in a financial position to acquire alternative accommodation.

## Relationship between Residential Tenancy Laws and FDV

It is only in recent times that the interplay between residential tenancy law and tenants experiencing violence in the home has been acknowledged. Traditionally, landlord–tenant law was based on the classical contract notions of two parties of equal bargaining power negotiating the terms of the lease (Bradbrook 1974). This unsatisfactory conclusion was criticised in the Commonwealth Commission of Inquiry into Poverty (Commonwealth of Australia 1975) with a conclusion that common law rules were inappropriate in a residential tenancy context and that remedial legislation was required to protect the rights of tenants (Bradbrook 1975). The commission’s findings underscored the inadequacy of the common law rules to modern tenancy arrangements and prompted state and territory legislatures to introduce legislation regulating residential rental housing (Bradbrook 1975; Sackville 1975).

Gradually, discrete residential tenancy legislation was introduced in all Australian states and territories as shown in Table 6. Although there are differences between the Acts, in general, the legislation deals with the most pertinent issues affecting residential leasing being:

...the form of the documentation, the amount of the rent and other payments, the means of increasing the rent, security deposits, repairs and cleanliness, entry by the landlord, the use of the premises, dealings with the residential tenancy, settling disputes and termination.<sup>26</sup>

**Table 6: Residential tenancy legislation by jurisdiction**

Queensland	NSW	Victoria	ACT	Northern Territory	Tasmania	South Australia	Western Australia
<i>Residential Tenancies and Rooming Accommodation Act 2008</i>	<i>Residential Tenancies Act 2010</i>	<i>*Residential Tenancies Act 1997</i>	<i>Residential Tenancies Act 1997</i>	<i>Residential Tenancies Act 1999</i>	<i>Residential Tenancy Act 1997</i>	<i>Residential Tenancies Act 1995</i>	<i>Residential Tenancies Act 1987</i>

\*The *Residential Tenancies Act 1997* has been amended by the *Residential Tenancies Amendment Act 2018 (RTAA)*. Several sections of the RTAA pertinent to this report will commence on 29 March 2021.

There was no reference to circumstances of FDV in the early incarnations of the RTAs and, in the case of early termination, strict rules applied even in the presence of extenuating circumstances. In general, the rules of joint and several liability apply to all tenants on the lease. This means that all tenants are jointly *and individually* responsible for obligations under a tenancy agreement. Therefore, a tenant—

<sup>26</sup> Lexisnexis, *Halsburys Laws of Australia* vol (at 11 January 2017) 245 Leases and Tenancies, ‘8 Residential Tenancies’ [245-1845]

even a tenant experiencing FDV—could be liable for loss or damage arising under the lease such as unpaid rental or the repair of damage to premises even if that tenant was not responsible for the breaches. The liability remains until the lease term expires or the landlord rents the property to another tenant.

State and territory jurisdictions were initially slow to address the vexed relationship between the RTAs and early termination in circumstances of FDV. In 2008, the Victorian parliament amended the RTA to address issues of family violence<sup>27</sup> while Queensland introduced provisions providing for the protection of a domestic associate<sup>28</sup> who wants to terminate the lease on the basis of FDV<sup>29</sup> and, if desired, be recognised as the tenant under the a new lease of the same premises.<sup>30</sup> Other jurisdictions have implemented amendments, sometimes more than once, to the RTAs over the past 10 years<sup>31</sup> while reforms in Western Australia only passed through the parliament in November 2018.<sup>32</sup> Further amendments are anticipated in several jurisdictions in the near future.<sup>33</sup>

It is fair to say that legislation in some jurisdictions addresses the circumstances of a tenant experiencing FDV more than others. For example, while most jurisdictions provide for assistance in FDV in a range of circumstances, some do not, in some instances, refer to this situation at all.<sup>34</sup> Others provide for an early termination of a lease but require the existence of various forms of order.<sup>35</sup> Some legislation features the opportunity for a smoother transition from the existing lease through arrangements regarding responsibility for repairs and the return of the security deposit while others remain silent.<sup>36</sup>

## Overlap with FDV-focused Legislation

In some jurisdictions the relevant RTA may be silent where a victim/survivor of wants to terminate a residential lease but the circumstances are addressed in FDV-focused legislation.

<sup>27</sup> With the introduction of s 233A–233D into the *Residential Tenancies Act 1997* (Vic) via ss 262 *Family Violence Protection Act 2008* (Vic). Provision was also made in relation to changing locks in circumstances of family violence: s 259 *Family Violence Protection Act 2008* (Vic) with regard to s 70A *Residential Tenancies Act 1997* (Vic).

<sup>28</sup> Section 245(9) and s 321(2) RTRAA : A *domestic associate* means a person in any of the following relationships—

- (a) an intimate personal relationship;
- (b) a family relationship;
- (c) an informal care relationship.

Note that initially, the definition only referred to a person in a domestic relationship. Amendments in 2012 broadened the definition considerably: Sch 1 Pt 2 *Domestic and Family Violence Protection Act 2012* (Qld) The term has the same meaning as in this act.

<sup>29</sup> Section 321(1) RTRAA

<sup>30</sup> Section 245(1) RTRAA.

<sup>31</sup> For example, in NSW, Victoria and the ACT.

<sup>32</sup> *Residential Tenancies Legislation Amendment (Family Violence) Bill 2018* (WA).

<sup>33</sup> Significant amendments specifically or related to termination of tenancies in circumstances of FDV were introduced in NSW (commenced 28 February 2019), Victoria (passed by parliament 18 September 2018) while the ACT introduced 3 amendment acts to the relevant RTA in 2018 and 2019. Tasmania has recently amended relevant provisions of the *Family Violence Act 2004: Residential Tenancy Amendment Bill 2018* (Tas). NSW has amended the relevant provisions as recently as 20 December 2020.

<sup>34</sup> For example, the Northern Territory and until recently the Tasmanian legislation did not refer to persons experiencing FDV in relation to enhancing the security of rented premises.

<sup>35</sup> See, for example, the legislation in Queensland, Victoria, ACT and South Australia.

<sup>36</sup> See, for example, in Western Australia.

**Table 7: Legislation by Jurisdiction regulating early termination of a lease in circumstances of FDV**

Queensland	NSW	Victoria	ACT	Northern Territory	Tasmania	South Australia	Western Australia
<i>Residential Tenancies and Rooming Accommodation Act 2008</i>  * <i>Domestic and Family Violence Protection Act 2012 (Qld)</i> —relevant to proceedings via Magistrates Court.	<i>Residential Tenancies Act 2010</i>	<i>Residential Tenancies Act 1997</i>  *NB amendments pursuant to the RTAA commencing 29 March 2021.	<i>Residential Tenancies Act 1997</i>	<i>Domestic and Family Violence Act 2007</i>	<i>Family Violence Act 2004</i>	<i>Residential Tenancies Act 1995</i>	<i>Residential Tenancies Act 1987</i>

## The Nature of Leases: Fixed-term and Periodic Leases

Residential tenancy leases are either fixed-term or periodic. The length and method of notice required to terminate each form of lease will determine whether or not a FDV victim should use the statutory provisions directed at FDV circumstances or use the standard procedure.

### Fixed-term Leases

Fixed-term leases are created expressly for a stipulated period of time as agreed by the parties. In Australia, most fixed-term residential tenancy leases are for a 6 or 12 month period. A fixed-term lease terminates automatically upon expiry of the term although in some jurisdictions, a fixed-term lease will continue until certain formalities are fulfilled and will take on the character of a periodic lease.

A fixed-term lease binds the tenant into the agreement for the term of the lease. As discussed earlier in this chapter, adverse consequences can flow where a tenant seeks to ‘break’ a lease. Therefore, the provisions that provide a method of terminating the lease early in circumstances of FDV will be most beneficial to victims of FDV with fixed-term leases.

### Periodic Leases

Periodic leases can be created expressly and by implication from the period in which the rental is paid, such as weekly, monthly or quarterly. Unlike fixed-term leases, periodic leases do not terminate upon expiry of the stipulated period. Rather, such leases continue indefinitely from period to period, until one party serves a notice to quit on the other party.

As periodic leases are for relatively short periods, it may be unnecessary for a FDV survivor/victim to comply with the termination process. By the time the FDV victim/survivor complies with, for example, the need to seek a court or tribunal order, a notice to quit served by the tenant would see the lease terminated before proceedings have even begun. However, in states where there is an expedited process—such as a certification process, as in Western Australia and NSW—this process could be used effectively for both periodic and fixed-term leases.

## The Scope of the Various Acts: How Far do They Extend?

It is important to determine in each case:

- i. *To whom the legislation applies.* This ascertains the people who can use the provisions. The victim/survivor must be in a particular kind of relationship with the perpetrator of the violence. Generally, the legislation’s application extends to a wider range of people than just domestic partners and includes children, relatives and, in some cases, carers and guardians. See Table 8 for legislation regarding applicable relationship and conduct by jurisdiction.
- ii. *What conduct is necessary to trigger the relevant statute?* This refers to the nature of the conduct in which the perpetrator has engaged. Most of the legislation defines FDV broadly and includes physical, emotional and financial abuse. Some legislation goes further to include behaviours such as stalking or causing harm to a domestic animal.

Table 8 summarises to whom the legislation applies and the conduct under scrutiny. This is a general summary and more specific details will be provided in the course of the report.

**Table 8: Applicable relationships and relevant conduct**

Jurisdiction	Legislation	Applicable relationship	Conduct
Queensland	<i>Residential Tenancies and Rooming Accommodation Act 2008</i> ; NB s 245 and s 321	Domestic associate	Domestic violence (Sch 2 RTRAA as per S.8 DFVPA 2012) Domestic violence issues Injury NB S 344(2), 245(4)
NSW	<i>Residential Tenancies Act 2010</i> ; NB s 105B and s 79	Tenant or dependent child of the tenant	Circumstances of domestic violence (Re s 105B) Final AVO (Re s 79) (b), (c), (d)
Victoria	<i>Residential Tenancies Act 1997</i> ; NB s 233A/91V	A party to the lease or a person who is residing in the premises and has been or is being subjected to family violence by a party to the residential tenancy agreement; this category of persons includes a ‘protected person’ (ss 233A(3) and, as of 29 March 2021, 91V(3))	Family violence
ACT	<i>Residential Tenancies Act 1997</i> ; NB s 85A	Protected person	Protection order, or interim or final personal protection order
Northern Territory	<i>Domestic and Family Violence Act 2007</i> ; NB s 23	Protected person	Court domestic violence order
Tasmania	<i>Family Violence Act 2004</i> ; NB s 17A	Affected person	Family violence order
South Australia	<i>Residential Tenancies Act 1995</i> ; NB s 89A	Domestic associate	Domestic abuse
Western Australia	<i>Residential Tenancies Act 1987</i> ; NB s 71AB, AE	Tenant in circumstances where the tenant or a dependant of the tenant is likely to be subjected or exposed to family violence	Family violence

## Residential Tenancy Legislation by Australian Jurisdiction in Relation to Women and Children Escaping Violence in Their Homes

The example scenario in Box 2 below highlights considerations pertinent to the interplay between residential tenancy laws and tenants experiencing FDV. It is assumed that the legislation will be applicable to X and that the conduct of her partner comes within the various definitions of FDV.

The example raises several common issues that may arise, including the decision to stay in the premises or leave; the termination procedure itself; and rights and obligations regarding financial obligations, such as rent payable, the security bond and the cost of outstanding repairs (if any). The scenario also considers issues such as potentially being listed on a residential tenancy database; facing discrimination in finding another property; factors that affect the tenant's ability to leave the premises; and whether the tenant, if remaining in the premises, can strengthen security measures.

### Box 2: Relationship between residential tenancy laws and FDV illustration

X lives in a rented property with her partner and child. X and her partner are co-tenants on the lease. The lease is for a term of one year and has another six months before expiry.

X wants to leave her partner, as he is abusive towards her. The property has been damaged by her partner during arguments. X paid the security deposit from her own funds. Without a refund of the security deposit, X will be unable to secure another rental property.

This scenario raises several issues for consideration:

1. What are the consequences if X wants to terminate the lease immediately and vacate the premises? Alternatively, would it be possible for X to stay in the home, yet remove the violent partner from the lease?
2. Will X bear any responsibility for:
  - (c) outstanding rental, including for the remainder of the term, or
  - (d) any repairs to the property?
3. What effect will this have on the security deposit?
4. Could X be the subject of an adverse listing on a residential tenancy database?
5. Could X encounter discrimination in finding another rental property?
6. Are there any other factors, such as a family pet, that could affect X's willingness to leave?
7. If X opts to remain in the premises, would she be permitted to change locks and install security devices for protection?

## Background

Until relatively recently, X's legal position would have been precarious. Unless the landlord agreed to an early termination of the lease, X and her partner would be jointly and severally responsible for the rent for the remainder of the term. Although this responsibility would be subject to the landlord's duty to mitigate any losses—such as by re-renting the premises to a new tenant/s—the prospect of continuing to pay the rental is likely to be a significant deterrent to leaving (Flanagan et al. 2019; Murray 2008). This financial burden has often seen a tenant experiencing FDV stay in the rental property despite the violence or, if affordable accommodation cannot be sourced, become homeless



until the tenancy expired. Moreover, all tenants listed on the lease are liable for any damage that occurs to the premises, even though, as is the case here, one of the tenants is not responsible.

If X was to leave the premises, and rent was unpaid and/or repairs were outstanding, it is likely her name would be placed on a tenancy database and that the security deposit would not be returned. Leaving a tenancy in these circumstances could see X experience discrimination in finding another property to rent because of the potential for an adverse listing on a tenancy database—a factor compounded by the dearth of affordable properties available to persons leaving circumstances of FDV.

Alternatively, if X wanted to stay in the premises—for example, if she wanted to ensure that her child could continue to attend a school in a particular area—removing the partner from the lease and from the premises would be a complex exercise. Also, if X was to stay, she may be prevented from changing locks or installing security devices on the property if the landlord does not give consent to do so.

Depending on the jurisdiction, provisions in the applicable state and territory legislation to assist persons experiencing FDV will, to a greater or lesser degree, affect the conclusions reached in the example above. Each question will now be addressed with reference to legislation in Australian states and territories.

## Question 1: What are the consequences if X wants to terminate the lease immediately and vacate the premises? Alternatively, would it be possible for X to stay in the home, yet remove the violent partner from the lease?

### The Problem

A person experiencing FDV may be deterred from leaving an abusive relationship because of barriers to breaking a lease and the potential for financial and reputational consequences. Provisions in the various RTAs mitigate against this result, with most jurisdictions enabling the FDV victim/survivor to choose between an outright termination of the lease, thus enabling the victim/survivor of FDV to find alternative accommodation away from the perpetrator (addressed in Option 1 below), or be recognised as the tenant in her own right and continue to reside in the rented premises (addressed in Option 2 below). However, inconsistencies between state and territory legislation mean that, in some jurisdictions, this process is more complex and burdensome for the FDV victim/survivor than in others.

In the case of both Options 1 and 2, the courts or tribunals can make orders regarding ancillary matters, such as responsibility for damage to the property and the fate of a security bond. Legislation provides for a prohibition on a victim/survivor's name being placed on tenancy databases when the lease is terminated in circumstances of FDV. These considerations will be discussed later in this chapter.

### Overview

#### Option 1: Terminating the Lease and Leaving the Tenancy

The main difference between the relevant state and territory legislation is the circumstances necessary to 'trigger' the termination of a residential lease where there is FDV and the evidence that must be provided to support an application for termination. In most jurisdictions, the RTA is the appropriate legislation to consider; however, in the Northern Territory and Tasmania, discrete FDV legislation is considered. The relevant provisions are summarised in Table 9 below.

Queensland	NSW	Victoria	ACT	Northern Territory	Tasmania	South Australia	Western Australia
Section 321 <i>Residential Tenancies and Rooming Accommodation Act 2008</i>	Section 105B, 105C <i>Residential Tenancies Act 2010</i>	Section 233A, 233B <i>Residential Tenancies Act 1997</i>  *Pursuant to RTAA, a new Part 8 Subdivision 3 of the RTAVIC will commence and address this issue as of 29 March 2021; <b>NB ss 91V(1)(a), 91W</b>	Section 85A, 85B <i>Residential Tenancies Act 1997</i>	Section 23 <i>Domestic and Family Violence Act 2007</i>	Section 16, 17, 17(IA) <i>Family Violence Act 2004</i>	Section 89A <i>Residential Tenancies Act 1995</i>	Section 71AB <i>Residential Tenancies Act 1987</i>



**Table 9: Legislation permitting termination of residential tenancy agreement in event of FDV**

State and territory legislation permits termination of a residential tenancy agreement in the event of FDV.

The states and territories demonstrate a range of positions, as follows:

**i. No provision in the RTA for outright termination in the event of FDV.**

While some RTAs do not contain provisions addressing outright termination in circumstances of FDV, FDV legislation fills the void. For example, the RTA in the Northern Territory only permits termination of a lease in the event of hardship, but s 23 *Domestic and Family Violence Act 2007* (NT) addresses termination of a lease in the event of FDV. This is also the case in relation to ss 17 and 17A of the *Family Violence Act 2004* (Tasmania).

**ii. The need for the FDV victim/survivor to obtain a court or tribunal order to terminate the lease.**

To terminate a lease in circumstances of FDV, legislation may necessitate that a FDV survivor/victim must apply to a court or tribunal for an order to terminate the lease. In such cases, the application must be supported by evidence, such as orders obtained previously through the police, or a court or tribunal. For example, prior to the COVID-19 emergency regulations,<sup>37</sup> Queensland’s residential tenancy legislation required an application via QCAT or, in appropriate circumstances, the Magistrates Court. In considering the order, the tribunal or court had to examine ‘domestic violence issues’, such as whether the applicant has applied for a domestic violence order against the domestic associate; if an application was made, whether the order was made and whether it is in force; and, if there is a domestic violence order in force, whether there is an imposed condition that prohibits the applicant’s domestic associate from entering or remaining in the premises.<sup>38</sup> In the ACT, the legislation makes reference to protection orders issued by the Magistrates Court, including an order that includes an exclusion condition or a condition prohibiting the respondent (perpetrator) from being within a particular distance from the protected person.<sup>39</sup>

**iii. The need for the FDV victim/survivor to obtain various orders prior to serving a termination notice on the landlord.**<sup>40</sup>

Several jurisdictions provide that a notice, often referred to as a domestic violence termination notice (DVTN) or a similar name, must be served on the landlord. However, the DVTN must be supported by evidence, usually in the form of orders obtained through the judicial system. For example, in NSW, s 105C provides that a DVTN must have one of the prescribed orders evidencing circumstances of domestic violence listed in s 105B(2)(a)–(c) annexed to it.<sup>41</sup> Those circumstances are where the person seeking the order:

- (a) has been the victim of a domestic violence offence while a tenant of, or a dependent child of a tenant of, the residential premises and a relevant domestic violence offender has been found guilty of that offence, or
- (b) is the person for whose protection a DVO [domestic violence order] has been made against a relevant domestic violence offender and the DVO is in force, or
- (c) is the person for whose protection an injunction under section 68B or 114 of the *Family Law Act 1975* of the Commonwealth has been granted on the basis of evidence of family

<sup>37</sup> *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*.

<sup>38</sup> Sections 321, 344 RTRAA.

<sup>39</sup> Section 85A(1)(d) ACTRTA.

<sup>40</sup> For example, all other jurisdictions. Note that, in NSW and Western Australia, there is the alternative for a declaration procedure. A similar process has been operating in Queensland during the COVID-19 emergency.

<sup>41</sup> Note that, pursuant to s 105B(2)(d) RTANSW, NSW also provides for a declaration procedure. This is discussed below.

violence in proceedings against a relevant domestic violence offender and the injunction is in force.<sup>42</sup>

Similarly, the Western Australian legislation notes that a court may make an order terminating a tenant's interest in a residential tenancy agreement if it is satisfied that a family violence order is in force against the excluded tenant or that the excluded tenant has committed family violence against the protected tenant or their dependant. A **family violence order** means a DVO, family court injunction or other court order denying a tenant's right of occupancy in premises under a residential tenancy agreement.<sup>43</sup>

**iv. Streamlined declaration procedures permitting termination upon notice to the landlord accompanied by a declaration from a prescribed person.**

In both Western Australia and NSW, a lease can be terminated in circumstances of FDV where the survivor/victim of FDV serves the landlord with a DVTN, but it can be supported by a declaration made by a competent person listed under the legislation.

Recently, in addition to procedures already in effect under existing legislation, two jurisdictions have introduced an alternative, and more efficient, process to terminate a tenancy. This procedure is illustrated in the bottom stream in the figure below. In Western Australia and NSW, a tenant experiencing FDV can terminate a lease where the victim/survivor obtains a notice of termination from certain persons who can attest to the victim/survivor's circumstances.<sup>44</sup> In Western Australia, a broad selection of persons can provide the termination notice.<sup>45</sup> Until amendments taking effect on 20 December 2020, NSW only deemed medical practitioners be 'competent persons' to complete the requisite termination notice.<sup>46</sup> However, amendments pursuant to the *Residential Tenancies Amendment (Declaration by Competent Person) Regulation 2020* (NSW) have seen this category of persons extended. Section 105B(2)(d) provides that a declaration by a competent person (that the tenant is a victim of domestic violence perpetrated by the relevant domestic violence offender during the currency of the residential tenancy agreement) will suffice to support a DVTN. A similar process has been operating in Queensland during the COVID-19 emergency.<sup>47</sup>

These different processes are represented in Figure 7.

<sup>42</sup> Western Australia also has a declaration procedure.

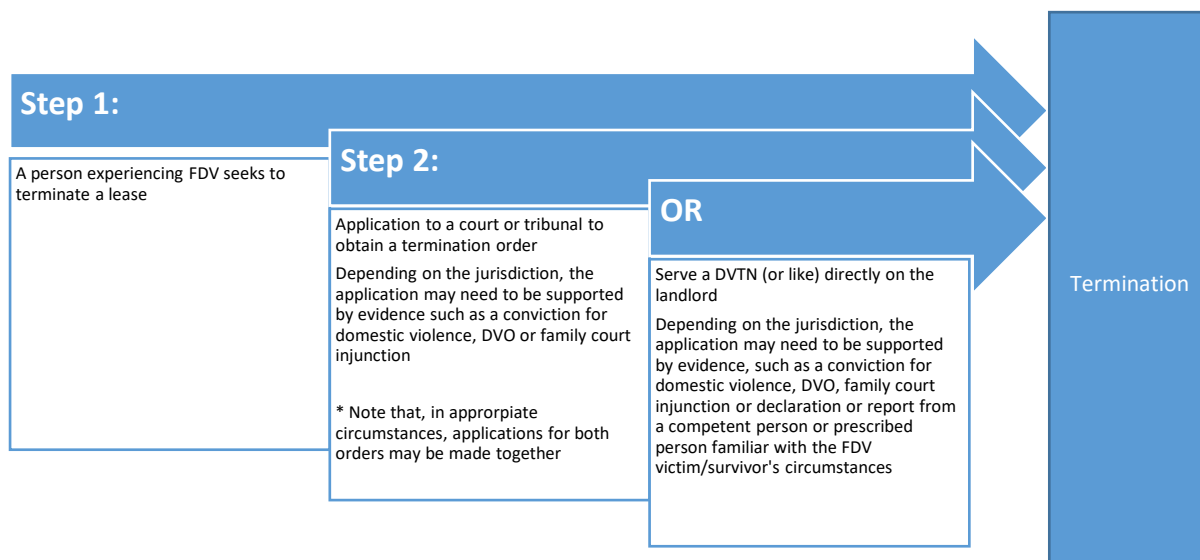
<sup>43</sup> Section s 71AE(2)RTAWA.

<sup>44</sup> Section 71AB(1),(2) RTAWA; ss 105B, 105C(2),(2A) RTANSW.

<sup>45</sup> Section 71AB(2)(d)(i)–(vi) RTAWA. This includes a medical practitioner, psychologist, social worker, police officer or person in charge of a women's refuge. Other persons or class of persons can be prescribed by regulation.

<sup>46</sup> Section 105B(2)(d) RTANSW. 'Competent person' means a medical practitioner within the meaning of the *Health Practitioner Regulation National Law (NSW)*: s 105A RTANSW.

<sup>47</sup> Division 7, *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*. Division 7 is scheduled to be discontinued after 30 April 2021.



**Figure 7: Illustration of the various approaches to terminate a lease in circumstances of FDV**

**Table 10: Response to Option 1—terminating the lease and leaving the tenancy**

Queensland	NSW	Victoria	ACT	Northern Territory	Tasmania	South Australia	Western Australia
<p>Application to QCAT for an order</p> <p>Requires supporting documentation (various orders) to be obtained prior to application</p> <p>NB alternative process via Magistrates Court</p> <p>* During COVID-19, a notice of termination procedure has been adopted similar to that of NSW and Western Australia; this measure is scheduled to cease on 30 April 2021</p>	<p>DVTN, accompanied by supporting documentation (various orders), is served on the landlord</p> <p>There is also a procedure where a ‘competent person’ (as defined) can declare that the tenant is experiencing FDV</p> <p>The declaration can be served with the DVTN on the landlord, and the lease can be terminated immediately</p>	<p>Application to VCAT for an order</p> <p>Requires supporting documentation (various orders) to be obtained prior to application</p>	<p>Application to ACAT for an order</p> <p>Requires supporting documentation (various orders) to be obtained prior to application</p>	<p>Application to the Magistrates Court for an order</p> <p>Requires supporting documentation (various orders) to be obtained prior to application</p>	<p>Application to the Magistrates Court for an order</p> <p>Requires supporting documentation (various orders) to be obtained prior to application</p>	<p>Application to SACAT for an order</p> <p>Requires supporting documentation to be obtained (various orders) prior to application</p>	<p>Prescribed notice of termination, accompanied by supporting documentation (various orders), is served on the landlord; the lease can be terminated with one week of notice</p> <p>There is also a procedure where a person listed in the RTA and who has worked with the tenant can complete a report of family violence declaring that the tenant is experiencing FDV</p> <p>The declaration can be served with the DVTN on the landlord, and the lease can be terminated immediately</p>

As noted in Chapter 2, FDV victims/survivors may find it difficult to navigate the court system or obtain the necessary orders. While doing so, valuable time is lost, and the victim/survivor is exposed to danger while in the home. It is imperative that a person experiencing FDV is able to leave rented premises in a timely fashion. The legislation in most jurisdictions places the obstacle of obtaining various orders before the lease can be terminated. Although several jurisdictions now provide for urgent applications in these circumstances, the exercise remains stressful, confusing and time-consuming. Apart from the processes and delays involved, the need to seek orders prior to any hearing in these circumstances is often ineffective because of a reluctance by FDV victims/survivors to seek the orders anyway.

Many victims/survivors of domestic violence are unaware of how to access family law injunctions, and time and money are also significant barriers to access (Women's Legal Service NSW 2017). Alternatively, the police in all jurisdictions have the power to take out intervention orders on behalf of FDV victims/survivors or the FDV victim/survivor may apply themselves. Data from Victoria highlight that the police lodge over two-thirds of order applications for FDV (Sentencing Advisory Council 2016, cited in Dowling et al. 2018, p. 10).

As noted below in Chapter 2, 71 per cent of the respondents to our survey did not have an intervention order in place. Box 3 outlines the factors that discourage both victims/survivors and police from applying for protection orders.

**Box 3: Factors that discourage or obstruct police and victims/survivors from applying for protection orders**

1. Complicated and time-consuming administrative requirements for police, including excessive paperwork, which are further exacerbated when victims and perpetrators are located in different jurisdictions (Ragusa 2013).
2. A lack of victim cooperation with police-initiated protection order applications, and the withdrawal of victim-initiated applications, resulting from fears of reprisal, perceptions that orders are unlikely to have any effect, and previous negative court. This is particularly apparent for Indigenous victims, who can experience additional cultural barriers (Moore 2002). Relatedly, Wolf et al. (2000) found that victims were less likely to apply for a protection order if they lived with the abuser and sustained an injury during the index incident, which further supports the contention that fear of the abuser can serve to discourage victims from pursuing a protection order.
3. A perception among police that protection orders have a limited effect (Segrave, Wilson & Fitz-Gibbon 2016).
4. The perceived severity of domestic violence incidents, with police less likely to lodge order applications for nonphysical forms of domestic violence (State of Victoria 2016, cited in Dowling et al. 2018, p. 11).

Obtaining this material—generally various protection orders or an injunction—can be complex. Indeed, many FDV victims/survivors simply choose not to navigate the processes. There is then the likelihood of a delay before the hearing, even if there is an urgent application, and the hearing must take place. It should be noted that, in Queensland, the need to have already obtained this documentation can be tempered via an alternative pathway through the Magistrates Court, where an order can be obtained and tenancy matters addressed.<sup>48</sup>

<sup>48</sup> Unfortunately, the process can be slow; at present, urgent applications in Queensland take four weeks.

*Option 2: Remaining in the Property, to the Exclusion of the Perpetrator, and Assuming the Obligations Under the Lease*

All state and territory jurisdictions provide that, upon application of a victim/survivor of FDV, a lease can be terminated and a new lease entered into, with the victim/survivor being recognised as the tenant, or co-tenant, as the case may be. Therefore, the FDV victim/survivor will remain in the property, to the exclusion of the perpetrator, and assume the obligations under the lease. The FDV victim/survivor can be named as the tenant on the lease. A third-party co-tenant could also be named on the lease. The relevant legislation across the states and territories is shown in Table 11.

**Table 11: Legislation permitting termination of a residential tenancy agreement in the event of FDV with the victim/survivor taking on the lease**

Queensland	NSW	Victoria	ACT	Northern Territory	Tasmania	South Australia	Western Australia
Section 245 <i>Residential Tenancies and Rooming Accommodation Act 2008</i>	Section 79 <i>Residential Tenancies Act 2010</i>	Section 233A <i>Residential Tenancies Act 1997</i>  * Pursuant to RTAA, a new Part 8 Subdivision 3 of the RTAVIC will commence and address this issue as of 29 March 2021  ss 91V(1)(b), 91W	Section 85A, 85B <i>Residential Tenancies Act 1997</i>	Section 23 <i>Domestic and Family Violence Act</i>	Section 16, 17(1A) <i>Family Violence Act 2004</i>	Section 89A <i>Residential Tenancies Act 1995</i>	Section 71AE <i>Residential Tenancies Act 1987</i>

In some circumstances—for example, if children are in school in the local area or if the family has a domestic pet—it is best for a FDV victim/survivor to be able to remain in the rented premises. To this end, the various jurisdictions provide a means by which an order can be granted terminating a perpetrator’s interest in the lease and providing for the FDV victim/survivor to assume responsibility for the lease. In determining whether to make the order, the court may consider certain factors, including the best interests of any child ordinarily resident on the premises<sup>49</sup> or the effect the order might have on any pets kept on the premises.<sup>50</sup> Alternatively, considerations may be left to the discretion of the court or tribunal.<sup>51</sup>

The jurisdictions differ to some extent; however, for the most part, they require a FDV order. For example, s 79 RTANSW states that, upon the grant of an AVO, the perpetrator’s interest in the lease ends and can be transferred to the remaining parties to the lease.<sup>52</sup> In the Northern Territory, a DVO is required,<sup>53</sup> whereas the Tasmanian legislation states that application must be evidenced by a family violence order (FVO) or police family violence order (PFVO).<sup>54</sup> An order is also required in Queensland,

<sup>49</sup> Section 71AE(4)(a) RTAWA. The welfare of the child or children is to be of primary importance: Section 71AE(5) RTAWA.

<sup>50</sup> Section 71AE (4) (d) RTAWA; see to ss 91V(1)(b), 91W *Residential Tenancies Act Amendment Act 2018* (Vic).

<sup>51</sup> For example, in NSW, the Northern Territory and South Australia.

<sup>52</sup> Section 85A(2)(b)(i),(ii) RTAACT.

<sup>53</sup> Section 23(1)(c) FDVA.

<sup>54</sup> Section 17(1A)(b) FVATAS: The court may terminate the lease or change the tenants on a lease agreement in accordance with the Family Violence Act when a tenant has a FVO or PFVO made against another tenant.

but can be obtained at the same time as the order to remain in the tenancy through the Magistrates Court.<sup>55</sup> The Western Australian RTA provides that an order can be tendered, but also the application can be made on the grounds simply that a perpetrator has committed family violence against the tenant or a dependent of the tenant.<sup>56</sup>

Before making the order, most jurisdictions require that the court or tribunal satisfy itself of certain matters including whether persons subject to the order could reasonably be expected to comply with obligations under the agreement.<sup>57</sup> In most cases, the replacement agreement will be under the same terms and conditions as the terminated agreement, other than the names of the tenants,<sup>58</sup> and, if the terminated agreement is for a fixed term, the date of expiry of the replacement agreement must be the same as that of the terminated agreement.<sup>59</sup>

### Key Findings

It is imperative that a person experiencing FDV can leave rented premises in a timely fashion. The legislation in most jurisdictions places the obstacle of obtaining various orders before the lease can be terminated. Although several jurisdictions now provide for urgent applications in these circumstances, the exercise remains stressful, confusing and time-consuming.

The discussion so far in this chapter has identified that the most common approach across the jurisdictions is that a court or tribunal order must be obtained before the lease can be terminated. In fact, this is a two- (or more) step process because, before the application can be made, the FDV victim/survivor must have obtained the required supporting documentation. Obtaining this material—generally various protection orders or an injunction—can be complex. Indeed, many FDV victims/survivors simply choose not to navigate the processes. There is then the likelihood of a delay before the hearing, even if there is an urgent application, and the hearing must take place. It should be noted that, in Queensland, the need to have already obtained this documentation can be tempered via an alternative pathway through the Magistrates Court, where an order can be obtained and tenancy matters addressed.<sup>60</sup> Apart from the processes and delays involved, the need to seek orders prior to any hearing in these circumstances is often ineffective because of a reluctance by FDV victims/survivors to seek the orders anyway.

It is suggested that the declaration approach (as used in NSW and Western Australia) be adopted nationally, as it expedites the termination process and avoids FDV victims/survivors from being required to navigate complex court and tribunal systems. First, this process dispenses with the need to navigate more formal legal processes. There is no need to apply for an order or seek an injunction. Second, this approach dispenses with the need for a court or tribunal hearing, as the notice of termination is served directly on the landlord. This does not prevent the landlord asserting various rights at a later time—indeed, this is likely to be the case in relation to any outstanding payments and bond—but it does mean that the lease can be terminated with minimal formality. This has benefits in relation to timeliness and efficiency.

<sup>55</sup> Section 32, DFVPA QLD, see to s 245 RTRAA.

<sup>56</sup> See s 60(1)(bc) and s 71AE(2) RTAWA. Note that the tenant is referred to as ‘the protected tenant’ and the perpetrator is referred to as ‘the excluded tenant’ (s 71AE(1)). The order takes effect on a day specified in the order, being a day that is not less than seven days and not more than 30 days after the order is made: Section 71AE(6) RTAWA.

<sup>57</sup> Section 89A(6)(a).

<sup>58</sup> Section 23(5) FDVA.

<sup>59</sup> Section 23(6) FDVA.

<sup>60</sup> Unfortunately, the process can be slow; at present, urgent applications in Queensland take four weeks.

## Question 2: Will X bear any responsibility for outstanding rental, including for the remainder of the term or any repairs to the property?

### The Problem

All tenants listed on a residential tenancy agreement are jointly and severally liable for obligations under the lease, including the payment of rent and repairs to the premises. Therefore, in the usual course of events, a FDV victim/survivor could be held responsible for unpaid rent or damage for which they were not responsible. Even if a lease can be terminated in the event of FDV, if the person affected by the violence remains responsible for debts, that person may not be able to afford new accommodation. Such expenses will be deducted from the security bond, thus diluting funds available when seeking new accommodation.

### Overview

Despite the considerable practical importance of this issue, there is inconsistency in the state and territory legislation, and it seems that persons experiencing FDV could be disadvantaged. Most jurisdictions mention some relief for a person experiencing FDV from liability for expenses, but this differs between the Acts—some only refer to disposal of the security deposit,<sup>61</sup> while others are more specific.<sup>62</sup> In some cases, it appears that the general discretions available to a court or tribunal would need to be relied on to find an equitable resolution.<sup>63</sup> The relevant legislation is shown in Table 12.

### Summary of Legislative Provisions

**Table 12: Legislation addressing outstanding rental etc.**

Queensland	NSW	Victoria	ACT	Northern Territory	Tasmania	South Australia	Western Australia
<i>Residential Tenancies and Rooming Accommodation Act 2008</i> S 245(6)	<i>Residential Tenancies Act 2010</i> S 105D	<i>Residential Tenancies Act 1997</i>	<i>Residential Tenancies Act 1997</i> S 85B	<i>Residential Tenancies Act 1999</i> S 12	<i>Family Violence Act 2004</i> S 16	<i>Residential Tenancies Act 1995</i> S 89A(10-12)	<i>Residential Tenancies Act 1987</i> S 17B

### Summary of Legislative Responses

Given the importance of issues involving the residual responsibilities under the lease, it is perplexing that there is not more focus on this issue in the legislation. In Western Australia, s 17B(1) RTAWA states that a tenant, or former tenant, under a residential tenancy agreement may apply to the Magistrates Court for a determination of the rights and liabilities of the parties to the agreement once the former tenant's interest in the agreement has been terminated.<sup>64</sup> When hearing an application, the court must determine the rights and liabilities of the parties to the agreement, as affected by the termination, and may order a party to pay compensation to another party for loss or injury, other than personal injury, relating to the termination.<sup>65</sup> When the amendments come into effect, in Victoria, additional orders regarding the parties' liability can be made pursuant to s 91W(8).

<sup>61</sup> For example, Northern Territory, Tasmania and the ACT.

<sup>62</sup> For example, Western Australia and Victoria. The NSW provision is drafted broadly and appears to incorporate a diversity of matters.

<sup>63</sup> For example, Queensland.

<sup>64</sup> This is also applicable to orders under s 71AE RTAWA.

<sup>65</sup> Section 17B(2) RTAWA.



In Queensland, it seems that an order in relation to unpaid rental or repairs could be made pursuant to s 245(6) or an order sought if proceeding under s 321. It seems the same result would occur in the ACT. In the Northern Territory, s 12(3) RTA 1999 provides that a tenant will not be vicariously responsible for the breach of the tenancy, presumably including damage to the premises, due to an act of domestic violence. The Tasmanian legislation is unclear; however, presumably, an order regarding repairs and unpaid rent could be made under s 16 FVA.

The practical effect of s 54 of the NSW RTA provides that tenants are not held to be liable for acts or omissions by others lawfully on residential premises, if the damage occurred in the commission of a domestic violence offence. This provision ensures that FDV survivors/victims are not liable for damage to property where damage has occurred during the commission of FDV. The South Australian approach is interesting, as it seeks to retrieve compensation for damage from the person responsible.

### *Key Findings*

In relation to the matter of expenses, it is suggested that a FDV victim/survivor be released from obligations for unpaid rent or damage to the premises for which they were not responsible. The landlord can proceed against the perpetrator to be compensated for unpaid rent and damage. It is acknowledged that, in many cases, this may be a fruitless exercise. However, the same could be said of pursuing the FDV victim/survivor and doing so may undermine their efforts to re-establish themselves.

### Question 3: What effect will the termination have on the security deposit?

#### The Problem

Accessing the security bond is essential where a person experiencing FDV is seeking new accommodation and financial obligations incurred under a previous lease are likely to undermine the FDV victim/survivor's ability to secure new accommodation.

#### Overview

Despite the security bond being a pivotal consideration for all tenants, the provisions in the various state and territory RTAs—even where there are comprehensive provisions dealing with survivors/victims of FDV—provide minimal consideration of assessing the fate of a security bond where the lease is terminated because of FDV. For the most part, the security bond may be considered in relation to other orders granted during proceedings to terminate the lease; however, in some cases, the legislation may not refer to the situation at all and, it seems, may be addressed in an indirect way. Victoria will introduce quite comprehensive provisions through the 2018 amendments.

#### Summary of Legislative Responses

**Table 13: Provisions dealing with refunding the security deposit**

Queensland	NSW	Victoria	ACT	NT	Tasmania	SA	WA
<i>Residential Tenancies and Rooming Accommodation Act 2008</i> S 245(6)	<i>Residential Tenancies Act 2010</i> S 105D(1)	<i>Residential Tenancies Act 1997</i> (2018 Amendments) Ss 91X, 91W(1), 420A, 420B	<i>Residential Tenancies Act 1997</i> S 85B(5)	<i>Domestic and Family Violence Act 2007</i> S 12 (NB non-specific)	<i>Residential Tenancy Act 1997</i> 17(3A), (3B) <i>Family Violence Act 2004</i> S 17(3A),(b)	<i>Residential Tenancies Act 1995</i> S 89A(1)89A(12)	<i>Residential Tenancies Act 1987</i> S 17B(4)

#### Orders

In Queensland, where an order is made in relation to terminating a lease in circumstances of FDV, the tribunal may make any order it considers appropriate.<sup>66</sup> An order about a rental bond paid is provided as an example of an order that could be given. Section 17B(1) RTAWA in Western Australia requires the court to determine the rights and liabilities of the parties to a tenancy agreement where at least one of the tenant's interests in the tenancy agreement has been terminated. The section permits the court to apportion the disposal of a security bond to individual tenants and/or the landlord, as considered appropriate in the circumstances.<sup>67</sup> Similarly, in the ACT, ACAT may determine the liabilities of all parties to the lease in relation to the bond paid under the agreement.<sup>68</sup>

Section 91X RTAVIC states that, if VCAT makes an order under s 91W(1), the tribunal may determine the liability of the victim/survivor or any other person under the existing agreement in relation to a bond paid for the rented premises, as well as any existing liability under the existing agreement, including liability in relation to outstanding rent, damage caused to the premises and utility charges.<sup>69</sup>

<sup>66</sup> Section 245(6) RTRAA.

<sup>67</sup> S 17B(4) RTAWA.

<sup>68</sup> Section 85B(5) RTAACT.

<sup>69</sup> Section 91X(1)(a),(b) RTAVIC.

Termination of a residential rental agreement under Section 91W does not give rise to a right to claim compensation on behalf of any party to the agreement for early termination of the agreement.<sup>70</sup> The tribunal may adjourn the hearing to allow an inspection of the rented premises.<sup>71</sup> Further, s 420A and 420B will be inserted into the legislation through the 2018 amendments. The sections deal with two circumstances: (i) where the FDV victim/survivor and perpetrator are named on the lease and (ii) the FDV victim/survivor is not named on the lease.

In the first case, where VCAT is hearing an application for repayment of the bond, there is more than one renter on the lease and one is a victim/survivor of family or personal violence, VCAT can apportion liability between renters, including making the perpetrator liable for all the landlord's loss and damage, including any unpaid rent.<sup>72</sup> Further, the portion of the bond paid by the renter who experienced the violence is excluded from the bond available to compensate the landlord for any loss of damage.<sup>73</sup> It is noteworthy that, in establishing that one of the renters is a victim/survivor of violence, court orders do not have to be provided.<sup>74</sup>

In the second case, where a renter on the lease has experienced family or personal violence and the perpetrator is not party to the agreement,<sup>75</sup> VCAT can hold that the victim/survivor is not liable for any loss or damage suffered by the landlord, if it is satisfied that the damage was caused by the perpetrator and various protection orders have been granted.<sup>76</sup>

### *Less Specific Provisions*

Other states are less specific, although presumably the fate of the security bond could be the subject of a discretionary order. However, in the legislation, Tasmania expressly deals only with circumstances where the lease is terminated and the FDV survivor/victim takes responsibility for the lease. Therefore, the court may make an order stating that the deposit in respect of the original agreement is the security deposit in respect of the replacement agreement.<sup>77</sup> On the termination of the replacement agreement, the security deposit is to be disbursed or refunded as if it were the termination of the original agreement.<sup>78</sup> Even more indirectly, in the Northern Territory, a tenant is responsible for acts or omissions made by a person on the tenant's premises.<sup>79</sup> However, this does not extend to conduct resulting from domestic violence.<sup>80</sup> Both South Australia and NSW are vague on this issue, although ss 89A(1) RTASA and s 105D(1) could have some relevance.<sup>81</sup>

### *Key Findings*

Given the importance of the security deposit to being able to maintain, or enter into, a tenancy, it may be appropriate for all jurisdictions to prescribe a procedure, rather than leaving the matter to the discretion of the tribunal or court. The Western Australian model appears to be the most appropriate, as there is considerable flexibility in relation to the disbursement of the security deposit. In relation to the security deposit, there should be a discretion regarding how the security deposit is allocated when the lease terminates. If the FDV victim/survivor remains on the premises, yet the perpetrator is excluded, it is straightforward to simply maintain the status quo. If the FDV victim/survivor leaves the premises, the court or tribunal should have the flexibility to provide tailored solutions, such as allowing

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<sup>70</sup> Section 91X(2) RTAVIC.

<sup>71</sup> Section 91X(3); 86(1)(g).

<sup>72</sup> Section 420A(3)(a) RTAVIC.

<sup>73</sup> Section 420A(3)(b) RTAVIC.

<sup>74</sup> Section 420A(1)(b); (2) RTAVIC.

<sup>75</sup> Section 420B(1) RTAVIC.

<sup>76</sup> Section 420B(2)(a) and (b) RTAVIC.

<sup>77</sup> Section 17(3A) FVA.

<sup>78</sup> Section 17(3B) (c) FVA.

<sup>79</sup> Section 12(1) RTANT.

<sup>80</sup> Section 12 (3) RTANT.

<sup>81</sup> Section 89A(1) RTASA.



the FDV victim/survivor to take all of her share of the bond. Although the result may be the same, reference in the legislation may emphasise the importance of the issue.

## Question 4: Could X be the subject of an adverse listing on a residential tenancy database?

### The Problem

A tenant can be listed on a tenancy database if rent is unpaid or the premises damaged as a result of FDV. Given all tenants are liable for obligations under a residential tenancy agreement, a person can be listed on a database, even though it was another tenant, and not that person, who was responsible for the damage or unpaid rent.<sup>82</sup> Further, there is a danger that tenants can be unfairly excluded from the rental market as a result of lessors' or agents' incorrect, inconsequential or (in some cases) malevolent listings.

An adverse listing could result in a person, who leaves an environment of FDV while rent is unpaid and/or the premises damaged by the violence, encountering difficulty finding other rental accommodation.

### Overview

Tenancy databases collect information about a tenant's rental history. The information is stored electronically and made available to lessors and agents to peruse a prospective tenant's 'track record', including past rent arrears and breaches.

A listing on a tenancy database can prevent persons from obtaining a new rental property and are of particular concern for persons seeking to leave a violent domestic situation. As discussed above, if a person 'breaks' a lease, they remain bound by their obligations under the agreement. The circumstances mean that rent may be unpaid or the property damaged because of the violence—factors that can substantiate a listing. Listings may be made quickly upon the occurrence of a breach and can be difficult to remove, even where there has been no fault on behalf of the tenant. Depending on the jurisdiction, a listing may remain on a residential tenancy database for up to three years.<sup>83</sup> Therefore, the difficulty in finding a new property is compounded by landlords and agents being reluctant to rent to a person named on a tenancy database.

The National Residential Tenancy Database Model Provisions were developed by the Council of Attorneys-General (formerly the Standing Committee of Attorneys-General) and the Consumer Affairs Forum (formerly the Ministerial Council on Consumer Affairs) in 2010.<sup>84</sup> The ensuing amendments to the state and territory residential tenancy legislation established nationally agreed minimum standards of rights and obligations regarding residential tenancy databases. However, it is important to note that, although the legislation from all jurisdictions applies a similar approach to issues involving tenancy databases, there is no uniform approach. For example, there is no uniform approach to tenancy issues resulting from FDV.

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<sup>82</sup> Refer to the discussion above regarding joint and several liability.

<sup>83</sup> There are consequences under the state and territory legislation if a database operator, lessor or agent wrongly lists a tenant, fails to remove a listing, or fails to provide a tenant with information required under the legislation.

<sup>84</sup> The model provisions were *inter alia* in response to the Australian Law Reform Commission's (2008) findings noting the unsatisfactory nature of RTA responses to privacy issues.

Summary of Legislative Provisions

**Table 14 Legislative provisions relevant to tenancy databases**

Queensland	NSW	Victoria	ACT	NT	Tasmania	SA	WA
<i>Residential Tenancies and Rooming Accommodation Act 2008</i> S 245(6); 459(1)(d); 460(1); 460(3) RTRAA	<i>Residential Tenancies Act 2010</i> S 213A(a),(b) ) Schedule 1 [38]	<i>Residential Tenancies Act 1997</i> 233B(7)(2) S 439F, G, 439L S 91W (Amendment Act)	<i>Residential Tenancies Act 1997</i> Ss 100(1) 99(1),(2)(a),(b) ) 99(3)(b)(i)–(iv)	<i>Domestic and Family Violence Act 2007</i> Ss 134(1); 134(2)(a), (b)	<i>Residential Tenancy Act 1997</i> Ss 48ZF(1),(2); 48ZF(3)(b)(i) -(iv)	<i>Residential Tenancies Act 1995</i> S 89A(4)(d)	<i>Residential Tenancies Act 1987</i> Pt VIA NB ss 82J; 82J (2)(b); 82J(2A); 82J (2B)

In Queensland, QCAT can order that personal information about victims/survivors not be listed on, or be removed from, a tenancy database, where the breach of a residential tenancy agreement is the result of domestic violence. It is necessary to distinguish between whether the FDV victim/survivor is terminating the lease and vacating or is assuming responsibility for the lease. Sections 212 and 213 RTA place restrictions on listings and, in addition, s 213A creates an offence where a landlord or landlord’s agent lists personal information about a tenant or co-tenant in a residential tenancy database if that tenant or co-tenant terminated an agreement. A landlord, or landlord’s agent, must not list personal information about a person in a residential tenancy database if the person was named as a tenant in a residential tenancy agreement that was terminated,<sup>85</sup> or the person’s co-tenancy was terminated in circumstances of domestic violence.<sup>86</sup> In the ACT, an order to remove or amend personal information can be made in prescribed circumstances.<sup>87</sup> Such order can only be made where the listing of the personal information is unjust in the circumstances. The criteria to which ACAT may refer in determining whether the listing is unjust are identical to those listed in the equivalent Queensland and NSW provisions.<sup>88</sup> A specific example is provided involving domestic violence.

Upcoming amendments to the Victorian legislation will prohibit landlords and database operators from listing personal information about a person in a residential tenancy database if:

- the information relates to *inter alia* termination and creation of a new residential rental agreement in circumstances of family violence as a result of a tribunal order, under new Section 91W of the Act<sup>89</sup>
- the person has objected to the residential rental provider, their agent, or the database operator about the listing of information on the grounds that it relates to an act or circumstance of family or personal violence experienced by the person.<sup>90</sup>

Further, if a landlord who lists personal information in a residential tenancy database becomes aware that the information relates to an act or circumstance of family or personal violence experienced by the person whose personal information is listed, the landlord must notify the database operator within seven days of becoming aware of that information.<sup>91</sup> The database operator must amend or

<sup>85</sup> Section 213A (a) RTANSW.

<sup>86</sup> Schedule 1 [38], Section 213A (b). The maximum penalty is presently set at \$2,200.

<sup>87</sup> Section 99(1),(2)(a),(b)) RTAACT.

<sup>88</sup> Section 99(3)(b)(i)–(iv) RTAACT.

<sup>89</sup> Section 439F(6) RTAVIC.

<sup>90</sup> Section 439F(7) RTAVIC. The objection must be accompanied by a copy of any prescribed documentary evidence.

<sup>91</sup> Section 439G (1),(2) RTAVIC.

remove the personal information in the residential tenancy database within 14 days of receiving notification from the residential rental provider.<sup>92</sup>

In 2018, the Northern Territory government made significant amendments to the RTA with the introduction of Part 14, which addresses residential tenancy databases.<sup>93</sup> Deliberations leading up to the amendments considered whether to include specific references to domestic violence and the introduction of a test of unjustness, yet did not do so because of concerns of ‘unintended consequences’.<sup>94</sup> The matter is still under consideration, with Recommendation 3 stating:

The Committee recommends the Government undertake a comprehensive assessment to determine the most appropriate way to provide protections for people that may be unjustly listed on a residential tenancy database.

As it stands, a person may apply to the tribunal for an order if personal information about the person is, or is proposed to be, listed on a tenancy database.<sup>95</sup> The tribunal may make any orders it considers appropriate, including an order prohibiting a landlord or database operator from listing personal information about a person on a tenancy database, or to amend or remove the listing.<sup>96</sup>

In Tasmania, an eligible person—that is, a person affected by information kept on a residential tenancy database—can apply to the Residential Tenancy Commissioner for an order removing the information.<sup>97</sup> The commissioner may make any order he or she thinks fit in respect of an application if the commissioner is satisfied that, *inter alia*, the inclusion of information that affects the eligible person is unjust in the circumstances with regard to the four listed factors.<sup>98</sup> Again, it is assumed that circumstances involving domestic violence would be regarded as unfair. No examples are provided within the provision.

In South Australia, where there has been a termination based on domestic abuse, the tribunal can make an order that prohibits the landlord, agent or database operator from listing an applicant’s personal information on a residential tenancy database.<sup>99</sup> If the listing is already on the database, the tribunal has a general power to make orders. Presumably, this would mean an order can be made that the listing be amended or removed.<sup>100</sup>

Section 89A(4)(d) RTA refers specifically to instances of domestic abuse and states that various orders can be made, including prohibiting or removing a listing from the database where the tribunal is satisfied that the tenant did not cause a breach of the residential tenancy agreement, or a breach resulted from an act of abuse or domestic abuse against the tenant.

Part VIA of the Western Australian legislation considers residential tenancy databases. The legislation uses the unjustness standard and the criteria from the legislation discussed, but will make specific reference to instances of family violence.<sup>101</sup> The court may make an order where the listing is unjust<sup>102</sup> and a listing is deemed unjust if the applicant is being subjected or exposed to family violence.<sup>103</sup> Further, the court may order personal information about a person in a residential tenancy database

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<sup>92</sup> Section 439H(1) RTAVIC.

<sup>93</sup> Indeed, until this year, the Northern Territory had not adopted the national principles.

<sup>94</sup> Although these inclusions were recommended by several submissions, an inquiry by the Northern Territory Legislative Assembly’s Economic Policy Scrutiny Committee (2018) decided against this.

<sup>95</sup> Section 134(1) RTANT.

<sup>96</sup> Section 134(2)(a), (b) RTANT.

<sup>97</sup> Section 48ZF(1),(2) RTATAS.

<sup>98</sup> Section 48ZF(3)(b)(i)–(iv) RTA.

<sup>99</sup> Section 99F (1)(e); s 89A(4)(d) RTA.

<sup>100</sup> Section under s 99L RTA.

<sup>101</sup> Section 82J RTAWA.

<sup>102</sup> Section 82J (2) (b) RTAWA.

<sup>103</sup> Section 82J(2A) RTAWA.

to be wholly or partly removed, amended in a stated way, or not listed in a residential tenancy database.<sup>104</sup>

### *Key Findings*

Despite the national model, inconsistencies remain across Australia. Some jurisdictions provide that a database operator, landlord or agent must not list a person on a database in circumstances of FDV. Legislation from all jurisdictions also provides a mechanism for listings to be amended or removed in certain circumstances. Most jurisdictions provide a test of whether a listing is unjust and provide criteria to assist in determining such. Other jurisdictions do not require an assessment of unjustness, but the provisions are sufficiently broad to necessitate consideration of like criteria.

Until recently, South Australia provided for the most comprehensive legislation in that the applicable RTA specifically prohibits listing, or provides for amendment or removal of a listing, in circumstances of domestic violence. Amendments to the Victorian legislation will and the NSW and Western Australian legislation have enhanced tenants' rights in respect to adverse listings on a tenancy database upon termination of a lease because of FDV.

In Queensland and the ACT, FDV is not a specific ground for removal from a tenancy database. However, examples illustrating the anticipated operation of the provisions describe circumstances of FDV. Legislation in Tasmania and the Northern Territory lists factors, but there is no specific reference to FDV in the legislation or by illustration.

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<sup>104</sup> Section 82J (2B) RTAWA.



## Question 5: Could X encounter discrimination in finding another rental property?

### *The Problem*

Persons experiencing domestic violence may experience discrimination in seeking a new rental property. Apart from the issues associated with a listing on a tenancy database, there is anecdotal evidence that landlords and agents discriminate against persons who have experienced FDV because of concerns that violence may 'follow' the victim/survivor to the new property, with disruption or damage ensuing.

### *Overview*

One would expect that such conduct would contravene state and territory equal opportunity legislation.<sup>105</sup> All states and territories prohibit discrimination against persons with certain listed characteristics (such as sex or sexual orientation) and discrimination in relation to the provision of accommodation is addressed. Again, the legislation is not consistent nationally and can include, depending on the provision, relatively few categories of person or a much broader group.<sup>106</sup> Unfortunately, there is no specific reference to discrimination against persons experiencing FDV. While there are common references to, for example, marital status, the definition of the term is often ambiguous.

Having said this, even if persons experiencing FDV were included under the protections of the legislation, proving discrimination is a difficult task. There are many reasons why accommodation is allocated to one person over another and it is not always, despite suspicions, clear as to the real reasons why an accommodation request was refused.

### *Summary of Legislative Provisions*

The 2019 amendments to the Western Australian RTA inserted s 56A into the legislation to prohibit discrimination against a tenant or prospective tenant on the grounds that a person has or may have experienced or been exposed to family violence. The section also extends some protection to the perpetrator by prohibiting discrimination where a tenant has been convicted of a charge relating to family violence. A penalty is imposed for a contravention of the provision.

### *Key Findings*

Apart from Western Australia, it is disappointing that other RTA and related legislation in Australia does not expressly address discrimination in relation to a tenant. This should be highlighted in all

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<sup>105</sup> The following laws operate at a state and territory level, with state and territory equal opportunity and anti-discrimination agencies having statutory responsibilities pursuant to them:

- ACT—*Discrimination Act 1991*
- NSW—*Anti-Discrimination Act 1977*
- Northern Territory—*Anti-Discrimination Act 1996*
- Queensland—*Anti-Discrimination Act 1991*
- South Australia—*Equal Opportunity Act 1984*
- Tasmania—*Anti-Discrimination Act 1998*
- Victoria—*Equal Opportunity Act 2010*
- Western Australia—*Equal Opportunity Act 1984*.

<sup>106</sup> An example of a broader scope can be seen in Victoria where discrimination is prohibited in Part 4 in relation to: (a) age, (b) breastfeeding, (c) employment activity, (d) gender identity, (e) impairment, (f) industrial activity, (g) lawful sexual activity, (h) marital status, (i) parental status or status as a carer, (j) physical features, (k) political belief or activity, (l) pregnancy, (m) race, (n) religious belief or activity, (o) sex, (p) sexual orientation and (q) personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

provisions addressing early termination of leases in the event of FDV. However, this is not to say that the Western Australian is a panacea. First, it is uncertain whether the provision only has a prospective effect—that is, in relation to any new leases entered into with a future landlord—or can also apply to an existing lease. For example, if a person is experiencing FDV *now*, a landlord may be reluctant to renew a lease at the end of the term, even if the FDV victim/survivor wanted to stay. If there was an application to exclude the perpetrator and stay, the issue of the FDV may be a factor (express or implied), which raises an objection to the order being made. The provisions would apply to a future landlord, it seems, but issues of proof as to the reason behind refusal to lease to a prospective tenant are notoriously difficult.

#### *Discrimination against the Perpetrator*

It is important to consider discrimination against the perpetrator too. Nothing is to be gained by encouraging a situation where the perpetrator is unable to secure accommodation; this could inflame what is already a volatile situation.

Whether the lease is terminated outright or the perpetrator is excluded from the premises and the FDV victim/survivor remains, the perpetrator must seek alternative accommodation. If the victim/survivor is staying in the property, the security bond is likely to have carried over. This can affect the perpetrator's ability to obtain alternative accommodation upon departure. It is likely the perpetrator would experience some discrimination if he was outed and, again, this would not be caught by the equal opportunity Acts. Section 56A RTAWA seems limited to discrimination against the FDV victim/survivor.

The recent Tasmanian amendments provide that, when dealing with a replacement residential tenancy agreement, the court has an option to terminate the original agreement and establish a new residential tenancy agreement for the benefit of the person *against whom the FVO is to be made* and any other party who was a party to the terminated agreement, other than the affected person.<sup>107</sup> In Western Australia, if a tenant affected by FDV elects to terminate the lease and leave the premises, the perpetrator can stay in the rental home, if they choose to and can afford to.<sup>108</sup> Further, South Australia has recently announced the trial of a program to house perpetrators of FDV in hostels while undertaking related programs (ABC News 2019).

It is suggested that the circumstances of the perpetrator must be considered. In establishing a safety net around women and children experiencing violence, monitoring the perpetrator and, ideally, encouraging behavioural change in the perpetrator is essential. This cannot be achieved if a perpetrator is transient or homeless. Indeed, this is likely to increase the risk to families.

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<sup>107</sup> *Family Violence Act 2004* (Tas), section 17(1A)(c).

<sup>108</sup> Section 71AE RTAWA.

## Question 6: Are there any other factors, such as the presence of a family pet, that could affect the ability of a FDV survivor/victim to leave the tenancy?

### *The Problem*

The circumstances of companion animals residing in violent domestic circumstances are often overlooked in discussions about FDV. The reality is that many FDV victims/survivors will not leave abusive circumstances because, even though the individual may be able to leave, she may be unable to take a pet. (Douglas and Chapple, [3.1.10]).

Further, despite recognition of the benefits to mental wellbeing of having a pet, and evidence of the comfort and support that pets provide, obtaining rental accommodation with a pet remains difficult (Power 2017). This is of particular concern where a FDV survivor/victim may already be at a disadvantage when seeking alternative accommodation.

### *Overview*

It has been noted that 70 per cent of women fleeing FDV also report abuse of pets (Scott 2020). Companion animals are at risk of deliberate harm from abusers in violent households (Coorey & Coorey-Ewings 2018). Pets are often victimised and used as a ‘bargaining chip’, as victims/survivors are fearful for the fate of the pets should they leave (Volant 2008). As Coorey and Coorey-Ewings (2018) note:

As members of families where DFV is occurring, animals are at risk of acts of cruelty and of being killed. Perpetrators use threats, assaults, neglect, torture and the killing of animals as strategies of intimidation, coercive control and retaliation within family violence contexts. For many elderly, disabled and chronically ill people, animals are their companion, and may provide aid in relation to their physical and/or psychological needs. As a source of support, practical assistance and comfort, these animals are at risk of being abused by carers and/or family members who exert power and control over the person they are attached to, and who depends on them.

Further, most refuges do not cater for pets and, despite the existence of rescue and assistance services in most states and territories, demand exceeds the supply of boarding accommodation (Blackney 2018). Where accommodation is found, in most jurisdictions, keeping a pet is at the discretion of the landlord, and the tenant must obtain the landlord’s consent. In some jurisdictions, this may come with the need to pay a pet bond—an additional expense that most FDV victims/survivors can ill afford.

While this issue does not directly affect the statutory framework regulating the termination of residential leases in circumstances of domestic violence, it has a real practical effect on the preparedness of FDV victims/survivors to leave the premises.

### *Summary of Legislative Responses*

In some jurisdictions, abuse of an animal comes within the definition of FDV—a development that appears to reflect arguments that abuse of animals should be subsumed under the umbrella of FDV (Coorey & Coorey-Ewings 2018).<sup>109</sup> However, generally, the Australian response to the plight of companion animals in circumstances of FDV is minimal.<sup>110</sup> Table 15 identifies the relevant legislation by jurisdiction.

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<sup>109</sup> Referring to discussions by Reilly (personal communication, 20 January 2016).

<sup>110</sup> Indeed, compared with the US, the United Kingdom, New Zealand and Canada, Australia’s inclusion of animals in its DFV service responses is minimal.

**Table 15: References to animals in residential tenancy and related legislation by jurisdiction**

Queensland	NSW	Victoria	ACT	NT	Tasmania	SA	WA
<p><i>Residential Tenancies and Rooming Accommodation Act 2008</i> S 268(f) and s 71(12)(g); Schedule 1, c17 RTRAA Regulations <i>Domestic and Family Violence Act 2012</i> Definition of domestic violence (used in RTRAA) includes reference to abuse of an animal</p>	<p><i>Residential Tenancies Act 2010</i> S 19(3), Regulations Schedule 1, cl 43–45</p>	<p><i>Residential Tenancies Act 1997</i> Part 2, Division 5B Pets <i>Family Violence Protection Act 2008</i> Definition of family violence (used in RTAVIC) includes reference to abuse of an animal</p>	<p><i>Residential Tenancies Act 1997</i> <i>Residential Tenancies Amendment Act 2018 (No 2)</i>— requirements regarding advertisements about and prior approval for keeping a pet on the premises</p>	<p>Nil</p>	<p><i>Residential Tenancy Act 1997</i> S 64B <i>Family Violence Act 2004</i> (used in RTATAS) includes reference to abuse of an animal</p>	<p><i>Residential Tenancies Act 1995</i> S 49(1)(b)(vi) (G) Reference in 105B to rooming houses * A pet bond was suggested in the government framework released March 2019</p>	<p><i>Residential Tenancies Act 1987</i> S 29 RTAWA See s 71AE RTAWA In determining whether to grant an order, the potential effect of the order on any pets kept on the premises should be considered ((4)(d)) <i>Restraining Orders Act 1997</i> (used in RTAWA) includes reference to abuse of an animal</p>

**Key Findings**

As noted above, keeping a pet is generally at the discretion of the landlord. Pet bonds are required in, for example, Western Australia, to protect the interest of the landlord in the event of damage to the property. However, tenant advocacy groups do not support pet bonds because they increase the upfront cost of entering into a lease.<sup>111</sup> This is of particular concern in instances of FDV.

The Victorian amendments will provide for robust provisions regarding pet ownership in that, while consent is still required to keep a pet in rental accommodation, if such consent is refused, the tenant has a right to seek a review in VCAT. In this instance, the onus of proof to establish the legitimacy of the refusal is upon the landlord.

It would be desirable for the definition of FDV in each state and territory to expressly include pet abuse as a characteristic of FDV. Further, as is the case in s 71E(4)(d) of the Western Australian legislation, a family pet can be the subject of consideration when determining whether a FDV survivor/victim should remain in the premises.

Finally, as a pet may discourage a survivor/victim from leaving an abusive relationship in the first place, it would be desirable for affordable temporary accommodation to be made available for pets. Ideally,

<sup>111</sup> See, for example, Launch Housing, ShelterWA and ShelterSA.



schemes such as the RSPCA's 'Safe Kennels' program<sup>112</sup> should be encouraged to provide affordable accommodation for pets.

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<sup>112</sup> <https://www.rspcasa.org.au/safe-kennels-project/>

## Question 7: Would X be permitted to change locks and install security devices for protection?

### *The Problem*

A tenant experiencing or at risk of FDV must be confident that the premises are secure. This includes ensuring that:

- a perpetrator does not retain, or obtain access, to a key to the premises after exclusion
- locks can be changed in a timely fashion in appropriate circumstances, and
- where necessary, additional security precautions, such as security doors and cameras, can be installed.

A person experiencing FDV needs secure premises to maintain privacy and safety. At present, most RTAs minimise landlord responsibilities for security and place obstacles in the way of tenants who seek to secure rented premises. Although some RTAs refer to circumstances of ‘reasonable excuse’ or ‘emergency’, in most cases, the consent of the landlord must be obtained prior to a change of locks. Alterations, such as security screens, require consent on the proviso that consent cannot be unreasonably withheld. These factors hinder the tenant’s ability to secure the premises in a timely manner, potentially placing the tenant and any dependants in danger. Indeed, the Victorian Royal Commission into Family Violence noted that refusal to consent to security modifications may undermine the ability of victims/survivors to stay safe in their homes (State of Victoria, 125).

### *Overview*

The various RTAs place obligations on the landlord regarding security of the premises. Although the wording of the provisions differs, generally, the landlord must ensure that the premises are reasonably secure, and that the lessor must provide locks to the premises. In most cases, this obligation is implied by the statute into each agreement, and there is also an obligation to maintain the locks. Some RTAs extend these obligations to security devices, as well as locks. Where locks are changed, most jurisdictions limit the availability of a new key to the perpetrator and, in some cases, the landlord.

In general, the landlord or tenant cannot alter, remove or add any lock (or, where relevant, security device) without gaining the consent of the other before doing so. In some jurisdictions, a landlord or tenant who does so, without reasonable excuse, is guilty of an offence. In some cases, the RTAs permit locks to be changed in the event of an emergency or in circumstances where the premises are subject to various orders. The Victorian amendments will see enhanced standards of locks, including locks on all windows and deadlocks on most doors, across all rental properties. The 2019 Western Australian amendments dispensed with the need for the victim/survivor to obtain consent to change locks and security devices where there is a risk of violence or the lease of a tenant has been terminated and the victim/survivor takes over the lease.

The jurisdictions differ about alterations to premises, such as the installation of security screens or cameras. The issue of obtaining the landlord’s consent, including the delay that this may involve, and the expense of fixing damage caused by the installation at the end of the lease, raise problematic issues for a tenant. The Victorian amendments provide that it is unreasonable for a landlord to refuse to permit modifications that are reasonable security measures or where there is family violence involved. Western Australia makes it a term of every residential tenancy agreement that a tenant may affix any prescribed alterations to the premises in circumstances of family violence.<sup>113</sup>

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<sup>113</sup> Section 47(4) RTAWA.

Summary of Legislative Responses

A summary of legislative responses across Australian jurisdictions in relation to security measures on residential rental premises is detailed in Table 16.

**Table 16: Scope of legislation regarding security measures**

Queensland	NSW	Victoria	ACT	Northern Territory	Tasmania	South Australia	Western Australia
<i>Residential Tenancies and Rooming Accommodation Act 2008</i>	<i>Residential Tenancies Act 2010</i>	<i>Residential Tenancies Act 1997</i>	<i>Residential Tenancies Act 1997</i>	<i>Residential Tenancies Act 1999</i>	<i>Residential Tenancies Act</i>	<i>Residential Tenancies Act 1995</i>	<i>Residential Tenancies Act 1987 (WA)</i>
Locks: ss 210, 211, 212 Alterations: ss 208, 209	Locks and security devices: ss 70, 71 Alterations: ss 66, 68	Locks and security devices: s 64, 70A(1)(b), 70B Alterations: s 64	Locks: s 1(CI54(1)-(3)) Alterations: ss 71AA, AB, AC	Locks: ss 49, 52, 53 Alterations: s 55	Locks: s 57 Alterations: s 54	Locks: s 66 Alterations: s 70	Locks and other means of securing premises: s 45

Key Findings

Amendments to the respective RTAs in Victoria and Western Australia will enhance flexibility for tenants in these circumstances and should be considered a model for amendment in other jurisdictions.

The Western Australian legislation provides efficiencies that are not available through the other RTAs. When they become law, the amended provisions will absolve the victim/survivor of the need to obtain the landlord’s consent in stipulated circumstances involving family violence. This removes the need to obtain the landlord’s consent—a requirement that can be time-consuming and cause delay in circumstances where prompt action is required. It also avoids issues with landlords refusing to allow changes, thus causing the tenant to have to establish an unreasonable refusal. Again, this is time-consuming and could be dangerous to a victim/survivor and dependants.

The other jurisdictions place hurdles before a victim/survivor of FDV to enhance security on a rented property in a timely manner. While the reference to reasonable excuse provides some scope, the onus of proof is upon the tenant to discharge and it is uncertain what is reasonable in these circumstances. Domestic violence ranges from physical acts to psychological behaviours. While the legislation provides that an ‘emergency’—presumably a violent, overt act—is a reasonable excuse, establishing a reasonable excuse in less overt circumstances may be risky to a tenant, especially where doing so can result in an offence.

The requirement for a court order as evidence of a reasonable excuse is useful, although obtaining the order can be difficult and may result in delays.

## Issues Regarding the Court/Tribunal Process

Some state and territory legislation provides for additional safeguards for a residential tenant experiencing FDV in relation to evidentiary issues and privacy concerns.

### The Court/Tribunal Process

In an application to a court or tribunal seeking an order for early termination of a lease in circumstances of domestic violence, there is a risk that, during those proceedings, a FDV victim may come face to face with the perpetrator. Indeed, a self-represented perpetrator may seek to cross-examine a FDV survivor/victim during proceedings for termination (Douglas & Chapple, [10.3.2]).

Provisions that circumvent the court or tribunal process such as the declaration procedure supporting the service of a notice to the landlord dilute the likelihood of engagement with the perpetrator, at least at the termination stage. However, there is the potential for any ensuing order to be challenged and legislation in several jurisdictions is silent regarding assessing responsibility for outstanding issues, particularly the security deposit. In such instances, although the lease may be terminated, the matter may not be resolved without some form of tribunal or court proceedings.

In circumstances where the matter does proceed to a tribunal or court, issues regarding the conduct of cross-examination and maintaining privacy and confidentiality are significant considerations. These issues will now be discussed.

#### *Cross-examination*

In relation to FDV proceedings generally, Douglas & Chapple note at [10.3.2]:

In some cases, a perpetrator may choose to be self-represented so as to secure the opportunity to directly cross-examine the victim. The victim's capacity to give evidence or the quality of the victim's evidence in these circumstances may be compromised by the victim's fear of the perpetrator and, as a consequence, the probative value of the evidence may be diminished or negated.

This can certainly be the case in relation to proceedings seeking a termination order where it is necessary for an application to be made to a court or tribunal for an order granting or providing evidence for a termination.

Although most tribunals are not required to heed the rules of evidence, a tribunal may inform itself as it thinks appropriate (Harvey 2019). Under each jurisdiction's evidence legislation there is a procedure available by which a person can be declared a 'special witness' for the purposes of court proceedings due to *inter alia* the likelihood of suffering 'severe emotional trauma' or 'be so intimidated or distressed as to be unable to give evidence or to give evidence satisfactorily by reason of age, cultural background, *relationship to any party to the proceeding*, the nature of the subject-matter of the evidence, or any other factor that the court considers relevant.'<sup>114</sup> Tribunal members, or in the various Magistrates Courts, have discretion to make like arrangements for FDV survivors/victims. Ideally, such provisions could be incorporated into the RTAs or relevant FDV legislation addressing termination of tenancies.

Although not taking the 'special witness' approach, some jurisdictions have already introduced provisions stating that, in a proceeding for termination or new residential rental agreement, the perpetrator cannot cross-examine the FDV victim unless the court or tribunal gives leave to do so.<sup>115</sup>

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<sup>114</sup> This terminology is derived from s 106R(3)(b)(i)–(ii) *Evidence Act 1906* (WA). Terminology used differs from jurisdiction to jurisdiction.

<sup>115</sup> See amendments to s 8A and 31 *Family Violence Reforms Act 2018* (Tas) and see too s 88B RTAWA.



For example, in the Northern Territory, s 113 DFVA provides for recorded statements to be taken in relation to hearings arising under domestic violence offences or orders while s. 114 DFVA provides for circumstances where an unrepresented defendant wishes to cross-examine a vulnerable witness or any other witness who is in a domestic relationship with the defendant.<sup>116</sup> Leave must be sought and obtained.<sup>117</sup> Where leave is not granted, s 114A DFVA regulates the procedure to be followed by the court. In summary, the fact that the defendant cannot cross-examine the witness must be explained to the defendant and, if the defendant does not seek legal representation to conduct the cross-examination, a person may be appointed by the court.<sup>118</sup>

In Victoria, s 233D presently considers cross-examination in a proceeding for termination of a lease or entry into a new lease as a result of FDV. The victim/survivor of FDV cannot be personally cross-examined by the perpetrator.<sup>119</sup> Further, upon commencement of the Victorian amendments, a person subjected to family violence or a protected person under a personal safety intervention order, cannot be personally cross-examined by the person who subjected that person to the violence.<sup>120</sup> Although leave may be granted in certain circumstances,<sup>121</sup> the person who subjected the witness to the FDV may only cross-examine the person as to certain related matters and in accordance with any conditions to which the leave given is subject.<sup>122</sup>

## Privacy and Confidentiality

In the Final Report of the Victoria's Royal Commission into Family Violence it was noted that the 'complexity of the legislative environment' resulted in persons and organisations not fully understanding their obligations regarding privacy and confidentiality (Victorian Government 2016). their obligations and were consequently reluctant to share information. The issue can be a 'balancing act' because obligations may impact adversely on information sharing although, in other instances, undermining privacy could lead to safety concerns (Legislative Assembly Western Australia 2020). This is a concern regarding tenancies impacted upon by FDV because information about the survivor/victim's new address or other personal information could be inadvertently revealed.

All jurisdictions provide, to some degree, for enhanced privacy and confidentiality provisions in relation to persons in circumstances of FDV (Douglas & Chapple [10.3.2]). In some jurisdictions, this has been extended to legislation focussing on FDV in a residential tenancy context. For example, in NSW, information or documents provided with a termination notice must not use or disclose the material unless compelled by law to do so. Further, the material must be stored and disposed of securely.<sup>123</sup> Similar provisions apply in Western Australia, in particular in relation to the keeping of documents and the declaration procedure.<sup>124</sup> In Victoria, the amendments will provide that a tenant can object to entry into the premises for the purpose of producing advertising videos or images if those images or video could identify a person residing at the premises who is at risk of family violence or personal violence.<sup>125</sup>

## Concerns about Landlords

<sup>116</sup> Section 114(1)(a) and (b) DFVA. As amended by *Evidence and Other Legislation Amendment Act 2020* (NT).

<sup>117</sup> Section 114(2)(a),(b) DFVA.

<sup>118</sup> Section 114 (2)(c)–(e), (3) DFVA.

<sup>119</sup><sup>119</sup> Section 233D(2) Similar provisions will be incorporated via the 2018 amendments when they come into effect on 29 March 2021. Ss 91Y(1)(a),(2),(4); 91T, 91W(2) RTAVIC.

<sup>120</sup> Where this occurs during a proceeding under proposed s 91V(1)RTAVIC.

<sup>121</sup> Section (3) RTAVIC.

<sup>122</sup> The relevant matters are those matters set out in ss 91T(1) and 91W(2) RTAVIC. Note the discussion of the usual practice in domestic violence matters in the Women's Legal Service Victoria (2014).

<sup>123</sup> Section 105C(3),(4) NSWRTA.

<sup>124</sup> Section 75AB, AE.F.

<sup>125</sup> Section 89A RTAVIC.

Traditional tenancy laws are predicated on the desire to provide certainty to landlords that, when entering into a fixed-term lease, the rental income for that period is guaranteed. Therefore, landlord and their representatives have been concerned that providing greater flexibility for FDV victims/survivors to terminate leases will undermine these principles, see leases too easily terminated, and, in the event of outstanding rent or damage, the landlord experiencing a loss.

The principal concern is the loss of rental income where the lease is terminated, and the premises vacated. However, there is a persuasive argument that ending the lease, minimising the risk of damage to a property, and obtaining a new tenant in a timely fashion, may be a more favourable outcome for a landlord than preventing termination. During the preparation of the 2019 Western Australian amendments, a cost-benefit analysis was prepared by the Consumer Protection Division in the Department of Mines, Industry Regulation and Safety that considered three courses a landlord could take in relation to termination. The analysis considered three models:

1. Termination of tenancy by notice.
2. Abandonment of premises.
3. Termination by court order only.

The termination by notice model was pivotal to the Western Australian amendments.

### Termination of Tenancy by Notice

Termination by notice provides that a tenant may terminate the lease by issuing a notice of termination. The notice period is 7 days. If there is another co-tenant, the landlord must provide a copy of the notice to the co-tenant/s who has to give 21 days' notice of termination. If the co-tenant wants to stay in the premises, the landlord will not experience any loss.

The argument supporting this model is that the landlord will be able to assess the circumstances almost immediately. Upon service of the notice, rental will be payable for the final 7 days. In the case of a co-tenant, for 21 days. The property could be advertised to be re-let promptly.<sup>126</sup>

### Abandonment of Premises

Abandoning the premises is a drastic step but, in circumstances of FDV where a person may be fearful to be in a property and, upon leaving, resolves not to return, all too common. The process associated with abandonment is complex because the landlord must make an application to the court seeking an order that the premises have been abandoned. This is a lengthy process, and the landlord is unable to re-rent the property until the process concludes. Further, abandonment often sees furniture and other goods left behind at the property necessitating additional removal and cleaning expenses.

### Termination by Court Order Only

Where termination is by court order, the person experiencing FDV must apply to the court or tribunal, as the case may be, and the time it takes for the matter to be heard can be significant. Urgent applications are available in some jurisdictions however obtaining the order remains a significant hurdle for people to navigate.<sup>127</sup> As the lease is still on foot, the landlord will still be entitled to receive rent however, whether there is no guarantee and that it will be received. As noted in the Western Australian analysis:

Although lessor is entitled to receive rent from tenant throughout process, the consequence of this is that a victim of FDV may be forced to remain in the premises or

<sup>126</sup> See information in 'Cost analysis of various models of termination of a tenancy for FDV.'

<sup>127</sup> See information in 'Cost analysis of various models of termination of a tenancy for FDV.'



become homeless during this period due to an inability to pay rent at two premises, or alternatively the tenant stops paying rent to this lessor in order to be able to secure new premises, which could mean the lessor is without access to rent until the premises are re-let...

This is a lengthy process which has no certain outcome—therefore the lessor is realistically not able to seek new tenants until court has made an order terminating the tenancy agreement.<sup>128</sup>

While each circumstance is different, the WA modelling does suggest a benefit to landlords from the use of the termination procedures where tenants are experiencing FDV.

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<sup>128</sup> See information in 'Cost analysis of various models of termination of a tenancy for FDV.'

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COSTS ANALYSIS OF VARIOUS MODELS OF TERMINATION OF A TENANCY FOR FDV		
Termination of Tenancy Agreement by Notice (as proposed in the Amendment Bill)	Abandonment of Premises (only option for some victims of FDV if third party evidence is not allowed)	Termination by Court Order only
<p><b>KEY POINTS</b></p> <ul style="list-style-type: none"> <li>Lessor receives rent from tenant and/or co-tenant(s) throughout process;</li> <li>If co-tenant(s) nominate to remain in the tenancy, no impact on the lessor;</li> <li>If the co-tenant(s) terminate the tenancy agreement, lessor has 21 days minimum to secure new tenants;</li> <li>Current average vacancy period for Perth tenancies is 49 days (seven weeks) (REIWA data) – therefore worst case scenario potential impact on lessor of 28 days’ rent (seven weeks vacancy period, less three week notice period during which co-tenants are paying rent equals four weeks).</li> </ul>	<p><b>KEY POINTS</b></p> <ul style="list-style-type: none"> <li>In order for premises to be considered abandoned, tenant must cease paying rent, therefore lessor is without rent until premises are re-let;</li> <li>Instead of issuing the tenant with a notice of termination, the lessor may apply to the court for an order that the premises have been abandoned. This will be a significantly longer process (see next column) and therefore has not been factored into these costings; however there are times where a lessor will want the certainty of a court order rather than relying on their own assessment that premises have been abandoned;</li> <li>To form a reasonable view that premises have been abandoned, the Act requires there to be non-payment of rent and other indicators. A reasonable view could not be formed upon the rent being one day late. Therefore, it is likely that several cycles of rent (generally fortnightly cycles) would need to be missed before a reasonable view could be formed;</li> <li>Lessor is not reasonably able to seek new tenants until after seven day notice period has expired.</li> <li>Abandonment of premises can give rise to a tenant being listed on a tenancy database. These listings remain for three years.</li> </ul>	<p><b>KEY POINTS</b></p> <ul style="list-style-type: none"> <li>Although lessor is entitled to receive rent from tenant throughout process, the consequence of this is that a victim of FDV may be forced to remain in the premises or become homeless during this period due to an inability to pay rent at two premises, or alternatively the tenant stops paying rent to this lessor in order to be able to secure new premises, which could mean the lessor is without access to rent until the premises are re-let</li> <li>This is a lengthy process which has no certain outcome - therefore the lessor is realistically not able to seek new tenants until court has made an order terminating the tenancy agreement</li> <li>In the Perth court year to date, the average length of time from application to first mention is 36 days. If the matter does not settle at that date, the average wait to hearing from the first mention is a further 76 days;</li> <li>If this model were to be implemented, wait times for all tenancy matters in the court would be negatively impacted;</li> <li>Lessor or their property managers will be required to attend court. This involves not only the individual’s time, but if the property manager attends, the lessor will incur a fee for their attendance.</li> </ul>
<p><b>Estimate of lessor costs</b></p> <p><u>If there are co-tenants</u></p> <p>Loss of rent while vacant: 4 weeks x \$350* = <b>\$1400</b></p> <p><u>If there are no co-tenants</u></p> <p>Loss of rent while vacant 6 weeks x \$350 = <b>\$2100</b></p>	<p><b>Estimate of lessor costs</b></p> <p>Loss of rent while forming reasonable view that premises is abandoned 4 x \$350 = \$1400</p> <p>Loss of rent during notice period 1 x \$350 = \$350</p> <p>Loss of rent while vacant: 7 weeks x \$350 = \$2450</p> <p><b>Total estimated cost to lessor in lost rent \$4200</b></p>	<p><b>Estimate of lessor costs</b></p> <p>Property manager attendance at court \$500</p> <p>Loss of rent from date of hearing until re-let: 7 weeks x \$350 = \$2450</p> <p><b>Total estimated cost to lessor \$2950 if tenant continues to pay rent during court proceedings. If tenant ceases paying rent in order to avoid homelessness and further violence, total estimated cost to lessor is \$8550 (112 days from application to full hearing)</b></p>

\* Perth median rent \$350 (Source: REIWA.com) <https://reiwa.com.au/the-wa-market/perth-metro/> accessed on 13 June 2018

## Landlord’s Right of Entry during the Termination Process

Under the RTAs, landlords are entitled to inspect the premises at certain times and after providing the requisite notice. Where a tenancy is being terminated early because of FDV, even if the interest under the lease is going to be transferred to the FDV victim/survivor, the landlord may want to inspect the property and any damage that may have ensued.

Several RTAs have amended the legislation to facilitate the landlord’s entry onto the premises in this circumstance. No discrete provisions in Queensland, NSW, ACT, Tasmania and the Northern Territory regarding entry in circumstances of early termination for FDV. Therefore, general provisions would apply. Victoria<sup>129</sup> and South Australia<sup>130</sup> make reference to entry onto the premises after early termination in circumstances of FDV.

Western Australia has the most comprehensive provisions. Section 46 provides generally for the landlord’s right of entry in a variety of circumstances including for the purpose of inspecting the premises and assessing any damage after the termination of a tenant’s interest under s 60(1)(ba),(bb) or (bc).<sup>131</sup> The notice and time frames differ depending on whether the lease is to be terminated outright because of FDV or whether it is being transferred to the FDV victim/survivor or another co-tenant.<sup>132</sup> If it is the former case, the landlord may enter the premises not more than 7 days after receiving notice under section 71AB(1) or 71AD(4); and not less than 3 days after giving notice to each tenant of the landlord’s intention to enter the premises. In the latter case, the landlord may enter the premises not more than 10 days before the hearing of the application under section 71AE; and not less than 3 days after giving notice to each tenant of the lessor’s intention to enter the premises.<sup>133</sup>

## False and Misleading Information Provided to Landlords to Terminate a Lease

When discussing legislation permitting termination in the event of FDV, real estate and landlord organisations have expressed concern that the provisions could lead to false claims of FDV to terminate a lease. In other words, such provisions could be used as an ‘easy way out’ of leases. Some legislation includes provisions stating that parties cannot make false or misleading statements when triggering the process or generally. These are outlined in Table 17 below.

**Table 17: False and misleading information**

Queensland	NSW	Victoria	ACT	Northern Territory	Tasmania	South Australia	Western Australia
Section 446, 447 <i>Residential Tenancies and Rooming Accommodation Act 2008</i> (general prohibition)	Section 105H <i>Residential Tenancies Act 2010</i>	S 501 <i>Residential Tenancies Act 1997</i> (general prohibition)	S 46 <i>Residential Tenancies Act 1997</i> (general prohibition re tenants)	Nil <i>Domestic and Family Violence Act 2007</i>	Nil <i>Family Violence Act 2004</i>	Nil <i>Residential Tenancies Act 1995</i>	Nil <i>Residential Tenancies Act 1987</i>

<sup>129</sup> Section 86(1)(g) RTAVIC.

<sup>130</sup> Section 72(1)(ca) RTASA.

<sup>131</sup> Section 46(2)(ga) 6RTAWA.

<sup>132</sup> Section 46(6A) RTAWA.

<sup>133</sup> Section 46(6B) RTAWA.

Another concern for landlords is that such provisions may be used to by tenants seeking to terminate a lease for another purpose and use FDV as an excuse. To date, there is no evidence to suggest this is the case. The experience in several Canadian provinces, however, where statistics on such terminations were kept, have indicted only a small initial rise in such applications. This is discussed in Chapter 4.

## Conclusion to Chapter 3

It is clear from the review presented in this chapter that residential tenancy legislation as it relates to the impact of FDV on women has been reformed in some jurisdictions. There is growing recognition among lawmakers of the need for change, though more remains to be done. It is also clear from this review that significant differences remain between jurisdictions, and that while there may be a growing congruence in the broad direction of the relevant legislative framework variation in the detail of legislation often exerts a significant impact.

As will be discussed in the final chapter of this report, it is essential that all Australian jurisdictions adopt a consistent approach to circumstances where a person experiencing FDV wants to terminate a residential lease. It is suggested that the legislation in Western Australia is the most efficient and practical and reflects best practice.

At the time of writing, the Western Australian provisions provide, in our view, the best-practice model among the Australian states and territories.

The legislation is extremely comprehensive and articulates clearly the rights and responsibilities of person wanting to terminate a lease in circumstances of FDV. The implementation of the declaration procedure, and the diverse groups of people from which a victim/survivor can seek the declaration, provides for a timely and straightforward method of terminating the lease, without the need to navigate more complex legal processes. Although court orders can be also be evidence of FDV and therefore the basis for termination, this step is not necessary to terminate. It should be noted that the equivalent provision in NSW provides that the lease can be determined immediately upon service of the notice. NSW has also introduced a declaration procedure although at present only medical practitioners can sign the declaration.

All states and territories provide for the lease to be terminated and for the person experiencing FDV to assume responsibility for the lease. As noted in the discussion, in all jurisdictions a court process is necessary and consideration could, perhaps, be given to extending the declaration procedure to these circumstances.

All jurisdictions need to specify clearly what is to happen to outstanding financial responsibilities and the security bond upon termination in these circumstances. It is essential that a person experiencing FDV can extricate herself from a lease and be, so far as possible, in circumstances that enable her to find alternative, affordable accommodation. Many jurisdictions are silent on this issue. The Western Australian legislation is again the most comprehensive. Although the potential contingencies are difficult to predict, a clear set of default rules regarding 'end of lease' matters and the security deposit should be introduced.

There is a considerable degree of consistency across the jurisdictions regarding listings on tenancy databases. Nevertheless, the Northern Territory's rejection of an unfairness standard is disappointing.

The vexed issue of discrimination should also be considered. At the time of writing, only Western Australia has a specific reference in the legislation to discrimination against persons leaving a lease in circumstances of FDV. Despite difficulties with proof, it is an important acknowledgement within the legislation that underscores the legislation's focus on assisting persons experiencing FDV. It is emphasised too that any anti-discrimination provision should extend to the perpetrator too. Nothing

is to be served by preventing a perpetrator from getting resettled elsewhere. Unlike several states in the US, there is no provision providing a defence from eviction for a person in circumstances of FDV. In our view, this would be beneficial in Australian legislation, especially in the light of the reluctance of the parliaments to prevent no-fault eviction.

Reluctance to leave a domestic pet is a significant deterrent when a person is considering whether to exit a violent relationship. In most jurisdictions, abuse towards animals is an indicator of FDV. However, this has little practical consequence. The dilemma is that a person may be reluctant to leave circumstances of FDV because she is fearful of the fate of a family pet that remains on the premises and it is often impossible to take the pet with her. Additional consideration could be given by government to provide for funding and assistance for some refuges to shelter family pets and also provide support for organisations who foster, or home animals involved in circumstances of FDV.

In relation to locks and security devices, most legislation requires the consent of landlords regarding alterations. Given that security screens, lighting and alarms are essential to ensure security, there should be greater flexibility permitted within the legislation. As an example, Western Australia provides that consent of the landlord to such alterations may be dispensed with in appropriate circumstances.

## Chapter 4: International Comparison

Having discussed the approach taken in the various Australian states and territories, it is instructive to examine some international legislative approaches in relation to women and children escaping violence from rented properties. Legislation from the United States, and particularly Canada, was used to inform recent amendments in Australia.<sup>134</sup>

### The United States

In the United States (US), landlord and tenant laws are influenced at federal, state and local levels of government although state laws are the primary instruments.

#### Federal Laws

##### *Fair Housing Act*

The Fair Housing Act prohibits discrimination in relation to the purchase or rental of residential property.

##### *Uniform Residential Landlord and Tenant Act (1972)*

The Uniform Residential Landlord and Tenant Act (URLTA) provides states with model legislation in relation to issues pertinent to residential tenancy law. The Revised Uniform Residential Landlord and Tenant Act (RURLTA) was introduced in 2015. The revised act incorporates provisions about *inter alia* tenants affected by domestic violence.<sup>135</sup>

##### *The Violence against Women Act*

The Violence against Women Act<sup>136</sup> provides funding towards investigation and prosecution of violent crimes against women. The Act provides for criminal and civil redress.<sup>137</sup>

#### State Laws

As is the case in Australia, responsibility for legislating on residential tenancy matters is primarily the responsibility of the states. As such, the model law is not binding, and state legislatures do not have to adopt it. Each jurisdiction can legislate as the respective government sees fit.

Having said this, many states have adopted the original URLTA and have subsequently adopted the revised version. Those states that do adopt the model law are free to alter the terms of the model law. As a result, there have been varied responses to FDV in a residential tenancy context. Several US states have adopted quite stringent, and in some cases, novel, responses while others have opted for minimal intervention.

Other states have not adopted the model law and take an individual approach.

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<sup>134</sup> In particular, in Western Australia. The provisions were modelled on legislation adopted in Alberta.

<sup>135</sup> The model law has a broad definition of domestic violence that includes stalking and sexual violence. However, when adopting the model law, individual states are free to define the term as they choose. Therefore, some states have very broad definitions while some are more limited.

<sup>136</sup> Note that the legislation applies to all genders and is applicable in every state.

<sup>137</sup> The VAWA expired on 21 December 2018, was temporarily reinstated on 25 January 2018 but expired again on 15 February 2019. At the time of writing, it is uncertain when the Act will be reinstated.



## Local

In some states, supplemental laws have been introduced by local authorities.<sup>138</sup>

## Overview of the Relevant Provisions of the RURLTA

Although RURLTA is a model law, it provides an instructive base from which to discuss much of the US legislation. Article 11 addresses the effect of domestic violence, dating violence, stalking, or sexual assault on residential leases.<sup>139</sup> It provides for:

- i. Early termination of a lease in circumstances of domestic violence where there has been appropriate verification;<sup>140</sup>
- ii. No liability on a victim for rental after the date of termination;<sup>141</sup>
- iii. The opportunity to change locks and security devices without the landlord's consent;<sup>142</sup>
- iv. Termination of the perpetrator's lease with, and in some circumstances, without a court order.<sup>143</sup>

The RURLTA also places obligations on the landlord with respect to conduct towards the victim<sup>144</sup> and, in some cases, the perpetrator.<sup>145</sup> The landlord has the right to seek damages from the perpetrator.<sup>146</sup>

- (i) *Early termination of a lease in circumstances of domestic violence where there has been appropriate verification*

Where a victim/survivor of an act of domestic violence is a tenant, or an immediate family member, and has a reasonable fear of suffering psychological harm or a further act of domestic violence, the tenant may terminate the lease without the landlord's consent upon service of the requisite notice on the landlord.<sup>147</sup> The Section is self-executing in that the tenant is released from the lease upon filing the appropriate documentation. The notice must be accompanied by:

- (a) A copy of a court order restraining the perpetrator from contact with the tenant or immediate family member;<sup>148</sup>
- (b) A copy of the perpetrator's conviction for an act of domestic violence against a tenant or immediate family member;<sup>149</sup> or
- (c) A written verification signed by the tenant and an attesting third party.<sup>150</sup> The relevant third party can be a law-enforcement official, a licenced health care professional, a victim advocate<sup>151</sup> or a victim services provider.<sup>152</sup>

- (ii) *No liability on a victim for rental after the date of termination*

<sup>138</sup> For example, in California, New York and Florida.

<sup>139</sup> 1101–1109.

<sup>140</sup> 1102–1104.

<sup>141</sup> 1102.

<sup>142</sup> 1106.

<sup>143</sup> 1108.

<sup>144</sup> 1102, 1103.

<sup>145</sup> 1107.

<sup>146</sup> 1105.

<sup>147</sup> 1102 (a),(b).

<sup>148</sup> 1102(1).

<sup>149</sup> 1102(2).

<sup>150</sup> 1102(3). The verification requirements are set out in s 1104. A sample verification form is provided.

<sup>151</sup> Defined in 1101.

<sup>152</sup> Defined in 1101.

The tenant is not liable for rent accruing after termination or other actual damages resulting from the termination of the lease. The tenant does, however, remain liable for rent and other amounts owed to the landlord before termination of the lease.<sup>153</sup>

*(iii) The opportunity to change locks and security devices without the landlord's consent*

Where a tenant or immediate family member has been a victim/survivor of domestic violence and has a reasonable fear that the perpetrator may try to enter the premises, the tenant may change any locks or security devices without the landlord's consent.<sup>154</sup> The costs are borne by the tenant and the landlord must be provided with a key. There is no need to first trigger the termination procedure in s 1102 to take this step.

*(iv) Termination of the perpetrator's lease with, and in some circumstances, without a court order*

If a landlord has a reasonable belief<sup>155</sup> that a tenant or immediate family member of the tenant is a victim/survivor of domestic violence and another tenant of the landlord is the perpetrator of the abuse, the landlord may unilaterally terminate the perpetrator's interest immediately or on a later specified date.<sup>156</sup> Prior to the landlord terminating the perpetrator's interest, the landlord must give notice to the tenant of the intention to terminate to give the tenant time to take precautions.<sup>157</sup> Terminating the perpetrator's interest does not affect the interest of any other tenant whether the FDV victim/survivor or any other co-tenants.<sup>158</sup>

### *Applicability of the Legislation*

The conduct addressed, and the persons affected, by the legislation varies from jurisdiction to jurisdiction. Most states limit coverage to instances of domestic violence (as defined in the particular legislation) although some expressly incorporate other conduct such as sexual violence and stalking. Most of the legislation defines domestic violence as between domestic partners although some extends other categories of persons including vulnerable older adults. The applicability of legislation varies according to whether a perpetrator is a tenant, whether both parties are tenants or whether the victim/survivor is the sole tenant. In most instances, the legislation will capture most circumstances although in some instances, a victim/survivor could, it appears, be left without recourse. Most states specifically address the issue of co-tenants.

### *Does a Person Need to have Already Experienced FDV or is an Apprehension Enough to Trigger the Legislation?*

The answer to this question varies from state to state. Several Acts require that a person must have already been a victim/survivor, not merely being apprehensive of potential violence. This would seem to be an unnecessary hurdle for a person experiencing FDV. In comparison, in some states it is enough that there is a real apprehension of violence.<sup>159</sup>

### *How is Abuse Defined?*

Most states provide for broad categories of conduct within a definition of domestic violence and include physical, financial, psychological abuse and neglect. In several states, threats of or injury to domestic animals is included.

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<sup>153</sup> 1102(c)(1).

<sup>154</sup> S 1106.

<sup>155</sup> Note s 1108(g).

<sup>156</sup> 1108(a).

<sup>157</sup> 1108(b).

<sup>158</sup> 1108(g).

<sup>159</sup> Refer to Appendix 2.

### *Length of the Leases*

Unlike Australia where 12-month residential leases are commonplace, leases in the US are often for longer periods of time. Some jurisdictions provide different procedures and considerations depending on whether the lease is a shorter (usually 12-months) or a longer-term lease.

## Residential Tenancy and FDV

### *Overview*

#### *Early Termination*

Twenty-seven states have early lease termination laws for persons experiencing domestic violence.

Like in Australia, there are differences between jurisdictions regarding the evidence that needs to be provided by the victim/survivor to evidence the claim of domestic violence. Most states require a considerable amount of evidence, for example a court proceeding or a statement from a law-enforcement official or, in some cases, a criminal charge arising from the violence. Several provide that third-party declarations provided by listed professionals who are aware of the victim/survivor's circumstances will suffice. A few jurisdictions merely require a signed declaration by the victim/survivor.

The notice periods the victim/survivor must comply with vary again although 30 days is the most common time period. Some jurisdictions are as low as 7 or 10 days.

#### *Bifurcation*

Bifurcation means that a perpetrator can be removed without evicting, removing, terminating assistance to, or otherwise penalising a victim/survivor who seeks to remain in the unit. Eight states allow for lease bifurcation<sup>160</sup> Further, 40 states permit courts to exclude the abuser from the housing and grant the possession of the property to the survivor.

Therefore, the landlord may bifurcate a lease or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual.

#### *Locks*

Most states have some provisions for locks to be changed in circumstances of domestic violence. Eighteen states have laws that gives a victim/survivor of domestic violence the right to have the locks changed. There is, however, a significant degree of variation between the states as to the scope of the victim/survivor's rights.

The main distinction is that most states require that the landlord must organise for the locks to be changed. The timeframes are comparatively lengthy, especially if the circumstances involved an emergency, and are usually around two days. Only a few states provide that the victim/survivor can change the locks rather than the landlord. The victim/survivor must cover the cost of the new locks.

The legislation is silent about security devices. In this respect, it seems that tenants would need to comply with the relevant state residential tenancy laws in relation to alterations and fixtures.

#### *Liability of the Perpetrator*

As interesting feature of the tenancy laws in several states is that the laws can compel a perpetrator to pay for alternative housing or maintain rental payments when that person has been excluded from

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<sup>160</sup> Tennessee.

the premises. For example, 18 states can require abusers to pay for or provide housing for survivors while 11 states impose liability on the abuser for:

- damages to the unit
- lock changes
- moving expenses, and
- other housing costs related to the violence.

Further, six states have laws that state that the person named in an order of protection etc. may be civilly liable for losses incurred by the landlord for the domestic violence early lease termination (Arizona Ariz. Rev. Stat. Ann. 33-1318 I, J) or when the FDV victim/survivor takes over the lease the person named in the protection order is liable for any losses of the landlord. The liability of the costs of locks, damage, lost rent etc. is the responsibility of the person named in the protection order.

#### *Emphasis on Confidentiality*

Forty-four states and localities have laws pertaining to confidentiality of housing records and documentation of survivors, or have an address confidentiality program. The provision in relation to confidentiality are comprehensive and include personal information, addresses, electoral rolls and taxation records.

#### *Discrimination Against the FDV Victim/Survivor*

Twenty-four states and localities provide for eviction defence laws for tenants experiencing FDV, thus ensuring that a person cannot be forced to leave rented premises because of experiencing FDV.

In 23 states, landlords cannot terminate the lease of a FDV victim/survivor. Of these, six states give landlords limited rights to evict a person experiencing FDV if the perpetrator is allowed to re-enter the property or if the landlord believes that the presence of the perpetrator, poses a physical threat to other tenants, guests, invitees, or to a tenants right to quiet possession.<sup>161</sup>

Fourteen states have laws that say that landlords cannot refuse to rent to persons who have experienced FDV.

#### *Protection of Domestic Animals*

Most states include pets within protection orders (Wisch 2017). Several have amended definitions of domestic violence to include harm to animals.<sup>162</sup>

Recently, the Pet and Women’s Safety (PAWS) Act was signed into federal law as part of the 2018 Farm Bill.<sup>163</sup> The law provides that pets, service and emotional support animals, and horses are included in federal law in relation to interstate stalking and protection order violations (Animal Welfare Institute 2019). Although the Act is a federal law and therefore only addresses matters that occur across state boundaries, it is anticipated that similar laws will be introduced in several states (Animal Welfare Institute 2019). The PAWS Act also establishes a grant program for entities that provide shelter and housing assistance for domestic violence survivors to enable them to better meet the housing needs of survivors with pets.

#### *Comments*

While many similarities to Australian legislation can be observed in the model law and in various US states, some commentary is instructive.

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<sup>161</sup> For example Section 1927 of the Civil Code of California.

<sup>162</sup> For example, in Colorado Colo. Rev. Stat. §18-6-800.3, Nevada Nev. Rev. Stat. §33.018, and Tennessee Tenn. Code Ann. §36-3-601(1) (2008).

<sup>163</sup> 20 December 2018.

The model law provides for a wide definition of domestic violence, a factor that is similar to most Australian jurisdictions. Several states, however, have taken a narrower interpretation that means the legislation may be limited to more traditional views of a domestic violence circumstances. Having said this, some states have adopted a broad definition.

The US model law provides for early termination through various orders, evidence of a conviction and through a third-party verification. This closely resembles the procedures required in Australia, including the third-party verification option that reflects new laws in NSW and, in particular, Western Australia. There has been a considerable degree of utilisation of these provisions throughout the United States although fewer states have adopted the verification process. Further, although there are some exceptions, notice periods are often longer than in Australia and can be up to 30 days.

The rights of the landlord under the US laws are interesting in that, as well as usual avenues to obtain lost rental or to cover repairs, the landlord in many states has considerable rights to sue the perpetrator directly for consequential losses. There are also rights for a landlord to *unilaterally* terminate a perpetrator's lease, without a court order, where there is a concern regarding domestic violence.

With regard to changing locks and security devices. In most states, the landlord has this responsibility and notice periods can be significant. This is, obviously, a concern for persons experiencing FDV. Some states provide for a more proactive response from the landlord and, in a few cases, the tenant can change the locks where the landlord has not responded.

In many states it is a defence against eviction that a person has experienced FDV. It is also worth noting that there are widespread prohibitions regarding discrimination against persons experiencing FDV. The US provisions are noteworthy too for the emphasis on privacy and confidentiality of victim/survivor information.

## Canada

Gander and Johannson (2014) undertook a comprehensive study of Canadian residential tenancies and FDV victims/survivors, and concluded that

the legal context within which a victim of domestic violence finds herself as she attempts to address her need for housing is complex. She may need to engage with the criminal justice system, the family justice system, and the civil justice system. When she appears before any of a variety of courts and tribunals, she will confront an array of laws, regulations, policies, and procedures that require her to play a range of roles: claimant, complainant, witness, applicant and respondent. She will be forced to frame her life and tell her story in different ways to access the services and remedies to which she may be entitled. All of this stress occurs when her life is in a state of upheaval and her ability to cope is severely constrained. Indeed, the law is likely the last thing on her mind as she tries to find a safe place to live and some way to meet her basic needs.

In Canada, having an abusive relationship and housing problems were the main reasons women presented to homelessness shelters (Gander & Johannson 2014; Schwan & Robart 2018). The laws, including residential tenancies, in Alberta were contributing to women and children's homelessness, in fact Gander and Johannson argued in many instances women were 'legally-facilitated' if not 'legally-induced' into homelessness. They also found that landlords more often pursued the victim/survivor for overdue rent and damages resulting in them being left with a bad tenancy record, and the lack of a reference to obtain new accommodation. The victim/survivor and the perpetrator could also be evicted due to damage, even if the victim/survivor had no role in causing the damage, and the perpetrator had been barred from the property (Gander & Johannson 2014).

Several Canadian provinces have introduced legislative protection in relation to tenancy matters affecting persons experiencing FDV. Quebec, Manitoba and Nova Scotia were the first jurisdictions to address the issue.

The Civil Code of Quebec (SQ 1991) provides that where a person experiencing FDV is of the belief that she, or her children, are in danger from a spouse, former spouse or third party, she must provide a sworn document documenting the situation which is forwarded to the Public Prosecutors Office. If the decision is in her favour, the victim/survivor can serve the attestation on the landlord with a notice of termination. Notice periods vary between one and two months.

Manitoba utilises a system by which a certificate is obtained where the victim/survivor believes that if the tenancy continued she or her children would be in danger. The certificate has to be signed by a designated authority.<sup>164</sup> The grounds to obtain the certificate are that a complaint has been made to police and has cooperated with the investigation and received an order from the court. Once the certificate is obtained, it is served on the landlord and the notice takes effect after one full payment period.<sup>165</sup>

Nova Scotia takes a similar approach although the certificate has to be signed by the Director of Victim Services. The grounds for obtaining the certificate are an emergency protection order being granted within the past 90 days or the filing of a domestic complaint, obtaining a court order and the Director having reason to believe that the tenant is a victim/survivor of domestic violence.<sup>166</sup>

There have recently been significant changes in the *Residential Tenancies Acts* in Ontario, Alberta and British Columbia,

Schwan and Robart (2018) report that recent changes to the Residential Tenancy Act in Ontario, Alberta and British Columbia could positively influence a victim/survivor escaping violence and obtaining alternative housing, in combination with targeted support and services. The legislation provides for notice to be given to the landlord with the requisite supporting documents. The notice periods are around 4 weeks to a month (Schwan & Robart 2018).

The supporting documents range in detail and complexity.

## Alberta

Pursuant to the *Residential Tenancies (Safer Spaces for Victims of Domestic Violence) Amendment Act 2016*, Termination of Tenancy (Domestic Violence) Regulation 2016, and amendments to the RTA Ministerial Regulation victims/survivors of domestic violence can terminate a tenancy early without financial penalty. This legislation is applicable in circumstances where the safety of a tenant, a dependent child or a protected adult is at risk.

The model in Alberta is very similar to the model used in the Western Australian amendments. Part 4.1 of the *Residential Tenancies Act 2004*, refers to 'Victims of Domestic Violence'. Domestic violence is defined in s 47(2)(i) by reference to acts or omissions listed in s 47(2)(2) in relation to a tenant, dependent child or protected adult in listed relationships with a perpetrator. A tenant may terminate a tenancy by giving notice in accordance with s 47.3(2) if, because of domestic violence, the tenant believes that his or her own safety, that of a dependent child of the tenant or of a protected adult who lives with the tenant is at risk if the tenancy continues.<sup>167</sup>

Alberta adopts a certification process. To obtain a certificate, the victim/survivor must obtain various protection orders or obtain a statement from a list of professional who can confirm that the

<sup>164</sup> *Residential Tenancies Act* (SM 1990-91) S 92.3(2)(b).

<sup>165</sup> *Residential Tenancies Act* (SM 1990-91) S 92.3(2)(b).

<sup>166</sup> Section 10F(1) *Residential Tenancies Act* (RSNS 1989).

<sup>167</sup> Section 47.3(1).

victim/survivor is experiencing FDV.<sup>168</sup> The relevant orders are a copy of an emergency protection order or Queen’s Bench protection order, a restraining order, a peace bond, or another court order that stops the alleged perpetrator from contacting the tenant.<sup>169</sup> Alternatively, the FDV victim/survivor can seek a statement from a professional affirming the tenant has reported a risk to the safety of the tenant, dependent child or protected adult.<sup>170</sup>

A designated authority, the Safe Places Processing Centre, to receive an application from, and issue the certificate, to a victim/survivor of domestic violence. The certificate confirms that there are grounds to terminate the tenancy and is used by the tenant to give notice to their landlord that they are terminating the tenancy. Upon receipt of the certificate, it can be forwarded with the notice to the landlord. Notice must be served at least 28 days before vacating and within 90 days from the date on which the certificate was issued. The tenants are still responsible for paying the rental during the notice period. Further, the FDV victim/survivor can request that the landlord apply the security deposit as a payment of rent for the notice period.<sup>171</sup>

A landlord may apply to court or the Residential Tenancy Dispute Resolution Service (RTDRS) to set aside a notice to terminate only on certain grounds.<sup>172</sup>

It is important to note that in circumstances where a lease is terminated due to a certificate being issued, the tenancy of all parties to the lease will be terminated.<sup>173</sup> A landlord can enter into a new lease with the other tenants, but does not have to.

## British Columbia

British Columbia requires an ending fixed-term tenancy confirmation statement that is signed by a third party verifier. A court order is not required.

A tenancy can end only if matters listed in s 44(1) occur. Section 44(1)(a)(i1) refers to the issue of a tenants notice: Family violence or long-term care.

Pursuant to s 45.1(2) a tenant can end a fixed-term tenancy if a statement is made in accordance with Section 45.1(2)(a) confirming that if the tenant remains in the rental unit, the safety or security of either the tenant or a dependent of the tenant who lives in the rental unit is or is likely at risk from family violence carried out by a family member of the tenant.<sup>174</sup>

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<sup>168</sup> Section 47.4

<sup>169</sup> Section 47.4(2)(a)(i)

<sup>170</sup> Section 47.4(4):

a) A regulated member of the:

- College of Physicians and Surgeons of Alberta
- College and Association of Registered Nurses of Alberta
- Alberta College of Social Workers
- College of Alberta Psychologists
- College of Registered Psychiatric Nurses of Alberta

b) A police officer or Royal Canadian Mounted Police (RCMP)

c) An individual employed by an organization who:

- assists individuals by providing accommodation in an emergency or transitional shelter because of homelessness or abuse; or,
- provides support for victims of crime (such as Victims Services).

<sup>171</sup> Section 47.3(4)(a).

<sup>172</sup> Section 47.3(7): The tenant did not provide proper notice of termination. Tenants are required to provide at least 28 days’ notice along with the signed certificate from the designated authority confirming there are grounds for terminating the tenancy.

- The tenant does not properly serve the notice and certificate to the landlord in person or by registered mail.
- The notice is not in writing, or not signed by the tenant, or does not include the date that the tenancy will terminate.
- The notice to terminate is served more than 90 days after the date on which the certificate was issued.

<sup>173</sup> Section 47.3 (5).

<sup>174</sup> Other sub-Sections in s 45.1(2) refer to circumstances involving long term care and will not be discussed.

Persons eligible to make the statement are discussed in s 45.2. Regulation 39 provides a list of persons eligible to make the statement.<sup>175</sup>

A person may make a statement confirming a tenant's eligibility to end a fixed-term tenancy under Section 45.1 only if the person is authorised to do so under the regulations, and has assessed, in accordance with the regulations, the tenant and the tenant's circumstances.<sup>176</sup> The notice must be in the prescribed form.<sup>177</sup> In any ensuing proceedings, the person making the statement must disclose or provide evidence respecting in relation to only a narrow range of matters such as the veracity of a signature and the authority of the person to make the statement.<sup>178</sup> The timing of the notice is quite complex in that it must be at least a month and make reference to the day prior to the next rental period.<sup>179</sup>

If a tenancy is terminated in these circumstances, the tenancy of other tenants is also terminated. The remaining tenants can, however, enter into a new tenancy agreement with the landlord.<sup>180</sup>

## Ontario

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<sup>175</sup> *Residential tenancy Act—Residential tenancy Regulation* BC Reg 477/2003 **39** The following persons may make a family violence confirmation statement:

(a) a person who

(i) is an employee of an organization that receives funding, for the purpose of providing support or services, from either (A) the department of the ministry of the minister responsible for the *Victims of Crime Act* that administers programs with respect to victim services, or

(B) the British Columbia Housing Management Commission, and

(ii) provides support or services to persons who are at risk of, are or may be, experiencing violence;

(b) a person designated by a director under the *Child, Family and Community Service Act* to exercise duties in respect of child welfare;

(c) a member of the provincial police force or a municipal police department in British Columbia;

(d) an employee of the government who is responsible for duties as a victim court support caseworker;

(e) an employee of an organization that receives funding from the government of British Columbia or of Canada for the purpose of providing settlement and integration services to permanent or temporary residents, or naturalized citizens;

(f) a medical practitioner;

(g) a nurse practitioner;

(h) a registered nurse who is authorized by the British Columbia College of Nursing Professionals to practise nursing;

(i) a registered psychiatric nurse or psychiatric nurse who is authorized by the British Columbia College of Nursing Professionals to practise psychiatric nursing;

(j) a registered psychologist who is authorized by the College of Psychologists of British Columbia to practise psychology;

(k) a member of the BC Association of Clinical Counsellors who is designated by that group as a Registered Clinical Counsellor;

(l) a social worker who is authorized by the British Columbia College of Social Workers to practise social work;

(m) a lawyer who is authorized by the Law Society of British Columbia to practise law;

(n) an employee of an institution or a university within the meaning of the *College and Institute Act* who is responsible for providing counselling services to students;

(o) an employee of

(i) an aboriginal organization who is responsible for duties as a family support worker, executive director, aboriginal court worker or aboriginal justice worker, or

(ii) a first nation or the Métis Nation British Columbia who is responsible for providing support or services in respect of children, families, justice, housing or health.

<sup>176</sup> Section 45.2(1)

<sup>177</sup> Section 45.2(2)(a) See too c 52: form and content of notice to end tenancy.

<sup>178</sup> Section 45.2(3).

<sup>179</sup> Section 45.1(3)

<sup>180</sup> Section 45.3.



In 2016, the *Residential Tenancies Act 2006* in Ontario was amended to reduce the notice period to 28 days for victims/survivors of sexual or domestic violence. The legislation has an interesting process in that, although it lists several instances where an order or a statement is required to terminate the lease, there is also an opportunity to simply fill in an online form, N15 'Tenant Statement about Sexual or Domestic Violence and Abuse' form<sup>181</sup> and a tenants statement about sexual or domestic violence.<sup>182</sup> This is not as onerous as, for example, the need to get a court order or even to obtain a certificate or statement as required in Alberta and British Columbia.

A tenant may terminate a tenancy by giving notice of termination to the landlord in accordance with s 47.1 if the tenant is deemed under subsection 47.3 (1) to have experienced violence or another form of abuse; or a child residing with the tenant is deemed under subsection 47.3 (1) to have experienced violence or another form of abuse. The notice can be given jointly with other tenants or individually.<sup>183</sup> A notice must be in the prescribed form<sup>184</sup> and be accompanied by various protection orders<sup>185</sup> or a statement.<sup>186</sup> A notice period of 28 days is necessary<sup>187</sup> here is no financial penalty or legal liability for the victim/survivor upon termination. The lease continues for co-tenants.

## Conclusion to Chapter 4

Again, there are similarities between the Canadian and Australian responses although it must be said that many Canadian provinces have generally progressed further than most Australian jurisdictions in this regard. Indeed, in designing the new Western Australian provisions, the Albertan legislation was of considerable influence. There are some issues to note, however.

First, the necessity to file the third-party declaration in, for example, Alberta, means that the relevant government department has a dataset on the numbers of people using the process. This is useful in compiling statistics on FDV and also the number of tenants availing themselves of the service, thus informing the need for, and direction of, dissemination strategies.

Second, the use of the online form in Ontario could also be considered. Although such a measure is likely to cause consternation among real estate and landlord representatives, it is an efficient process, there is less concern about dealing directly with a landlord for a person experiencing FDV and, again, it provides a useful dataset to better inform public awareness of the issue.

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<sup>181</sup> <file:///C:/Users/Eileen/Downloads/N15.pdf> and <http://www.sjto.gov.on.ca/documents/lrb/Notices%20of%20Termination%20&%20Instructions/N15%20-%20Tenant%20Statement.pdf>

<sup>182</sup> A court order can also be provided if available.

<sup>183</sup> Section.47.1(2).

<sup>184</sup> Section 47.1(4), c43(1).

<sup>185</sup> Noted in Regulations Schedule 6 Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment), 2016, S.O. 2016, c. 2—Bill 132 See clauses 47.3 (1) (a), (b) or (c) and issued not more than 90 days before the date the notice is given.

<sup>186</sup> Clause 47.3 (1) (d), (e) or (f). 2016, c. 2, Sched. 6, s. 1.

<sup>187</sup> Section 47.1(3).

## Chapter 5: Conclusion and Policy Implications

FDV has long lasting impacts on individuals and the community and housing is an important consideration for women as they consider escaping this abuse, transition to a new future and adjust in the long term. For many women, the private rental market—and tenancy legislation—exerts an important influence on their opportunities to re-establish themselves.

It is clear from this research that FDV results in the hidden homelessness of women and children. Those who leave their home because of FDV (see Gander & Johannson 2014, p. 5) are vulnerable within the housing market in the short, medium and long term. Prior to approaching specialist services, the majority of respondents to the online survey (56 per cent) would turn to their family and/or friends when in need of housing assistance, and 44 per cent had sought financial help from family and friends in the previous 12 months.

Interviews were conducted with key informants from the housing and FDV sectors and we concluded that few women who left their housing because of FDV had a strong knowledge of the range of potential services and protections available to them. In large measure, women fleeing FDV relied upon informal resources—including family and friends—in order to make the transition away from the perpetrator. Overall, the responses from informants and women suggest significant resource constraints in the sector and critical gaps in the provision of services. These challenges are further exacerbated for women and their children from Aboriginal and Torres Strait Islander or CALD backgrounds.

Our review of the relevant legislation has found that residential tenancy legislation as it relates to the impact of FDV on women has been reformed in some jurisdictions. There is growing recognition among lawmakers of the need for change, though more remains to be done. It is also clear from this review that significant differences remain between jurisdictions, and that while there may be a growing congruence in the broad direction of the relevant legislative framework, there is still significant variation in the detail of legislation that can have a negative impact on women in particular jurisdictions.

### The Four Pillars for Effective ‘Safe at Home’ Programs

The findings from the interviews and survey highlight that need for broader strategies such as legislation, tenancy support and ‘safe at home’ programs to prevent women’s homelessness.

Breckenridge et al. (2015) identified four pillars for effective ‘safe at home’ programs and these are discussed below.

#### **1. Maximise Women’s Safety Through Legislation**

The extent to which Residential Tenancy Acts include responses FDV varies across states and territories-but they are critically important because as they can establish a woman’s right to remain in the home and the capacity to exclude the violent ex-partner.

#### **2. Integrate Service Responses**

The integrating of legal/judicial, housing and welfare policy can support the removal of the perpetrator from the home and thereby enable the woman and children to stay ‘safe at home’ (if it is safe for them to do so). Housing issues and security such as alarm systems, secure doors, and security lighting are also a step towards keeping women and children safe and are relatively low cost. Welfare support services, to address tenancy issues can assist with ongoing risk assessment and confidence building for women.

It is important to integrate the various legal/judicial, housing and welfare responses such as:

- improving police responses to breaches of court orders
- providing court-based family violence advocacy services
- domestic violence courts
- law reform
- private rental brokerage programs for women who have experienced family violence
- 24-hour response services by housing agencies
- Staying Home Leaving Violence (SHLV) type schemes
- perpetrator accommodation, and outreach services
- ‘Sanctuary’ type schemes, and
- emergency support, personal development and confidence building assistance (Spinney 2012, p. 12).

A new development that has occurred since we undertook the survey and interviews with informants is the South Australian Government’s plan to trial a new program that involves removing domestic violence perpetrators from the family home, where it is safe to do so, so that women and children can remain. A small number of beds will be available to perpetrators as well as access to support services and behaviour change programs.

Also the Keeping Women Safe in Their Homes initiative under the *Fourth Action Plan of the National Plan to Reduce Violence against Women and Their Children 2010–2022* funds state and territory governments and select providers to deliver services to improve the safety of women and their children who have experienced domestic violence to remain in their home or a home of their choosing, when it is safe to do so.

### 3. FDV is the Leading Cause of Women’s Homelessness

Potential legal intervention exists along the continuum of accessing, sustaining and exiting from housing tenancies. Women have difficulty accessing housing after they leave a tenancy after suffering FDV. This is because of:

1. systemic, services issues: such as an insufficient crisis responses, long waiting lists, women and children living in hotels
2. housing market issues such as the shortage of affordable housing; women’s increased poverty after leaving domestic violence, and
3. limited options and discrimination towards ATSI, CALD and women with disabilities, and there are fewer housing and service options in rural and remote areas.

### 4. Economic Security for Women

When in violent relationships, women commonly experience financial and economic abuse, which impacts on their ability to become financially independent. After leaving a relationship, women are financially disadvantaged and ‘plunged into poverty’, with few financial resources (Breckenridge et al. 2015, pp. 9-20; Franzway et al. 2019). Therefore, the economic security of women who are accessing, obtaining or exiting tenancies needs to be addressed.

Women’s housing difficulties interact with the multiple effects of FDV on their physical and mental health, social participation, financial situation, ability to access and complete education, and employment. Legislation that provides women with access to safe, affordable and appropriate housing, being able to maintain their housing and exit their tenancy when they are unsafe is therefore crucial.

Finally, it is important to acknowledge that the reform of legislation will only have a real impact on the wellbeing of women and children fleeing FDV if steps are taken to ensure effective implementation. The reformed processes need to be both sympathetic to the victims/survivors and easily implemented. There is a need to communicate the changed arrangements to both the sector

and the population broadly, and appropriately train police and other authorities in the delivery of this support.

It is clear from the literature and legislative reviews presented in this report that residential tenancy legislation as it relates to the impact of FDV on women and their children has been reformed in some jurisdictions. There is growing recognition among law makers of the need for change, though more remains to be done. It is also clear from the legislative review that significant differences remain between jurisdictions, and that while there may be a growing congruence in the broad direction of the relevant legislative framework, variation in the detail of legislation often exerts a significant impact.

It will be important to monitor developments such as this into the future.

## The Necessity for Wrap-around services

Women's ability to stay or leave their tenancy requires nationwide legislative change, along with timely judicial (court, police) responses that support women's choices, access to affordable housing, culturally relevant social and emotional supports, advocacy bodies and health and welfare services that focus on the safety of women and their children, as well as assistance for perpetrators. A multi-pronged, 'wrap-around' approach to support legislative change is required.

Consideration should be given to the introduction of programs such as the ACT's *Staying at Home* Program that seeks to facilitate the whole support process including assessment, planning, monitoring, advocacy and linking people to the support services they need. This program serves as an integrated service response. Similarly, in relation to financial support, the *Victims of Crime (Financial Assistance) Act 2016* (ACT) provides for a suite of services to be offered to victims of DFV. The resultant Victim Support program provides for a Financial Assistance Scheme (FAS) that covers the limited costs of ensuring the immediate safety of the victim. Assessments are made on a case by case basis.

In summary, the housing options for women and their children escaping violence requires improved and consistent legislation in all jurisdictions as well as improved support services for both victims/survivors and perpetrators of FDV.

## Legal Recommendations

As noted by Segrave, Wilson and Fitz-Gibbon (2018, p. 100), broader community and political commitment to ending the alarming persistence of FDV is desperately required. In the short term, to ensure the safety of women and children escaping FDV, it is recommended the RTA in each Australian state and territory adopt legislative changes similar to the good examples of overseas jurisdictions such as Alberta, British Columbia and Ontario, which have already informed the Western Australian and NSW legislation, namely:

- changing lease termination notification to landlords
- expanding evidence/supporting documents to confirm a tenant is experiencing FDV, and
- protecting the privacy and confidentiality of tenants escaping FDV.

For the ease of victims/survivors it is also important that there is jurisdictional consistency.

### (1) Uniform Approach to Legislation

It is recommended that all Australian jurisdictions introduce uniform legislation that provides relief for a FDV victim/survivor who wants to terminate a residential lease. Such legislation should adopt the declaration procedure used in Western Australia and NSW. The categories of person who are authorised to make the declaration should be diverse.

Although all jurisdictions provide for a mechanism to terminate a lease in circumstances of FDV, approaches vary. Most result in delay and require the FDV victim/survivor to navigate the court or tribunal system. In most cases, an order will not be granted unless there is evidence to substantiate the FDV allegations. Therefore, before attending the court or tribunal to obtain the order, a FDV victim/survivor has to obtain various documents such as evidence of a conviction for domestic violence, a DVO or a family court injunction. Given that a safe and timely departure is essential, it is imperative that a more streamlined process is adopted.

## (2) All Jurisdictions Adopt Declaration Procedure

The declaration procedure takes the court or tribunal system out of the equation and allows a FDV victim/survivor to obtain the declaration and serve the relevant documents on the landlord. This provides for a timely and cost-effective process. The landlord's interests are protected against false claims through a tribunal review process.

This declaration procedure should be streamlined so in a situation where the FDV victim/survivor wants to stay in the premises but can exclude the perpetrator.

Terminating a perpetrator's interest in a lease has significant consequences for that tenant and, potentially, the landlord. However, in many instances, considerations such as stability for family and the expense of moving elsewhere makes staying in the premises a more appropriate option than leaving.

At present, in most cases various orders must be obtained prior to a court hearing. All jurisdictions could provide:

- That a final AVO or equivalent will automatically terminate the perpetrators lease.
- Alternatively, the declaration procedure could be used so that the perpetrators lease is terminated upon the landlord's receipt of the declaration.
- There should be a presumption that the landlord agrees that the FDV victim/survivor can assume responsibility for the lease unless there are reasonable grounds for refusal.
- If a court procedure is regarded as appropriate, a declaration should be sufficient evidence for the court to support an application for the perpetrator's interest in the lease to be terminated.

## (3) Consideration of Liability for Outstanding Debts and Allocation of Security Bonds is Essential

Given the importance of issues involving the security deposit and residual responsibilities under the lease, it is perplexing that there is not more focus on this issue in the Australian legislation. Accessing the security bond is essential where a person experiencing FDV is seeking new accommodation and financial obligations incurred under a previous lease is likely to undermine the FDV victim/survivor's ability to secure new accommodation.

The matter needs to be considered by separating the issues of expenses and the security deposit. There also needs to be consideration of the landlord's position. In relation to the matter of expenses, it is suggested that a FDV victim/survivor be released from obligations for unpaid rent or damage to the premises for which she was not responsible. The landlord can proceed against the perpetrator to be compensated for unpaid rent and damage. It is acknowledged that, in many cases, this may be a fruitless exercise. However, the same could be said for pursuing the FDV victim/survivor and doing so may undermine her efforts to re-establish herself.

In relation to the security deposit, there should be a discretion as to how the security deposit is allocated when the lease terminates. If the FDV victim/survivor is remaining on the premises but the perpetrator is excluded, it is straightforward to simply maintain the status quo. If the FDV

victim/survivor is leaving the premises, the court or tribunal should have the flexibility to provide tailored solutions, for example, allow the FDV victim/survivor to take all of her part of a bond.

For example, the Western Australian model provides that the court may consider these outstanding issues. There is considerable flexibility too in relation to the disbursement of the security deposit.

#### (4) All Relevant Legislation Should Provide that a FDV Victim/Survivor Cannot be Listed on a Tenancy Database in the First Place

While there is provision to get people off, once listed this can be a complex process, it is best to prevent listing in the first place.

Once a person is listed, it is a complex process to remove the person's details. This could impede finding appropriate alternative accommodation and cause additional emotional distress and cost. Again, obtaining a declaration, and providing it to the real estate agent, should be enough to evidence that the person is experiencing FDV and prevent an adverse listing on a tenancy database. There are no jurisdictions which have this available at present.

#### (5) Any Provision Prohibiting Discrimination Should also Extend to the Perpetrator

Although there may be reluctance to embrace this recommendation, it is crucial to ensure that perpetrators also obtain a stable environment upon termination of a lease. This is more conducive to improving behaviour and enabling better responses to remedial programs.

#### (6) All Residential Tenancies Legislation Should Address Mistreatment of Animals as a Form of FDV

Threat or injury to an animal in circumstances of FDV should be regarded as a circumstance of aggravation resulting in a harsher penalty. Penalties for instances of animal abuse should be increased and when tested, implemented.

#### (7) All Legislation Should be Amended to Include More Flexibility for Tenants Experiencing FDV to Install Deadlocks, Security Devices and Alterations

Deadlocks should be compulsory for doors and windows on rented premises generally. The tenant should have broad powers in circumstances of FDV to change existing locks on doors and windows. Provisions in all jurisdictions should provide that a person experiencing FDV has flexibility to make modifications to install reasonable security measures or that are necessary to ensure the safety of a party to the existing agreement who has or is being subjected to family violence without the consent of the landlord. Legislation in all jurisdictions should provide for enhanced privacy and confidentiality provision in relation to persons in circumstances of FDV.

#### (8) Specific Defence to Eviction Proceedings

Legislation should contain a specific defence to eviction proceedings in circumstances of FDV. There are several US states on which such a provision can be modelled. Even with the introduction of a provision prohibiting discrimination, discrimination can be notoriously difficult to prove. Also, the existence of the no-fault eviction provisions throughout the Australian legislation further dilutes the position of a person experiencing FDV who wants to stay in premises beyond the term of the original lease. For example, where the victim becomes the lessee for the remainder of the term, the availability



of no-fault eviction means the lease could be ended if the landlord feared that violence could occur again.

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## Appendix 1: Legislative Provisions Allowing Tenant Experiencing FDV to ‘Break’ a Lease

Appendix 1 includes the most relevant provisions addressing how a tenant can break a lease in circumstances of FDV, or may enter into a new lease for the same premises while excluding the perpetrator, and provides a short summary of these key sections.

In relation to Victoria, the discussion will focus on the 2018 amendments that, at the time of writing, are expected to commence on 21 March 2021.

Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
<b>Queensland</b>		
<p><b>Residential Tenancies and Rooming Accommodation Act 2008 (RTRAA)*</b></p> <p>*The RTRAA is currently under review. The review has been delayed due to the COVID-19 pandemic but will address issues arising regarding FDV as foreshadowed in the <i>A Better Renting Reform Roadmap</i>.</p>	<p><b>245 Injury to domestic associate</b></p> <p>(1) This section applies to—</p> <ul style="list-style-type: none"> <li>(a) the domestic associate of the tenant occupying the premises with the tenant; and</li> <li>(b) a cotenant whose domestic associate is the other, or another, cotenant.</li> </ul> <p>(2) The person may apply to a tribunal for an order to be recognised as the tenant, or a cotenant, under the agreement instead of the person’s domestic associate because the person’s domestic associate has committed domestic violence against the person.</p> <p>(3) The tribunal may make the order if it is satisfied the person has established the ground of the application.</p> <p>(4) In deciding the application, the tribunal must have regard to the following issues (the domestic violence issues)—</p> <ul style="list-style-type: none"> <li>(a) whether the person has applied for a protection order against the person’s domestic associate; (</li> <li>(b) if an application was made—whether a domestic violence order was made and, if made, whether it is in force;</li> <li>(c) if a domestic violence order has been made—whether a condition was imposed prohibiting the person’s domestic associate from entering, or remaining, on the premises.</li> </ul>	<p>Pursuant to section 245(1) RTRAA, a FDV survivor/victim (as a ‘domestic associate’ as defined in s 245(9), (10)) can apply to QCAT for an order to be recognised as the tenant (or cotenant as the case may be) under the residential tenancy agreement instead of the perpetrator (s245(2)). In determining whether or not to grant the order QCAT <i>must</i> take into account certain ‘domestic violence issues’ (s245(4)) but the tribunal is not limited by those factors and can consider other circumstances as well (s245(5)). The Lessor can provide input into the proceedings (s245(8)). If satisfied that the ground of the application is established, the tribunal can make the order (s245(3)) and the victim/survivor who made the application will be regarded as the tenant (s245(7)). The tribunal can also make any other order it considers appropriate (s245(6)), for example to address related matters such as the fate of the rental bond and listing on tenancy databases.</p>



Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<p>(5) Subsection (4) does not limit the issues to which the tribunal may have regard.</p> <p>(6) If the tribunal makes the order, it may make any other order it considers appropriate.</p> <p><i>Examples of orders tribunal may make—</i></p> <ol style="list-style-type: none"> <li>1. <i>an order about the application of the terms of the agreement, or other terms, to the person as tenant, or as a cotenant</i></li> <li>2. <i>an order about any rental bond paid by the person’s domestic associate</i></li> <li>3. <i>an order that any other person must not list the person’s personal information in a tenancy database under section 459</i></li> </ol> <p>(7) A person in whose favour an order is made under subsection (3) is taken to be the tenant, or a cotenant, under the agreement on the terms the tribunal orders.</p> <p>(8) The tribunal may not make an order under subsection (3) without giving the lessor an opportunity to be heard on the application.</p> <p>(9) In this section— domestic associate means a person in any of the following relationships—</p> <ol style="list-style-type: none"> <li>(a) an intimate personal relationship;</li> <li>(b) a family relationship;</li> <li>(c) an informal care relationship.</li> </ol> <p>(10) A term used in subsection (9)(a) to (c) has the same meaning as in the Domestic and Family Violence Protection Act 2012 and a reference in that Act to a court deciding whether a relationship exists includes a reference to the tribunal deciding that issue for this section.</p>	
	<p><b>321 Application by tenant’s domestic associate for termination for damage or injury</b></p> <ol style="list-style-type: none"> <li>(1) The domestic associate of the tenant occupying the premises with the tenant may apply to a tribunal for a termination order because the tenant—             <ol style="list-style-type: none"> <li>(a) has intentionally or recklessly caused, or is likely to intentionally or recklessly cause, serious damage to the premises; or</li> <li>(b) has committed domestic violence against the domestic associate.</li> </ol> </li> <li>(2) In this section— domestic associate means a person in any of the following relationships—             <ol style="list-style-type: none"> <li>(a) an intimate personal relationship;</li> </ol> </li> </ol>	<p>Section 321(1) RTRAA provides that a FDV survivor/victim (as a ‘domestic associate’ as defined in s 321(3),(3)) can apply to QCAT for an termination order with regard to the lease where the perpetrator has, or is likely to, intentionally or recklessly cause serious damage to the premises or has committed domestic violence against the domestic associate.</p> <p>Note that where an application for a termination order is made because of injury or damage to a domestic associate of the tenant, the court must consider certain domestic violence issues listed in s 344 RTRAA. These issues include whether the applicant has applied for a domestic violence order against the domestic associate, if an application was made- whether the order was</p>

Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<ul style="list-style-type: none"> <li>(b) a family relationship;</li> <li>(c) an informal care relationship.</li> </ul> <p>(3) A term used in subsection (2)(a) to (c) has the same meaning as in the Domestic and Family Violence Protection Act 2012 and a reference in that Act to a court deciding whether a relationship exists includes a reference to the tribunal deciding that issue for this section.</p>	<p>made and whether it is in force, and if there is a domestic violence order in force- whether there is an imposed condition that prohibits the applicant’s domestic associate from entering or remaining in the premises</p>
<b>New South Wales</b>		
<p><b>Residential Tenancies Act 2010 (NSW) (RTANSW)</b></p>	<p><b>79 Change of tenants after AVO</b></p> <ul style="list-style-type: none"> <li>(1) Termination of tenancy On the making of a final apprehended violence order that prohibits a co-tenant or a tenant from having access to the residential premises, the tenancy of that co-tenant or tenant under the residential tenancy agreement is terminated. Such a termination does not affect the tenancy of any co-tenant not subject to the order.</li> <li>(2) Tribunal may recognise occupant as tenant after AVO The Tribunal may, on application by a remaining occupant or co-tenant, make an order recognising the remaining occupant as a tenant under the residential tenancy agreement, if the tenant, or a co-tenant or a former tenant or co-tenant is prohibited by a final apprehended violence order from having access to the residential premises.</li> <li>(3) Orders An order under this section may vest a tenancy over the residential premises in an occupant on such of the terms of the previous residential tenancy agreement as the Tribunal thinks appropriate having regard to the circumstances of the case.</li> <li>(4) An application for an order under this section may be made at the same time as any other application or during proceedings before the Tribunal or independently of any such other application or proceedings.</li> <li>(5) A Tribunal may not make an order under this section in respect of a social housing tenancy agreement unless the remaining occupant meets any applicable eligibility requirements of the social housing provider for tenancy of the premises.</li> </ul>	<p>This provision allows FDV survivors/victims to remain in their premises and carry on the existing lease agreement. A final AVO terminates the tenancy of a perpetrator’s residential tenancy agreement. This terminates the FDV survivor/victim’s joint responsibility with the perpetrator under the lease agreement. The FDV survivor/victim can apply to NCAT to assume responsibility under the tenancy agreement. The order does not affect the tenancy of any co-tenant who is not subject to the order.</p>
	<p><b>Termination by tenant – circumstances of domestic violence</b></p> <p><b>Section 105B Right of early termination</b></p>	<p>Part V, Division 4 provides for termination of a residential tenancy in circumstances of domestic violence (as defined)</p> <p>Section 105B enables a FDV survivor/victim tenant or co-tenant to terminate a lease where that tenant, co-tenant or a dependent child living in the premises is in circumstances of domestic</p>

Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<p>(1) A tenant may give a termination notice to the landlord and each co-tenant, if any, for a residential tenancy agreement if the tenant or a dependent child of the tenant is in circumstances of domestic violence.</p> <p>(2) A person is in <i>circumstances of domestic violence</i> if the person—</p> <ul style="list-style-type: none"> <li>(a) has been the victim of a domestic violence offence while a tenant of, or a dependent child of a tenant of, the residential premises and a relevant domestic violence offender has been found guilty of that offence, or</li> <li>(b) is the person for whose protection a DVO has been made against a relevant domestic violence offender and the DVO is in force, or</li> <li>(c) is the person for whose protection an injunction under section 68B or 114 of the <i>Family Law Act 1975</i> of the Commonwealth has been granted on the basis of evidence of family violence in proceedings against a relevant domestic violence offender and the injunction is in force, or</li> <li>(d) has been declared by a competent person to be a victim of domestic violence perpetrated by the relevant domestic violence offender during the currency of the residential tenancy agreement. <p>(3) A declaration made by a competent person under subsection (2)(d) must be in the form prescribed by the regulations.</p> <p><b>Section 105C Domestic violence termination notice</b></p> <p>(1) A domestic violence termination notice must specify a termination date that is on or after the day on which the notice is given and, in the case of a fixed term agreement, may specify a day before the end of the fixed term.</p> <p>(2) A domestic violence termination notice given to the landlord must have annexed to it one of the following documents relating to the relevant domestic violence offender—</p> <ul style="list-style-type: none"> <li>(a) a copy of the certificate of conviction in proceedings against the relevant domestic violence offender for the domestic violence offence,</li> <li>(b) a copy of the relevant DVO made against the relevant domestic violence offender,</li> <li>(c) a copy of the relevant injunction granted under section 68B or 114 of the <i>Family Law Act 1975</i> of the Commonwealth in favour of the tenant or co-tenant in proceedings against the relevant domestic violence offender,</li> <li>(d) a declaration made by a competent person that— <ul style="list-style-type: none"> <li>(i) is in the form prescribed by the regulations, and</li> </ul> </li> </ul> </li></ul>	<p>violence. The lease will be terminated by giving a termination notice to the landlord (and each co-tenant if applicable). Pursuant to s105C, a domestic violence termination notice must specify a termination date and have one of the prescribed documents listed in s 105B(2)(a)-(d) annexed to it. The effect of a domestic violence termination notice is stated in s 105D. In summary, a tenant is not liable to pay any compensation for early termination of a fixed term agreement under s 105B. In the event of early termination, the FDV survivor/victim is not financially disadvantaged for early termination of a fixed term agreement. There are also provisions made to accommodate other co-tenants (if applicable) NB s105E.</p>



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	<p>(ii) contains the matters prescribed by the regulations.</p> <p>(2A) A competent person is authorised to collect, hold, use and disclose personal information about a relevant domestic violence offender that the competent person requires for the purposes of making a declaration under subsection (2)(d).</p> <p>(3) A person must not, at any time, use or disclose any document, or any information contained in any document, referred to in subsection (2) except in accordance with this Division, unless the person is permitted or compelled by law to disclose the document or information.</p> <p style="text-align: center;"><i>Maximum penalty—20 penalty units.</i></p> <p>(4) A person who has in the person’s possession pursuant to this Division a document referred to in subsection (2) must ensure that the document is stored and disposed of securely.</p> <p>(5) The competent person who gives a declaration under subsection (2)(d) must be a person with whom the tenant or co-tenant giving the domestic violence termination notice, or a dependent child, has consulted in the course of the competent person’s professional practice.</p> <p><b>Section 105D Effect of giving domestic violence termination notice</b></p> <p>(3) A tenant is not liable to pay any compensation or other additional amount for the early termination of a fixed term agreement under section 105B.</p> <p>(4) A co-tenant ceases to be a tenant under the residential tenancy agreement on the termination date specified in a domestic violence termination notice if the co-tenant gives the domestic violence termination notice in accordance with this Division and vacates the residential premises.</p> <p>(5) A co-tenant who is not a relevant domestic violence offender and who continues to occupy the residential premises after a domestic violence termination notice is given is not liable to pay more than the amount of rent calculated in accordance with subsection (4) for a period of 2 weeks commencing on the date on which the domestic violence termination notice was given.</p> <p>(6) The amount of rent payable by each co-tenant under subsection (3) is equal to the rent that was payable under the residential tenancy agreement relating to the premises immediately before the domestic violence termination notice was given divided by the number of tenants</p>	



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	<p>under the residential tenancy agreement before the domestic violence termination notice was given.</p> <p>(7) In any proceedings before the Tribunal in respect of the payment of rent under this section, the Tribunal may order the payment of an amount that differs from the amount calculated in accordance with subsection (4).</p> <p><b>Section 105E Orders of Tribunal</b></p> <p>The Tribunal may, on application by a co-tenant, make a termination order for the residential tenancy agreement if it is satisfied that a domestic violence termination notice was given by another co-tenant in accordance with this Division.</p>	
<b>Victoria</b>		
<b><i>Residential Tenancies Act 1997 (Vic)</i></b>	<p><b>Section 91V Application for termination or new residential rental agreement because of family violence or personal violence.</b></p> <p>An application can be made for an order terminating an existing residential rental agreement, or an order terminating the existing residential rental agreement to enter a new agreement with person(s) specified in the application.</p> <p>An application may be made by a tenant or an occupant whose principal place of residence is the rented premises. In both cases, it is a requirement that the person applying to the Tribunal be or has been subjected to family violence by another party to the existing residential rental agreement, or be a protected person under a personal safety intervention order made against another party to the agreement. A child may also apply to the Tribunal, which is to be made on</p>	<p>This provision allows an application to be made to the Tribunal for an order terminating an existing residential rental agreement where the applicant has currently or previously been subjected to family violence by another party to the agreement. This provision not only allows tenant FDV survivors/victims to make an application, but also occupant FDV survivors/victims who are not listed on the lease agreement, provided the rented premises is their principal place of residence.</p> <p>An application may also be made by the FDV survivor/victim to end the current lease with the perpetrator and enter into a new lease.</p>



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	<p>the child’s behalf by a parent or guardian who lives with them at the rented premises.</p> <p><b>Section 91W Tribunal orders.</b></p> <p>This section outlines the orders a Tribunal may make on an application made under s 91V.</p> <p>The Tribunal may make an order terminating the existing residential rental agreement; or an order terminating the existing residential rental agreement and requiring the residential rental provider to enter into a new residential rental agreement person(s) specified person in the application.</p> <p>There are a variety of matters on which the Tribunal must be satisfied before making an order. For example, that the specified person could reasonably be expected to comply with the duties of a renter under a residential rental agreement; that dependent children would be likely to suffer severe hardship if they were compelled to leave the premises; and the hardship suffered would be greater than any hardship the residential rental provider would suffer if the order were made.</p> <p>The Tribunal must also take into account various matters relating to family or personal violence such as whether any relevant orders are in effect.</p> <p>If the Tribunal makes an order, the new residential rental agreement is subject to the same rent and frequency of rent payments as the existing residential rental agreement. The Tribunal may also order that the residential rental provider or that person’s agent must not list information about the specified person on a residential tenancy database</p>	<p>This section outlines the orders that a Tribunal can make upon application for termination or new residential rental agreement because of family or personal violence.</p> <p>The Tribunal, upon application by a FDV survivor/victim, may terminate an existing residential rental agreement and may require the rental provider to enter into a new lease with the FDV survivor/victim and other specified person(s). This allows FDV survivors/victims and their dependents to ‘take over’ the lease and remain in their premises, while ending the FDV perpetrator’s tenancy.</p> <p>In making these orders, the Tribunal considers whether the applicant will have the ability to comply with the terms of the rent agreement (i.e. meeting rent payments) and whether hardship would be suffered by the applicant and their dependents if compelled to leave the premises.</p>
<b>ACT</b>		
<b>Residential Tenancies Act 1997</b>	<p><b>85A New tenancy agreement—family violence and protection orders</b></p> <p>(1) This section applies if—</p> <p>(a) the Magistrates Court has made a protection order; and</p>	<p>Section 85A provides that the FDV survivor/victim may end the tenancy agreement with the perpetrator. The FDV survivor/victim may also apply to terminate the existing agreement and enter into a new tenancy agreement for the same premises, allowing the FDV</p>

Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<p>(b) the respondent is a party to a residential tenancy agreement in relation to premises; and</p> <p>(c) the protected person under the order—</p> <ul style="list-style-type: none"> <li>(i) is also a party to the residential tenancy agreement; or</li> <li>(ii) has been living in the premises as the protected person’s home but is not a party to the agreement; and</li> </ul> <p>(d) either—</p> <ul style="list-style-type: none"> <li>(i) the order includes an exclusion condition or a condition prohibiting the respondent from being within a particular distance from the protected person; or</li> <li>(ii) the respondent has given an undertaking to the court to leave the premises.</li> </ul> <p>(2) The protected person may apply to the ACAT for any of the following orders:</p> <ul style="list-style-type: none"> <li>(a) an order terminating the existing residential tenancy agreement;</li> <li>(b) an order— <ul style="list-style-type: none"> <li>(i) terminating the existing residential tenancy agreement; and</li> <li>(ii) requiring the lessor of the premises to enter into a residential tenancy agreement with the protected person and any other person mentioned in the application;</li> </ul> </li> <li>(c) an order terminating a residential tenancy agreement or occupancy agreement and granting vacant possession of the relevant premises to the lessor.</li> </ul> <p>(3) Each of the following is a party to a proceeding on the application:</p> <ul style="list-style-type: none"> <li>(a) the protected person;</li> <li>(b) the lessor;</li> <li>(c) the respondent;</li> <li>(d) any other existing tenants.</li> </ul> <p>(4) In this section: exclusion condition—</p> <ul style="list-style-type: none"> <li>(a) of a protection order under the FV Act—see the FV Act, section 39 (4); or</li> <li>(b) of a protection order under the PV Act—see the PV Act, section 31 (4).</li> </ul> <p><b>85B Applications under s 85A—ACAT orders</b></p> <p>(1) This section applies if the ACAT receives an application under section 85A from a protected person under a protection order.</p>	<p>survivor/victim to remain in the property. The circumstances in which the provision can be utilised are listed in s 85A(1).</p> <p>The FDV survivor/victim can make an application if she is a party to the tenancy agreement or if she has been living in the premises as their home although not party to the tenancy agreement. This section applies where the Magistrates Court has made a protection order and the respondent is a party to a residential tenancy agreement or has been living in the premises but is not party to the agreement. Where the order contains a condition prohibiting the respondent from being within a particular distance from the protected person or where the respondent has given an undertaking to leave the premises, the protected person may apply for an order terminating the existing tenancy agreement. They may also apply for an order requiring the lessor to enter a tenancy agreement with the protected person or an order terminating the agreement and vacating the premises (s 85A(2)).</p> <p>Where there is a protection order in place which prohibits the FDV perpetrator from being within a particular distance to the FDV survivor/victim or where the perpetrator has given an undertaking to leave the premises, a FDV survivor/victim may apply to the Tribunal to terminate the existing tenancy agreement.</p> <p>For ACAT to make an order, it must be satisfied that it is reasonable to do so based on the length of the protection order and duration remaining on the existing agreement. It will also consider the interests of other tenants and whether they support the application.</p> <p>Where an order is made terminating the existing agreement and the lessor enters into a new agreement with the protected person, ACAT will also consider a range of factors such as:</p> <ul style="list-style-type: none"> <li>- The hardship likely to be suffered by the protected person or their dependent’s if compelled to leave,</li> <li>- Whether the hardship would be greater than that the lessor would suffer,</li> <li>- Whether the person(s) mentioned in the application can comply with terms of the tenancy agreement, and</li> <li>- If other person(s) are included in the application, the lessor has considered their suitability as a tenant.</li> </ul>



Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<p>(2) The ACAT may make the order applied for if satisfied that—</p> <ul style="list-style-type: none"> <li>(a) it is reasonable to make the order, taking into consideration the length of the protection order and the length of time remaining on the term of the existing residential tenancy agreement; and</li> <li>(b) it is reasonable to make the order, taking into consideration the interests of the protected person, the respondent and any other tenants, under the existing residential tenancy agreement and, in particular, whether the other tenants support the protected person’s application; and</li> <li>(c) for an order mentioned in section 85A (2) (b)— <ul style="list-style-type: none"> <li>(i) the protected person, or the dependent children of the protected person or of any other person mentioned in the application, would be likely to suffer significant hardship if the protected person were compelled to leave the premises; and</li> <li>(ii) that hardship would be greater than the hardship the lessor would suffer if the order were made; and</li> <li>(iii) the protected person and any other person mentioned in the application could reasonably be expected to comply with the terms of a residential tenancy agreement; and</li> <li>(iv) if another person is mentioned in the application—the lessor has been given an opportunity to consider the person’s suitability as a tenant.</li> </ul> </li> </ul> <p>(3) If the ACAT makes an order mentioned in section 85A (2) (b), the new residential tenancy agreement must—</p> <ul style="list-style-type: none"> <li>(a) be subject to the same rent and frequency of rent payments as the existing residential tenancy agreement; and</li> <li>(b) if the existing residential tenancy agreement is a fixed term agreement—run for a term not longer than the remainder of the fixed term; and</li> <li>(c) otherwise be on the same terms as the existing residential tenancy agreement, subject to any changes the ACAT decides.</li> </ul> <p>(4) If the ACAT makes an order mentioned in section 85A (2) (b), the existing residential tenancy agreement is terminated when the new residential tenancy agreement is signed by the parties to the agreement.</p> <p>(5) The ACAT may determine the liabilities of the respondent, the protected person or any other tenants under the existing residential tenancy agreement in relation to the bond paid under the agreement.</p>	<p>In granting such an order, the new agreement is to be at the same rent and frequency as the existing agreement. Fixed term agreements must run no longer than what remains on the fixed term.</p>



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	<p>(6) The ACAT may suspend the operation of an order for a stated period of up to 3 weeks if satisfied that—</p> <ul style="list-style-type: none"> <li>(a) the protected person would suffer significant hardship if the order were not suspended for the stated period; and</li> <li>(b) the hardship would be greater than the hardship the lessor would suffer if the order were suspended for the stated period.</li> </ul>	
<b>Northern Territory</b>		
<p><b>Domestic and Family Violence Act 2007</b></p>	<p><b>23 Order regarding tenancy agreement</b></p> <p>(1) This section applies if:</p> <ul style="list-style-type: none"> <li>(a) the defendant and protected person live together or previously lived together in premises; and</li> <li>(b) the defendant or protected person is a tenant of the premises or both of them are tenants of the premises (regardless of whether anyone else is a tenant of the premises); and</li> <li>(c) either:               <ul style="list-style-type: none"> <li>(i) a court DVO includes a premises access order for the premises; or</li> <li>(ii) the protected person no longer wishes to live in the premises.</li> </ul> </li> </ul> <p>(2) The Court may, in the DVO, make:</p> <ul style="list-style-type: none"> <li>(a) an order terminating the tenancy agreement; or</li> <li>(b) an order terminating the tenancy agreement and creating a new tenancy agreement (the <i>replacement agreement</i>) for the benefit of:               <ul style="list-style-type: none"> <li>(i) the protected person and anyone else who was a party to the terminated agreement other than the defendant; or</li> <li>(ii) the defendant and anyone else who was a party to the terminated agreement.</li> </ul> </li> </ul> <p>(3) An order must not be made unless:</p> <ul style="list-style-type: none"> <li>(a) the Court is satisfied there is no reasonable likelihood of the defendant and the protected person living in the premises free of domestic violence; and</li> <li>(b) the landlord consents to the order or, if the landlord refuses consent, the Court is satisfied the refusal is unreasonable; and</li> </ul>	<p>This provision allows for the termination or creation of a new tenancy agreement where the domestic relationship has broken down permanently and there Upon application for the Domestic Violence Order (DVO) the court may make various orders such as an order terminating the tenancy agreement or creating a new tenancy agreement. Such an order will only be granted where there is no reasonable likelihood that the FDV survivor/victim and perpetrator can live in the premises free of domestic violence (S 23(3)(a)).</p>

Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<ul style="list-style-type: none"> <li>(c) the protected person consents to the order; and</li> <li>(d) in the case of a replacement agreement – the protected person or defendant, as the case may be, would be able to comply with the replacement agreement; and</li> <li>(e) the Court considers it appropriate in the circumstances to make the order.</li> </ul> <p>(4) The landlord and anyone else having an interest in the premises are entitled to appear and be heard in relation to the matter.</p> <p>(5) The replacement agreement must have the same conditions as the terminated agreement other than the names of the tenants.</p> <p>(6) If the terminated agreement is for a fixed term, the date of expiry of the replacement agreement must be the same as that of the terminated agreement.</p> <p>(7) Part 12 of the <i>Residential Tenancies Act 1999</i> applies to the terminated agreement as if the tenants had given up vacant possession of the premises.</p> <p>(8) In this section:  <i>premises, see the Residential Tenancies Act 1999.</i>  <i>tenancy agreement, see the Residential Tenancies Act 1999.</i></p>	
<b>Tasmania</b>		
<b><i>Residential Tenancy Act 1997(Tas)</i></b>	<p><b>37. Termination of agreement</b></p> <p>(1) A residential tenancy agreement in respect of residential premises is terminated only by –</p> <p>....</p> <p>(da) the making of an order of termination in accordance with section 17 of the <a href="#">Family Violence Act 2004</a></p>	<p>This section outlines the circumstances in which a residential tenancy agreement is terminated, one of which includes the making of an order of termination under the section 17 <i>Family Violence Act 2004</i> (Tas). See details below.</p>
<b><i>Family Violence Act 2004 (Tas)</i></b>	<p><b>17. Issue of replacement residential tenancy agreement</b></p> <p>(1) In this section –  <i>original agreement</i> means a residential tenancy agreement in relation to residential premises referred to in <a href="#">subsection (2)</a> ;  <i>replacement agreement</i> means a residential tenancy agreement established under <a href="#">subsection (1A)(b)</a> or <a href="#">(c)</a> .</p>	<p>Pursuant to s 17(1A), in circumstances where a Family Violence Order (FVO) is made against a tenant of residential premises (the perpetrator), a court may make an order terminating the original agreement (as defined in s 17(1)). FVO are considered in s16. The court may also make an order to terminate the original agreement and establish a replacement agreement (as defined in s 17(1))for the benefit of the affected person (the FDV</p>

Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<p>(1A) If the person against whom an FVO is to be made is a tenant of residential premises occupied by an affected person, a court may make an order under <a href="#">section 16</a> to –</p> <ul style="list-style-type: none"> <li>(a) terminate the original agreement; or</li> <li>(b) terminate the original agreement and establish a new residential tenancy agreement for the benefit of the affected person and any other party who was a party to the terminated agreement, other than the person against whom the FVO is to be made; or</li> <li>(c) terminate the original agreement and establish a new residential tenancy agreement for the benefit of the person against whom the FVO is to be made and any other party who was a party to the terminated agreement, other than the affected person.</li> </ul> <p>(2) A replacement agreement is to have the same terms and conditions, other than the names of the tenants, as the original agreement.</p> <p>(3) Where the original agreement was for a fixed term, the date of expiry of the replacement agreement is to be the same as that of the original agreement.</p> <p>(3A) Where a court has made an order terminating a residential tenancy agreement and establishing a new residential tenancy agreement and a security deposit has been paid as required under the <a href="#">Residential Tenancy Act 1997</a> in respect of the original agreement, the court may make an order stating that the deposit in respect of the original agreement is the security deposit in respect of the replacement agreement.</p> <p>(3B) If an order is made under <a href="#">subsection (3A)</a> –</p> <ul style="list-style-type: none"> <li>(a) the owner of the residential property may not require any further security deposit in respect of the replacement agreement; and</li> <li>(b) no disbursement or refund of the security deposit is payable under the <a href="#">Residential Tenancy Act 1997</a> on the termination of the original agreement; and</li> <li>(c) on the termination of the replacement agreement, the security deposit is to be disbursed or refunded as if it were the termination of the original agreement.</li> </ul> <p>(4) Before an order is made under this section, any person having an interest in the residential premises is entitled to appear and be heard in relation to the matter</p>	<p>survivor/victim) or another party to the terminated agreement (a cotenant).</p> <p>The court may also make an order to terminate the original agreement and establish a new agreement for the benefit of the person against whom the FVO is to be made.</p> <p>The replacement agreement is to have the same term sand conditions and date of expiry as the original agreement. The property owner cannot request further security deposit in respect of the replacement agreement. Further, no disbursement of the deposit is payable on termination of the original agreement and upon termination of the replacement agreement, the deposit is to be disburse as if it were termination of the original agreement.</p> <p>Where there is a FVO made against the perpetrator tenant which is occupied by an affected person (FDV survivor/victim) a court may:</p> <ul style="list-style-type: none"> <li>- Terminate the residential tenancy agreement; or</li> <li>- Terminate the original agreement and establish a new agreement for the benefit of the affected person (FDV survivor/victim) and any other person who was a party to the terminated agreement, other than the FDV perpetrator</li> <li>- Terminate the original agreement and establish a new agreement for the benefit of the FDV perpetrator and any other person who was a party to the terminated agreement, other than the FDV survivor/victim.</li> </ul> <p>Further security deposit is not required in relation to the replacement agreement and is not disbursed upon termination of the original agreement. Upon termination of the replacement agreement, the security deposit is to be disbursed according to the original agreement.</p>





Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
<b>South Australia</b>		
<b>Residential Tenancies Act 1995 (SA)</b>	<p><b>79—Termination of residential tenancy</b> A residential tenancy terminates if—</p> <p>...</p> <p>(b) the landlord or the tenant terminates the tenancy by notice of termination given to the other (as required under this Act); or</p> <p>(c) the Tribunal terminates the tenancy....</p> <p><b>89A—Termination based on domestic abuse</b></p> <p>(1) The Tribunal may, on application by a tenant or a co-tenant, terminate a residential tenancy from a date specified in the Tribunal's order if satisfied—</p> <p>(a) that an intervention order is in force against a person who resides at the residential premises for the protection of—</p> <p>(i) the applicant; or</p> <p>(ii) a domestic associate of the applicant who normally or regularly resides at the residential premises; or</p> <p>(b) that a person who resides at the residential premises has committed domestic abuse against—</p> <p>(i) the applicant; or</p> <p>(ii) a domestic associate of the applicant who normally or regularly resides at the residential premises.</p> <p>(2) The Tribunal may, on application by the South Australian Housing Trust, a subsidiary of the South Australian Housing Trust or a community housing provider registered under the Community Housing Providers National Law, terminate a residential tenancy from a date specified in the Tribunal's order if satisfied—</p> <p>(a) that an intervention order is in force against a tenant for the protection of a person who normally or regularly resides at the residential premises; or</p> <p>(b) that a tenant has committed domestic abuse against a person who normally or regularly resides at the residential premises.</p> <p>(3) For the purposes of an application under this section, the applicant, the landlord and any tenant or co-tenant under the residential tenancy agreement are parties to proceedings concerning the tenancy dispute.</p> <p>(4) The Tribunal may, on application by a party to proceedings under this section, make 1 or more of the following additional orders:</p>	<p><b>The relevant person who can utilise the provisions is a domestic associate (as defined) in circumstances of domestic abuse.</b></p> <p>The South Australian provision combines the two alternatives for a FDV survivor/victim in circumstances where there has been domestic abuse during a tenancy: to leave the tenancy or to remain in the premises but exclude the perpetrator.</p> <p>Section 89A (1) provides that a tenant (or co-tenant) may apply to terminate a residential tenancy agreement where an intervention order is in place protecting an applicant or a domestic associate, or where a person residing in the premises who has committed domestic abuse against the applicant or a domestic associate of the applicant.</p> <p>SACAT can make an order for vacant possession or an order requiring the landlord to enter into a new residential tenancy agreement with the applicant or a co-tenant under the terminated agreement for the remainder of the term of the tenancy (s89A(4)). In the latter case, the tribunal must be satisfied that any tenant or cotenant under the new residential tenancy agreement could reasonably be expected to comply with the obligations under the agreement (s89A(6)). Such lease will be under the same terms and conditions as the previous lease (s89A(8)).</p> <p>The landlord may intervene in the proceedings pursuant to ss89A(5) and (7).</p>

Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<ul style="list-style-type: none"> <li>(a) subject to this section, an order requiring the landlord to enter into a new residential tenancy agreement with the applicant or a co-tenant under the terminated agreement (or both) for the remainder of the term of the tenancy;</li> <li>(b) an order that the landlord may enter the residential premises at a time determined by the Tribunal to inspect the premises before a determination is made under this section;</li> <li>(c) an order for possession of the premises on a date specified by the Tribunal;</li> <li>(d) if the Tribunal is satisfied that—               <ul style="list-style-type: none"> <li>(i) the applicant did not cause or reasonably cause a breach of the residential tenancy agreement; or</li> <li>(ii) the nature of any breach of the residential tenancy agreement resulted from an act of abuse or domestic abuse against the applicant, an order that the landlord, landlord's agent or a database operator must not list the applicant's personal information in a residential tenancy database under section 99F(1).</li> </ul> </li> <li>(5) The Tribunal must not make an order under subsection (4)(a) requiring the landlord to enter into a new residential tenancy agreement with a co-tenant who is—               <ul style="list-style-type: none"> <li>(a) the person referred to in subsection (1)(a) against whom an intervention order is in force; or</li> <li>(b) the person referred to in subsection (1)(b) whom the Tribunal is satisfied has committed domestic abuse against an applicant or a domestic associate of the applicant who normally or regularly resides at the residential premises, if the landlord indicates, as part of proceedings before the Tribunal, that the landlord considers it would be unreasonable for such an order to be made.</li> </ul> </li> <li>(6) Before making an order under subsection (4)(a), the Tribunal must be satisfied—               <ul style="list-style-type: none"> <li>(a) that any tenant or co-tenant under the new residential tenancy agreement could reasonably be expected to comply with the obligations under the agreement; and</li> <li>(b) in a case where the landlord is the South Australian Housing Trust or a subsidiary of the South Australian Housing Trust—that any tenant under the new residential tenancy agreement meets the eligibility requirements of the Trust; and</li> </ul> </li> </ul>	



Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<ul style="list-style-type: none"> <li>(c) in a case where—               <ul style="list-style-type: none"> <li>(i) the landlord is a community housing provider registered under the Community Housing Providers National Law; and</li> <li>(ii) the residential premises constitute community housing within the meaning of that Law, that any tenant under the new residential tenancy agreement meets the eligibility requirements for such community housing and any membership or other requirements of the landlord associated with occupation of those premises.</li> </ul> </li> <li>(7) If the landlord or any co-tenant objects to an application for the making of an order under subsection (1) or (4)(a), the Tribunal must not make the order unless satisfied that the hardship likely to be suffered by the applicant or a domestic associate of the applicant who normally or regularly resides at the residential premises would, if the order were not made, be greater than any hardship likely to be suffered by the objector as a consequence of the making of the order.</li> <li>(8) A new residential tenancy agreement entered into by order of the Tribunal under subsection (4)(a) must be on the same terms and conditions as the terminated tenancy agreement, subject to any changes determined by the Tribunal.</li> <li>(9) In considering an application under this section, the Tribunal must have regard to such of the following orders and proceedings (if any) as are relevant to the application:               <ul style="list-style-type: none"> <li>(a) an order, injunction, undertaking, plan, recognisance or other form of obligation imposed or agreement made under the Family Law Act 1975 of the Commonwealth;</li> <li>(b) an order made under the Children's Protection Act 1993 or the Children and Young People (Safety) Act 2017;</li> <li>(c) an order made under the Intervention Orders (Prevention of Abuse) Act 2009;</li> <li>(d) a pending application for an order referred to in paragraph (a), (b) or (c);</li> <li>(e) any other relevant legal proceedings.</li> </ul> </li> <li>(10) If a residential tenancy is terminated under this section because of an intervention order in force against a co-tenant under the residential tenancy agreement, or because a co-tenant under the agreement has committed domestic abuse, the Tribunal may order the co-tenant to make a payment of compensation to the landlord for loss and inconvenience</li> </ul>	

Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<p>resulting, or likely to result, from the termination of the tenancy or from any additional order made under subsection (4).</p> <p>(11) If the Tribunal finds, in relation to a residential tenancy that is terminated under this section, that 1 or more, but not all, of the co-tenants under the residential tenancy agreement are responsible for damage to the residential premises or ancillary property, the Tribunal may determine that the responsible co-tenant or co-tenants are liable (to the exclusion of other co-tenants) for making any payment of compensation ordered under section 110(1)(c).</p> <p>(12) If 1 or more, but not all, of the co-tenants under a residential tenancy agreement are liable under subsection (10) or (11) for making a payment of compensation, the following provisions apply:</p> <ul style="list-style-type: none"> <li>(a) the Tribunal may give a direction under section 110(1)(i) that the bond (if any) be paid to the landlord and any co-tenant who is not liable for making the payment in such proportions as the Tribunal thinks fit;</li> <li>(b) a direction under paragraph (a) may not operate to limit the amount of bond payable to a landlord under section 110(1)(i).</li> </ul>	
<b>Western Australia</b>		
<p><b>Residential Tenancies Act 1987</b></p>	<p><b>60. How residential tenancy agreements and tenant’s interests in agreements are terminated</b></p> <p>(1) Despite any Act or law to the contrary, a residential tenancy agreement shall not terminate or be terminated except in one of the following circumstances –</p> <p>....</p> <ul style="list-style-type: none"> <li>(ba) in the case of a particular tenant’s interest in the agreement, where the tenant – <ul style="list-style-type: none"> <li>(i) gives notice under section 71AB(1) of termination of the tenant’s interest together with at least 1 of the documents required under section 71AB(2); and</li> <li>(ii) vacates the premises on or after the expiration of the period of notice required under section 71AB(5);</li> </ul> </li> <li>(bb) in the case of a particular tenant’s interest in the agreement, where the tenant – <ul style="list-style-type: none"> <li>(i) gives notice under section 71AD(4) of termination of the tenant’s interest; and</li> </ul> </li> </ul>	<p>Under the Western Australian legislation, residential tenancy agreements and tenant’s interests in agreements can only be terminated in accordance with s 60. In relation to FDV, ss 60(ba),(bb) and (bc) provide that the agreement can be terminated where the tenant gives notice of termination on the grounds of family violence in the prescribed form and vacates the premises on or after the expiration of the period of notice required or a court terminates the tenant’s interest on the grounds of family violence.</p>

Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<p>(ii) vacates the premises on or after the expiration of the period of notice required under section 71AD(5);</p> <p>(bc) in the case of a particular tenant’s interest in the agreement, where a competent court terminates the tenant’s interest under section 71AE</p> <p><b>71AB. Notice of termination of tenant’s interest on ground that tenant subject to family violence</b></p> <p>(1) Despite any other provision of this Act or another written law or a requirement under a contract, a tenant may give to the lessor notice of termination of the tenant’s interest in the residential tenancy agreement on the ground that the tenant or a dependant of the tenant is, during the tenancy period, likely to be subjected or exposed to family violence.</p> <p>(2) A notice under this section must be accompanied by a document, applicable during the tenancy period, comprising 1 of the following —</p> <ul style="list-style-type: none"> <li>(a) a DVO;</li> <li>(b) a Family Court injunction or an application for a Family Court injunction;</li> <li>(c) a copy of a prosecution notice or indictment containing a charge relating to violence against the tenant or a court record of a conviction of the charge;</li> <li>(d) a report of family violence, in a form approved by the Commissioner, completed by a person who has worked with the tenant and is 1 of the following — <ul style="list-style-type: none"> <li>(i) a person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the medical profession;</li> <li>(ii) a person registered under the <i>Health Practitioner Regulation National Law (Western Australia)</i> in the psychology profession;</li> <li>(iii) a social worker as defined in the <i>Mental Health Act 2014</i> section 4;</li> <li>(iv) a police officer;</li> <li>(v) a person in charge of a women’s refuge;</li> <li>(vi) a prescribed person or class of persons.</li> </ul> </li> </ul>	<p>The relevant person who can utilise the provisions is a <i>tenant in circumstances where the tenant or a dependent of the tenant is likely to be subjected to or exposed to family violence</i>.</p> <p>A tenant may give the lessor notice of termination of the residential tenancy agreement on the ground that they or their dependant, during the tenancy period, is likely to be subjected or exposed to family violence. At least 7 days’ notice is required (s71AB(5)). The termination notice must be supported by a one of the documents outlined in the legislation being a DVO, Family Court injunction or an Application for a Family Court injunction, a copy of a prosecution notice or indictment containing a charge relating to violence against the tenant, or a report of family violence completed by a prescribed person. Prescribed persons are listed in s 71AB(2)(d)(i) – (vi).</p> <p>All information provided under s71AB(2) is subject to non-disclosure and confidentiality obligations (s71AB(3),(4)).</p> <p>The termination notice can be the subject of review upon application of the lessor pursuant to s71AC.</p> <p>Co-tenants must be provided with a copy of the relevant notice in accordance with s 71AD.</p>



Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<p>(3) The lessor must not disclose information in a document provided to the lessor under subsection (2) to another person except in accordance with this Act or another written law. Penalty for this subsection: a fine of \$5 000.</p> <p>(4) The lessor must ensure that information provided to the lessor under subsection (2) is kept in a secure manner so far as it is reasonably practicable to do so. <i>Penalty for this subsection: a fine of \$5 000.</i></p> <p>(5) If a tenant gives notice under this section, the period of notice must be not less than 7 days before the termination day.</p>	
	<p><b>71AE. Termination of tenant’s interest by court on grounds of family violence</b></p> <p>(1) In this section —  excluded tenant means a tenant against whom an order is sought or made under subsection (2);  family violence order means a DVO, Family Court injunction or other court order denying a tenant’s right of occupancy in premises under a residential tenancy agreement;  protected tenant means a tenant for whose benefit an order is sought or made under subsection (2).</p> <p>(2) Despite any other provision of this Act or another written law, or a requirement under a contract, a court may make an order terminating a tenant’s interest in a residential tenancy agreement if it is satisfied —  (a) that a family violence order is in force against the excluded tenant; or  (b) that the excluded tenant has, during the tenancy period, committed family violence against the protected tenant or a dependant of the protected tenant.</p> <p>(3) The court may make the order on an application by any of the following —  (a) the excluded tenant;  (b) a protected tenant;  (c) a prescribed person acting on behalf of the protected tenant.</p> <p>(4) Before making the order the court must consider the following matters —</p>	<p>Section 71AE(3) provides that a FDV survivor/victim (protected tenant s71AE(1)), an excluded tenant (the perpetrator s71AE(1)) or prescribed person on behalf of the survivor/victim to make an application to the court to terminate an excluded tenant’s interest in a tenancy agreement if the court is satisfied that there is a family violence order in force against the perpetrator (as defined in s71AE(1)) or the excluded tenant has committed family violence against the victims or a dependent during the tenancy: s71AE(2). A court may make an order terminating a tenant’s interest in a residential tenancy agreement if it is satisfied that a family violence order (as defined in s71AE(1)) is in force against the excluded tenant or that the excluded tenant has committed family violence against the protected tenant or their dependant (s71AE(2)). The order may be sought a FDV survivor/victim (protected tenant s71AE(1)), an excluded tenant (the perpetrator s71AE(1)) or prescribed person on behalf of the survivor/victim (s71AE(3)). Such order can be made under the RTA or together with an application for orders pursuant to FDV legislation (S71AB(7)).</p> <p>In determining whether to make the order, the court must consider a range of matters listed in s71AE(4) including the best interests of any child residing at the premises (noted to be the paramount consideration (s71AE(d)(a), 71AE(5)), the best</p>



Legislation addressing residential tenancy issues & FDV	Key sections of the legislation	Overview of the key sections
	<ul style="list-style-type: none"> <li>(a) the best interests of any child ordinarily resident at the premises;</li> <li>(b) the best interests of the protected tenant, including, if the premises under the residential tenancy agreement are social housing premises, the ability of the tenant to meet any eligibility criteria for those premises;</li> <li>(c) the effect the order might have on the lessor and any tenants other than the protected tenant;</li> <li>(d) the effect the order might have on any pets kept on the premises;</li> <li>(e) the fact that perpetrators of family violence might seek to misuse the protections offered to tenants and lessors under this Act to further their violence and the need to prevent that misuse.</li> </ul> <p>(5) The court is to have regard to the matter set out in subsection (4)(a) as being of primary importance.</p> <p>(6) The order takes effect on a day specified in the order, being a day that is not less than 7 days and not more than 30 days after the order is made.</p> <p>(7) The court may make the order in proceedings under this Act or the Act under which the family violence order is made.</p>	<p>interests of the protected tenant and the effect the order might have on pets kept on the premises.</p> <p>Time limits apply in relation to the order taking effect (71AE(6))</p>

## Appendix 2: Summary of legislative responses for each jurisdiction

Appendix 2 elaborates further on provisions outlined in Chapter 3. Each jurisdiction has discrete legislation and it is instructive to consider each state and territory individually to compliment the general discussions in Chapter 3. The overview of each jurisdiction commences with a summary of the persons to whom the provision extends and then considers several of the questions raised in Chapter 3 in relation to the state or territory. To avoid overlap, questions 2 (outstanding payments and repairs) and 3 (the security deposit) in Chapter 3 will be addressed together. Appendix 2 does not seek to provide an exhaustive examination of the provisions in the various jurisdictions but rather an introductory overview of the discrete frameworks. In relation to Victoria, the discussion will focus on the 2018 amendments that, at the time of writing, are expected to commence on 21 March 2021.

### Summary of legislative responses: Queensland

#### Introduction

Sections 245 and 321 RTRAA are the pivotal provisions regarding termination of a lease in circumstances of FDV.

- i. The scope of both sections is limited to persons within the definition of a *domestic associate*.<sup>188</sup> This term is defined as a person in any of the following relationships—
  - (a) an intimate personal relationship;<sup>189</sup>
  - (b) a family relationship;<sup>190</sup>
  - (c) an informal care relationship.<sup>191</sup>

Given the breadth of related definitions in the *Domestic and Family Violence Protection Act 2012* (DFVPA), the term domestic associate extends to a considerable number of relationships. For example, a family relationship may include relatives such as an individual's spouse, child (including a child 18 years or more), stepchild, parent, step-parent, sibling, grandparent, aunt, nephew, cousin, half-brother, mother-in-law or aunt-in-law.<sup>192</sup> The provision also extends to certain former relatives.<sup>193</sup>

- ii. The occurrence of *domestic violence* triggers the operation of ss245 and 321 RTRAA. The term is defined for the purposes of the RTRAA in the DFVPA<sup>194</sup> and includes physical, sexual

<sup>188</sup> Sections 245(9) and 321(2) RTRAA.

<sup>189</sup> Section 14 DFVPA

<sup>190</sup> Section 19 DFVPA (this definition also includes a relative).

<sup>191</sup> Section 20 DFVPA

<sup>192</sup> Section 19(2) DFVPA.

<sup>193</sup> Ibid.

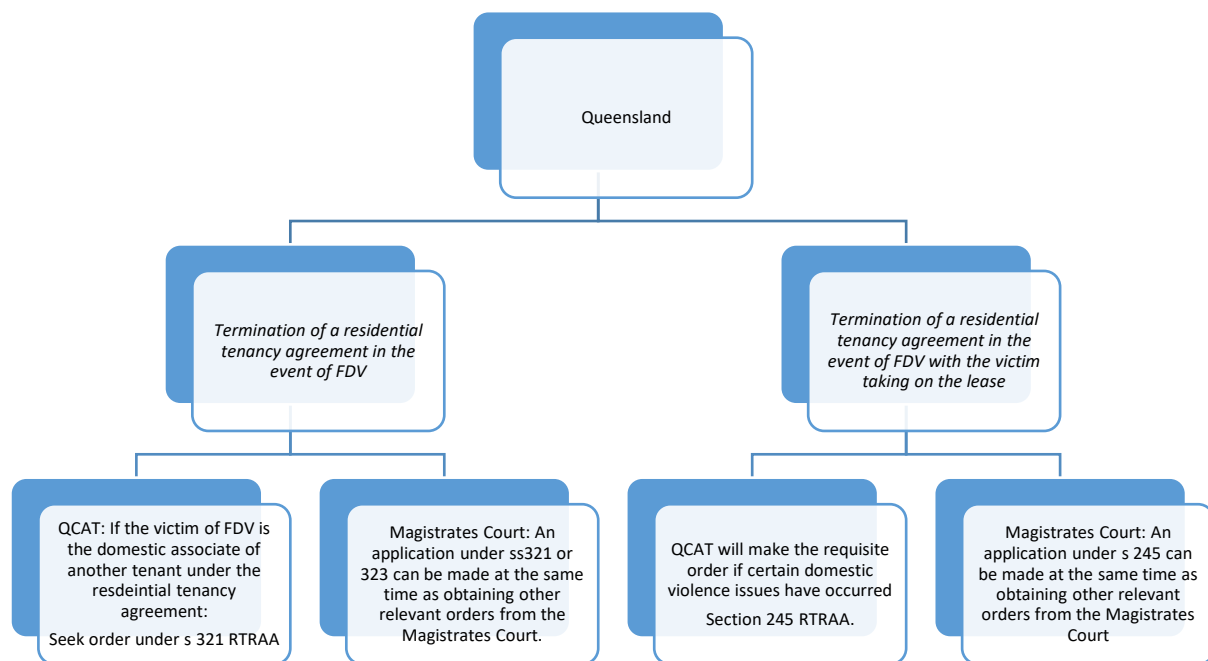
<sup>194</sup> Schedule 2 RTRAA, s 8 DFVPA.



emotional, psychological and economic abuse, including related threats, coercion and control.<sup>195</sup> Several ancillary behaviours are also listed that can be regarded as domestic violence for the purposes of the legislation.<sup>196</sup> Such behaviours include damage to property and abuse towards an animal.<sup>197</sup>

This section continues in relation to provisions discussed in Chapter 2, Question 1: *What are the consequences if X wants to terminate the lease immediately and vacate the premises?* The section discusses the path that can be taken to an early termination of a lease in circumstances of FDV in each jurisdiction. The section highlights whether interaction with a court or tribunal is mandatory or whether alternative procedures are available.

### Overview of paths to early termination of a lease in circumstances of FDV.



#### 1. Termination of a residential tenancy agreement in the event of FDV

In Queensland, a residential tenancy agreement can end only in the ways listed in s277 RTRAA.<sup>198</sup> Termination of a residential tenancy agreement in the event of FDV requires a Tribunal order.<sup>199</sup> Tenancy matters can also be heard at the same time as an application for a protection order in the Magistrates Court.<sup>200</sup> The circumstances of co-tenants who are not involved in the FDV are also addressed by the legislation.

<sup>195</sup> Section 8(1) DFVPA.

<sup>196</sup> Section 8(2) DFVPA.

<sup>197</sup> Section 8(2)(c), (g) DFVPA

<sup>198</sup> Section 277(1) RTRAA.

<sup>199</sup> Section 277(5)(a) RTRAA.

<sup>200</sup> Sections 32, 139, 140 Domestic and Family Violence Protection Act 2012 (Qld) (DFVPA)

### *Tribunal order*

The legislation addresses circumstances where a tenant is the domestic associate<sup>201</sup> of another tenant. The FDV victim/survivor can apply to QCAT for a termination of the lease for damage or injury under s321(1) RTRAA. The order will be granted where it is established that the tenant (being the perpetrator) has:

- (a) intentionally or recklessly caused, or is likely to intentionally or recklessly cause damage to the premises;<sup>202</sup> or
- (b) has committed domestic violence against the domestic associate.<sup>203</sup>

The application will be regarded as urgent<sup>204</sup> and the application can be made without giving the landlord a notice of intention to leave.<sup>205</sup> The application must be supported by documentation. Where the application is made because of injury to a domestic associate of the tenant, the court is obliged to consider certain domestic violence issues under s344(2) RTRAA being:

- 4.1 whether the applicant has applied for a domestic violence order against the applicant's domestic associate;
- 4.2 if an application was made—whether a domestic violence order was made and, if made, whether it is in force;
- 4.3 if a domestic violence order is in force—whether a condition was imposed prohibiting the applicant's domestic associate from entering, or remaining in, the premises.

These factors are not exhaustive and the Tribunal can also consider other matters.<sup>206</sup>

Where FDV victim/survivor believes on reasonable grounds the tenant is likely to cause further damage or injury for which a termination order could be sought, she may apply for an interim order to restrain the tenant from causing further damage or injury.<sup>207</sup>

### *Alternative path via Magistrates Court*

Pursuant to s32 *Domestic and Family Violence Protection Act 2012 (Qld)* (DFVPA), a tenant can apply to the Magistrates Court for a Protection Order in circumstances of FDV.<sup>208</sup> Sections 139 and 140 DFVPA provide that particular applications made under the RTRAA can be made to the Magistrates Court if an application for a protection order or a variation of a domestic violence order has been made to the court. The order can include conditions in the order that exclude the perpetrator from the premises. If an Ouster Condition is imposed on a perpetrator who is a tenant, the FDV victim/survivor can apply under s321 for an order terminating the tenancy.<sup>209</sup> Related tenancy matters can be determined at the same time. This process is useful and efficient where relevant orders have not been obtained as required by s344(2) RTRAA prior to an application being made.

<sup>201</sup> As defined in s321(2)(a) – (c).

<sup>202</sup> Section 321(1)(a), 324(1) RTRAA.

<sup>203</sup> Section 321(1)(b), 324(2) RTRAA

<sup>204</sup> Section 414A, 415(1),(4),(5) RTRAA; Tenants Queensland, *Tenancy Toolkit* 2018 1.3.4 <<https://tenantsqld.org.au/dv-toolkit/leaving-a-tenancy/#1.3.4>>

<sup>205</sup> Section 335(2)(c), (d) RTRAA.

<sup>206</sup> Section 344(3) RTRAA.

<sup>207</sup> Sections 323 and 348 RTRAA.

<sup>208</sup> See Form DV1 Protection Order Application Form

<sup>209</sup> Section 63DFVA

## 2. *Termination of a residential tenancy agreement in the event of FDV with the victim/survivor taking on the lease*

Where there has been injury to a domestic associate, application can be made to QCAT to be recognised as the tenant instead of the perpetrator.<sup>210</sup> This is the case whether the victim/survivor of FDV is named on the lease or not. Therefore, the FDV victim/survivor could be recognised as the sole tenant, or jointly hold the tenancy with a third person co-tenant (if applicable). QCAT will make the requisite order if the ground of the application has been established.<sup>211</sup> In making this decision, the Tribunal must have regard to whether certain domestic violence issues have occurred.<sup>212</sup> These issues are identical to those listed above in relation to s321(1). Again, other issues can be considered too.<sup>213</sup> The landlord must be given the opportunity to be heard on the application.<sup>214</sup> The Tribunal can make any order it considers appropriate in the circumstances,<sup>215</sup> including, it seems, orders regarding the security bond and listings on a tenancy database.<sup>216</sup>

### *Alternative path via the Magistrates Court*

As discussed above in relation to Option 1, FDV victim/survivor can seek to utilise s245 RTRAA at the same time as obtaining other relevant orders from the Magistrates Court.

## Outstanding payments and security bonds

This section elaborates further on provisions discussed in Chapter 3 Will X bear any responsibility for outstanding rental or repairs? What impact will this have on the security deposit?

In Queensland, where an order is made in relation to the termination of a lease in circumstances of FDV, the Tribunal may make any order it considers appropriate.<sup>217</sup> An order about a rental bond paid is provided as an example of an order that could be given.

## Tenancy Databases

This section elaborates further on provisions discussed in Chapter 3 *Could the tenant be blacklisted on a residential tenancy database?*

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<sup>210</sup> Section 245(2) RTRAA.

<sup>211</sup> Section 245(3) RTRAA.

<sup>212</sup> Section 245(4) RTRAA: In deciding the application, the tribunal must have regard to the following issues (the **domestic violence issues**)—

(a) whether the person has applied for a protection order against the person’s domestic associate;  
 (b) if an application was made—whether a domestic violence order was made and, if made, whether it is in force;  
 (c) if a domestic violence order has been made—whether a condition was imposed prohibiting the person’s domestic associate from entering, or remaining, on the premises.

<sup>213</sup> Section 245(5) RTRAA

<sup>214</sup> Section 245(8) RTRAA.

<sup>215</sup> Section 245(6) RTRAA

<sup>216</sup> Examples 2 and 3 ‘Examples of orders Tribunal may make’ s245(6) RTRAA.

<sup>217</sup> Section 245(6) RTRAA

QCAT can order that personal information about victim/survivors is not to be listed on, or must be removed from, a tenancy database, where the breach of a residential tenancy agreement is the result of domestic violence. It is necessary to distinguish between two circumstances.

As discussed, the RTRAA stipulates that a victim/survivor of domestic violence may apply to QCAT for:

- i. an order to be recognised as the tenant or a co-tenant under the tenancy agreement;<sup>218</sup> or
- ii. a termination order.<sup>219</sup>

The procedure for ensuring a victim/survivor is not to be listed on, or is removed from, a tenancy database depends on the type of order sought.

- i. Where a person obtains an order to be recognised as the tenant or co-tenant instead of a violent domestic associate,<sup>220</sup> certain additional orders can be made including an order that the person's personal information should not be listed on a tenancy database.<sup>221</sup> A person (presumably a landlord, their agent and a database operator) must not list personal information about a person in a tenancy database if QCAT has made an order prohibiting the listing of the information.<sup>222</sup>

Where such personal information has been listed in contravention of such an order, the person can apply to QCAT<sup>223</sup> and, if the tribunal decides that the listing has been made in breach of the order, it can require that such breach be remedied or make another order it considers appropriate.<sup>224</sup>

- ii. Where a person obtains a termination order because of domestic violence,<sup>225</sup> it seems there is no provision for the making of additional orders as in the case of (i) above. However, s461 provides for the removal of a listing.

A person whose personal information has been listed on a tenancy database may apply to QCAT for an order that the personal information about the tenant be omitted from, or amended on, the database.<sup>226</sup> Such an order can only be made where the Tribunal is satisfied personal information about the tenant that is inaccurate, incomplete, ambiguous or out of date<sup>227</sup> or, the inclusion of the personal information about the tenant in the database is unjust in the circumstances.<sup>228</sup> In determining whether the listing is unjust the Tribunal may have regard to the reason for the listing; the tenant's involvement in the acts or omissions giving rise to the reason for the listing; the adverse consequences suffered, or likely to be suffered, by the tenant because of the listing; and any other relevant matter.<sup>229</sup> Domestic violence is not listed as a specific circumstance but an example provided

<sup>218</sup> Section 245 RTRAA. Note that a person must be in the requisite relationship....

<sup>219</sup> Section 321 RTRAA. An interim order can be sought under s323 RTRAA.

<sup>220</sup> Section 245 RTRAA.

<sup>221</sup> Section 245(6) RTRAA. Note that the reference to databases is one of three examples illustrating the kinds of orders that can be made.

<sup>222</sup> Section 459(1)(d) RTRAA.

<sup>223</sup> Section 460(1) RTRAA.

<sup>224</sup> Section 460(3) RTRAA.

<sup>225</sup> Section 321 RTRAA

<sup>226</sup> Section 461(1), (2)(a) (b) RTRAA.

<sup>227</sup> Section 461(3)(a) RTRAA; *O'Brien v Compass Property Group* [2014] QCAT 548.

<sup>228</sup> Section 461(3)(b) RTRAA.

<sup>229</sup> Section 461(3)(b)(i) – (iv) RTRAA.

to inform the provision is a scenario involving domestic abuse. The order may be made against a landlord, agent or database operator.<sup>230</sup>

Furthermore, a tenant who becomes aware of a proposed listing of personal information about the tenant on a tenancy database may also seek an order from QCAT.<sup>231</sup> The Tribunal may order that a person should not make the proposed listing, make certain changes to any proposed listing or another order it considers appropriate.<sup>232</sup> Such an order can only be made if the Tribunal is satisfied that, if the proposed listing was made, the Tribunal could make an order under s459 or 461 RTRAA as described above.<sup>233</sup>

## Keeping of pets

This section considers provisions discussed in Chapter 3 *Are there any factors, for example, the presence of a family pet that could impact on X's ability to leave?*

In Queensland, the definition of domestic violence in S8(2)(g) Domestic and Family Violence Protection Act 2012 includes 'causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person.'

In relation to pet ownership in residential tenancies, Schedule 1 RTRA Regulations provides that a tenancy agreement must state whether pets are approved for occupation and, if so, the type and numbers of pets that may be kept on the premises.<sup>234</sup>

## Locks and security devices

This section provides elaboration on issues raised in Chapter 2, Question 6, would the tenant be permitted to change locks and install security devices for protection?

In Queensland, the lessor is obliged to supply and maintain locks that are necessary to ensure the premises are reasonably secure. Keys are to be provided to all tenants who are named in the agreement as a tenant. Locks may be changed only where the landlord/agent and tenant agree to do so or where there is a reasonable excuse for making the change. A reasonable excuse includes where there is an emergency, or a tribunal order has been issued. The onus of proof is upon the person changing the locks.

Regarding alterations, the RTRAA prohibits a tenant from attaching a fixture or making a structural change unless the landlord's consent is obtained. There is no provision in the legislation for circumstances of an emergency or where there is reasonable excuse. Consent must be in writing, describe the nature of the fixture or change and include any terms of the agreement. Terms of the

<sup>230</sup> Section 461(4) RTRAA.

<sup>231</sup> Section 462(1) RTRAA.

<sup>232</sup> Section 462(3) RTRAA.

<sup>233</sup> Pursuant to s461 RTRAA; see s 462(3) RTRAA. Note there is reference to s460 RTRAA.

<sup>234</sup> Clause 17, Schedule 1 RTRA Regulations. See too ss 268(f) and s 71(12)(g) RTRAA.



agreement may include provisions regarding removal of the fixture. The lessor must not act unreasonably in failing to agree to the attaching of a fixture, or the making of a structural change, to the premises. If the tenant attaches a fixture, or makes a structural change, to the premises without the lessor's agreement, the landlord may take action under s207 or choose to waive the breach and treat the fixture or change as an improvement to the premises for the lessor's benefit.

## 2. Summary of legislative responses: New South Wales

### Introduction

Sections 105B and s79 RTANSW provide for early termination of leases.

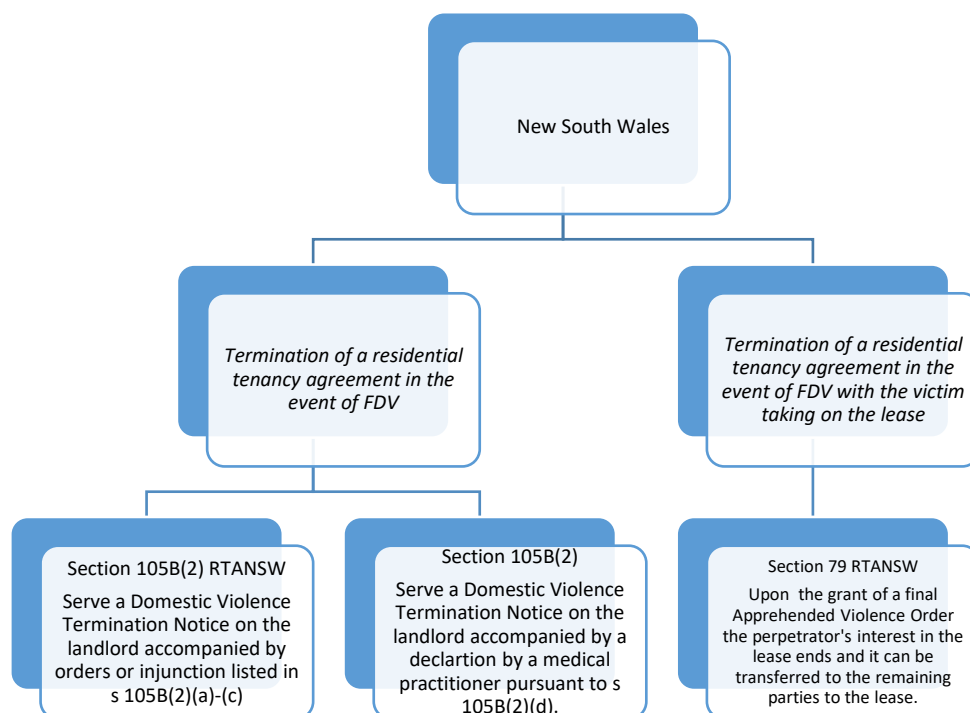
- i. Section 105B RTANSW enables a tenant or cotenant to terminate a lease where that tenant, co-tenant or a dependent child living in the premises is in circumstances of domestic violence as defined.<sup>235</sup>
- ii. Circumstances of domestic violence for the purpose of s105B RTANSW refers to circumstances where a person:
  - (a) has been the victim of a domestic violence offence while a tenant or co-tenant of, or dependent child in, the residential premises and a relevant domestic violence offender has been found guilty of that offence, or
  - (b) is the person for whose protection a DVO has been made against a relevant domestic violence offender and the DVO is in force, or
  - (c) is the person for whose protection an injunction under section 68B or 114 of the *Family Law Act 1975* of the Commonwealth has been granted on the basis of evidence of family violence in proceedings against a relevant domestic violence offender and the injunction is in force, or
  - (d) has been declared by a competent person to be a victim of domestic violence perpetrated by the relevant domestic violence offender during the currency of the residential tenancy agreement.
- iii. Section 79 RTANSW is triggered where a final apprehended violence order prohibiting a tenant or co-tenant from having access to the residential premises.<sup>236</sup>

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<sup>235</sup> Section 105B(2) RTANSW

<sup>236</sup> Section 79(1) RTANSW

## Overview of paths to early termination of a lease in circumstances of FDV.



### 1. Termination of a residential tenancy agreement in the event of FDV

The 2016 review of the *Residential Tenancies Act 2010 (NSW)* by the NSW Department of Fair Trading recognised the need for stronger protections for victim/survivors of domestic violence.<sup>237</sup> Consequent amendments provide that victim/survivors of FDV no longer need to apply to NCAT to terminate a tenancy in circumstances of FDV. The lease can be brought to an end by serving the landlord with a *Domestic Violence Termination Notice* (DVTN) and supporting documentation.<sup>238</sup> The circumstances of co-tenants who are not involved in the FDV are also addressed by the legislation.

#### Procedure

A tenant or co-tenant may give a DVTN<sup>239</sup> to the landlord and each other co-tenant, if any, if the tenant, co-tenant or dependent child<sup>240</sup> is in circumstances of domestic violence.<sup>241</sup> A person is in circumstances of domestic violence if that person is within one of four circumstances listed in s105B(2) being:

<sup>237</sup> NSW Fair Trading *Residential Tenancies Act 2010 – Statutory Review*, 17 June 2016, Sydney 4.4.6 <[https://www.fairtrading.nsw.gov.au/\\_data/assets/pdf\\_file/0009/398286/Residential\\_tenancies\\_act\\_2010\\_review\\_report.pdf](https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0009/398286/Residential_tenancies_act_2010_review_report.pdf)>

<sup>238</sup> NCAT Domestic Violence Protocol For tenancy matters in the Consumer and Commercial Division [http://www.ncat.nsw.gov.au/Documents/ncat\\_domestic\\_violence\\_protocol.pdf](http://www.ncat.nsw.gov.au/Documents/ncat_domestic_violence_protocol.pdf) Co-tenants must be notified too.

<sup>239</sup> Section 105B(1); Domestic Violence Termination Notice: s105C RTANSW.

<sup>240</sup> Section 105B(1)(a),(b) and (c) RTANSW. A dependent child is a child who is wholly or partly dependent for support on the tenant or a co-tenant: s 105B(1)(c) RTANSW.

<sup>241</sup> Section 105B(1) RTANSW.



- (a) has been the victim/survivor of a domestic violence offence while a tenant or co-tenant of, or dependent child in, the residential premises and a relevant domestic violence offender has been found guilty of that offence, or
- (b) is the person for whose protection a DVO has been made against a relevant domestic violence offender and the DVO is in force,<sup>242</sup> or
- (c) is the person for whose protection an injunction under section 68B or 114 of the *Family Law Act 1975* of the Commonwealth has been granted on the basis of evidence of family violence in proceedings against a relevant domestic violence offender and the injunction is in force, or
- (d) has been declared by a competent person to be a victim/survivor of domestic violence perpetrated by the relevant domestic violence offender during the currency of the residential tenancy agreement.<sup>243</sup>

*Form of the Domestic Violence Termination Notice: S105B(2)(a)-(c)*

The notice must to be supported by certain documents that establish the relevant circumstances of domestic violence being proof of court orders, an injunction or a declaration. Confidentiality obligations attach to these documents.<sup>244</sup> A DVTN must specify a termination date that is on or after the day on which the notice is given.<sup>245</sup> Therefore, in these circumstances, the lease can terminate immediately.

*The declaration procedure: S 105(2)(d)*

Section 105B(2)(d) introduces a new procedure for establishing that a person is in circumstances of domestic violence. Rather than going through the process of first obtaining a conviction, a DVO or an injunction, a person can obtain a declaration from a competent person stating that the victim/survivor of FDV has experienced domestic violence during the currency of the residential tenancy agreement.<sup>246</sup> Such declaration must be in the form and address matters prescribed by the regulations.<sup>247</sup> The competent person must be a person with whom the tenant or co-tenant giving the DVTN, or the dependent child, has consulted in the course of the competent person's professional practice.<sup>248</sup> Initially, only a medical practitioner was deemed to be a 'competent person' to make the declaration but amendments in 2020 saw this category of persons extended significantly.<sup>249</sup> The contents of the declaration are not reviewable.<sup>250</sup>

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<sup>242</sup> For this purpose, DVO is defined in s105A to mean an order that is in force that is:

- (a) a local DVO, within the meaning of Part 13B of the *Crimes (Domestic and Personal Violence) Act 2007*, or
- (b) an interstate DVO, within the meaning of Part 13B of the *Crimes (Domestic and Personal Violence) Act 2007*, or
- (c) a foreign order, within the meaning of Part 13B of the *Crimes (Domestic and Personal Violence) Act 2007*.

<sup>243</sup> NB ss105B(3); 105C(d), 105C(5), 105F RTANSW.

<sup>244</sup> Section 105C(3) and (4) RTANSW

<sup>245</sup> In the case of a fixed term agreement, it may specify a day before the end of the fixed term.

<sup>246</sup> Section 105B(2)(d) RTANSW

<sup>247</sup> Section 105C(3) RTANSW.

<sup>248</sup> Section 105C(5) RTANSW.

<sup>249</sup> Residential Tenancies Amendment (Declaration by Competent Person) Regulation 2020: Schedule 2A Declaration of Competent Person.

<sup>250</sup> Section 105F RTANSW.

### Review

If served with a DVTN, a landlord or former co-tenant may lodge an application with NCAT. Applications will be assessed in accordance with the relevant protocol with consideration being given to urgency and privacy.<sup>251</sup>

### Other orders

Other orders can be sought, including, orders regarding the security bond and listings on a tenancy database.

#### 2. Termination of a residential tenancy agreement in the event of FDV with the victim/survivor taking on the lease

To embark upon this path requires a Tribunal order. In circumstances where a final Apprehended Violence Order (AVO) has been granted that excludes the perpetrator from the premises, the perpetrator's tenancy ends and the tenancy transfers to another tenant or tenants who are party to the agreement.<sup>252</sup> Therefore, if there was only the FDV victim/survivor and the perpetrator on the lease, the lease would be solely in her name. If a person residing at the premises is not named on the lease, that person can ask the landlord to put the agreement in that person's name. Therefore, if the lease was just in the perpetrator's name, the FDV victim/survivor could apply to have the agreement transferred into her name. If the landlord refuses, that occupant can apply to NCAT to be recognised as a tenant under the original agreement.<sup>253</sup>

## Outstanding payments and security bonds

This section elaborates further on provisions discussed in Chapter 3 Will X bear any responsibility for outstanding rental or repairs? What impact will this have on the security deposit?

Section 105D(1) RTA provides that a tenant is not liable to pay compensation or any other additional amount for the early termination of a fixed term agreement under s105B. NCAT can make various orders regarding payments and the security bond.

## Tenancy Databases

This section elaborates further on provisions discussed in Chapter 3 *Could the tenant be blacklisted on a residential tenancy database?*

Sections 212 and 213 RTA place restrictions on listings and, in addition, s213A creates an offence where a landlord or landlord's agent lists personal information about a tenant or a co-tenant in a residential tenancy database if that tenant or co-tenant terminated an agreement. A landlord, or landlord's agent, must not list personal information about a person in a residential tenancy database

<sup>251</sup> NCAT Domestic Violence Protocol For tenancy matters in the Consumer and Commercial Division [http://www.ncat.nsw.gov.au/Documents/ncat\\_domestic\\_violence\\_protocol.pdf](http://www.ncat.nsw.gov.au/Documents/ncat_domestic_violence_protocol.pdf)

<sup>252</sup> Section 79(1) RTANSW.

<sup>253</sup> Section 79(2) RTANSW.

if the person was named as a tenant in a residential tenancy agreement that was terminated,<sup>254</sup> or the person's co-tenancy was terminated in circumstances of domestic violence.<sup>255</sup>

A person may apply to the NCAT for an order under s217(1) if personal information about the person has been, or is proposed to be, listed in a residential tenancy database. The Tribunal will make an order where *inter alia*, the inclusion of the applicants name or personal information is unjust in the circumstances.<sup>256</sup> In determining if the listing would be, or is, unjust, the Tribunal may consider several factors identical to those listed above with respect to the Queensland legislation.<sup>257</sup> Although there is no reference to domestic violence, or even an example as is the case in the Queensland legislation, it is assumed that a listing after the termination of a tenancy due to domestic violence would be regarded as unjust.

## Keeping of pets

This section considers provisions discussed in Chapter 3 *Are there any factors, for example, the presence of a family pet that could impact on X's ability to leave?*

The RTANSW provides that an agreement may include a term requiring the carpet to be professionally cleaned if the landlord has given consent for the tenant to keep an animal on the premises.<sup>258</sup> General clauses that may be incorporated in an agreement regarding pets are included in the Regulations.<sup>259</sup>

## Locks and security devices

This section provides elaboration on issues raised in Chapter 3 would the tenant be permitted to change locks and install security devices for protection?

Locks must be provided and maintained by the landlord and locks and other security devices can be changed where the parties agree or where there is a reasonable excuse for doing so. The definition of reasonable excuse is broader than the equivalent Queensland with provisions extending to circumstances where there is an emergency, a Tribunal order or apprehended violence order or where the tenancy of the other tenant was terminated. Again the onus of proof is borne by the person changing the locks or other security devices and it is an offence to change the locks where there is no reasonable cause.

Fixtures and alterations again require the written consent of the landlord however, a landlord cannot unreasonably refuse a change of a minor nature. Unfortunately, 'minor nature' is not defined in the legislation although it is assumed that include the installation of additional security features. In the event of a dispute, an application can be made to NCAT. A landlord may withhold consent to any other action by the tenant that is permitted under this section whether or not it is reasonable to do so. The potential range of security features is broad, however, so the scope of the provision is

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<sup>254</sup> Section 213A (a) RTANSW.

<sup>255</sup> Schedule 1 [38], Section 213A (b). The maximum penalty is presently set at \$2,200.

<sup>256</sup> Section 217(2)(b) RTANSW.

<sup>257</sup> Section 217(2)(i)-(iv) RTANSW.

<sup>258</sup> Section 19(3) RTANSW.

<sup>259</sup> Clause 43-45, RTA Regulations



uncertain. The cost of installation, and removal at the end of the lease, is the responsibility of the tenant.

## Summary of legislative responses: Victoria

### Introduction

The Royal Commission into Family Violence recognised the harm caused by family violence, the seriousness with which the community has come to regard it and its consequences for individuals and families.<sup>260</sup> Upon the release of the final report in March 2016, the Victorian government undertook to implement all the recommendations, including those in relation to terminating a tenancy in circumstances of domestic violence. In 2018, significant amendments to the Victorian RTA were passed by the Victorian parliament<sup>261</sup> including ss91V and 91W RTAVIC. At the time of writing these amendments will commence on 21 March 2021. These provisions regulate early termination of leases in circumstances of FDV.

- i. The scope of the Victorian legislation extends to *persons experiencing family violence* and to *protected persons*. For the purposes of the term, family, there are extended definitions of family member,<sup>262</sup> domestic partner<sup>263</sup> and relative.<sup>264</sup> A protected person is a person who is protected by a family violence intervention order, a family violence safety notice or a recognised DVO.<sup>265</sup>
- ii. Section 91V RTAVIC refers to *family violence* as defined in *Family Violence Protection Act 2008 (Vic)* (FVPA). Family violence is defined by providing a list of factors, and ancillary factors almost identical to those used in the Queensland legislation.<sup>266</sup> The section is enhanced by a comprehensive list of examples that may constitute family violence.

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<sup>260</sup> State of Victoria (2016) *Royal Commission into Family Violence: Report and recommendations*, Parliamentary Paper no. 132 (2014–16), p. 1 State of Victoria (2016) *Royal Commission into Family Violence: Report and recommendations*, Parliamentary Paper no. 132 (2014–16), p. 1 Cited in Department of Parliamentary Services *Residential tenancies Amendment Bill 2018 Bill Brief* August 2018 9 <<https://www.parliament.vic.gov.au/publications/research-papers/summary/36-research-papers/13872-residential-tenancies-amendment-bill-2018>>

<sup>261</sup> The *Residential Tenancies Amendment Bill 2018*, introduced more than 130 reforms into the legislation.

<sup>262</sup> Section 8 FVPA

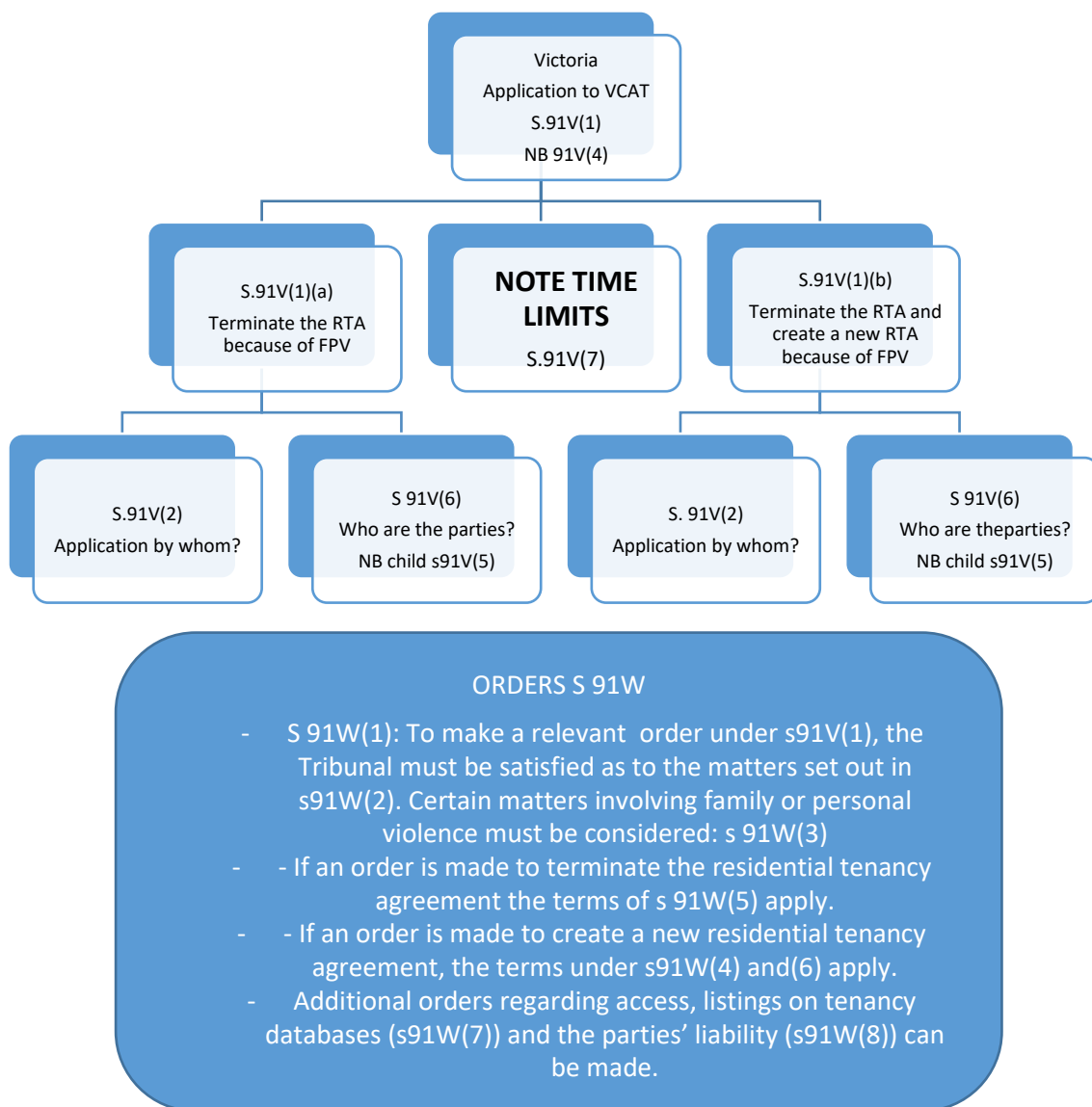
<sup>263</sup> Section 9 FVPA

<sup>264</sup> Section 10 FVPA

<sup>265</sup> s 5 RTAVIC.

<sup>266</sup> Section 5(1),(2) FVPA

Overview of paths to early termination of a lease in circumstances of FDV.



1. Termination of a residential tenancy agreement in the event of FDV

A residential tenancy agreement may only be terminated in accordance with the provisions of the RTAVIC.<sup>267</sup> The 2018 amendments provide for termination of, or the creation of new residential rental agreements because of family or personal violence. Either option can be pursued by an application to VCAT.<sup>268</sup> Applications are made under s91V (1) RTAVIC for one of two orders being:

- (a) An order terminating the existing residential rental agreement; or
- (b) an order—

<sup>267</sup> Section 91B RTAVIC

<sup>268</sup> Section 91V(a) to terminate the agreement or s91V(1)(b) where an agreement is to be terminated and a it is proposed a new lease be entered into.

- (i) terminating the existing residential rental agreement; and
- (ii) requiring the residential rental provider of the premises to enter a residential rental agreement with the person and other persons (if any) specified in the application.

A person can make an application<sup>269</sup> where that person has been or is being subjected to family violence by another party to the existing residential rental agreement.<sup>270</sup> This can be a tenant named on the lease<sup>271</sup> or simply a joint occupant so long as the premises are that person's principal place of residence.<sup>272</sup> Apart from the applicant or the person on whose behalf the application is made, parties to the proceeding include the landlord, any other party to the lease and any other person specified in the application.<sup>273</sup>

The Tribunal must hear an application under s91V(1) within 3 business days of the application being made or, if the application cannot be heard within this time, no later than the next available sitting day of the Tribunal after the end of the 3 days period.<sup>274</sup>

#### *Tribunal orders*

The Tribunal can make the orders sought under s91V(1) via s 91W(1) RTAVIC<sup>275</sup> so long as it is satisfied as to certain matters in s91W(2). The section provides a diverse list of factors, centred around the sustainability of the tenancy and the impact it may have on the immediate parties and any children involved.<sup>276</sup> The provisions also state that the Tribunal must take into account the existence and status of any family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order relevant to these circumstances.<sup>277</sup> Other prescribed matters or any other matter the Tribunal regards as relevant is also considered.<sup>278</sup>

**Orders under s91W(1)(a):** If the Tribunal makes an order under subsection (1)(a), the Tribunal must specify the date on which the existing residential rental agreement terminates.<sup>279</sup>

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<sup>269</sup> Section 91V(2) RTAVIC

<sup>270</sup> Section 91V(2) RTAVIC

<sup>271</sup> NB s 91V(3) RTAVIC

<sup>272</sup> Section 91V(2)(b) RTAVIC

<sup>273</sup> Section 91V(6) RTAVIC.

<sup>274</sup> Section 91V(2)(7) RTAVIC

<sup>275</sup> Section 91W(1) RTAVIC

<sup>276</sup> (2) For the purposes of subsection (1), the matters are—

(a) the specified person and other persons (if any) could reasonably be expected to comply with the duties of a renter under a residential rental agreement to which this Act applies; and

(b) the specified person or that person's dependent children would be likely to suffer severe hardship if the specified person were compelled to leave the premises; and

(c) the hardship suffered by the specified person would be greater than any 30 hardship the residential rental provider would suffer if the order were made; and

(d) if a renter of the rented premises is excluded from the rented premises under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order, it is reasonable to do so given the length of the exclusion under the notice or order and the length of the existing residential rental agreement; and

(e) it is reasonable to do so given the interests of any other renters (other 10 than any excluded renter) under the existing residential rental agreement and, in particular, whether the other renters support the specified person's application.

<sup>277</sup> Section 91W(3) (a),(b) RTAVIC.

<sup>278</sup> Section 91W(3)(c),(d) RTAVIC.

<sup>279</sup> Section 91W(5) RTAVIC.

**Orders under s91W(1)(b):** If the Tribunal makes an order under subsection (1)(b), the new residential rental agreement<sup>280</sup> will remain at the same length, for the remaining term and, generally, the same terms and conditions.<sup>281</sup> The existing residential rental agreement is terminated on the signing of the new residential rental agreement.<sup>282</sup>

#### *Other orders*

The Tribunal makes an order under subsection (1), it may also make the following order (a) an order that the residential rental provider or that person's agent must ensure that the specified person has access to the rented premises or former rented premises to remove the person's goods; (b) an order that the residential rental provider or that person's agent must not list information about the specified 10 person on a residential tenancy database within the meaning of Part 10A.

### Outstanding payments and security bonds

This section elaborates further on provisions discussed in Chapter 3 Will X bear any responsibility for outstanding rental or repairs? What impact will this have on the security deposit?

Section 91X RTAVIC states that if VCAT makes an order under s91W(1), the Tribunal may determine the liability of the victim/survivor or any other person under the existing agreement in relation to a bond paid for the rented premises as well as any existing liability under the existing agreement including liability in relation to outstanding rent, damage caused to the premises and with regard to utility charges.<sup>283</sup>

Termination of a residential rental agreement under section 91W does not give rise to a right to claim compensation on the part of any party to the agreement for early termination of the agreement.<sup>284</sup> The Tribunal may adjourn the hearing to allow an inspection of the rented premises.<sup>285</sup>

Furthermore, s420A and 420B were inserted into the legislation through the 2018 amendments. The sections deal with two circumstances, the first where the FDV victim/survivor and the perpetrator are named on the lease. The second is where only the FDV victim/survivor is not named on the lease.

In the first case, where VCAT is hearing an application for repayment of the bond, there is more than one renter on the lease and one is a victim/survivor of family or personal violence, VCAT can apportion liability between renters, including making the perpetrator liable for all of the landlord's loss and damage including any unpaid rent.<sup>286</sup> Furthermore, the portion of the bond paid by the renter who experienced the violence is excluded from the bond available to compensate the landlord for any loss of damage.<sup>287</sup>

It is noteworthy that, in establishing that one of the renters is a victim/survivor of violence, court orders do not have to be provided.<sup>288</sup>

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<sup>280</sup> Section 91W(4)RTAVIC.

<sup>281</sup> The Tribunal can make changes if this is considered appropriate.

<sup>282</sup> Section 91W(6)RTAVIC.

<sup>283</sup> Section 91X(1)(a),(b) RTAVIC.

<sup>284</sup> Section 91X(2) RTAVIC.

<sup>285</sup> Section 91X(3); 86(1)(g).

<sup>286</sup> Section 420A(3)(a) RTAVIC.

<sup>287</sup> Section 420A(3)(b) RTAVIC.

<sup>288</sup> Section 420A(1)(b); (2) RTAVIC.



In the second case, where a renter on the lease has experienced family or personal violence and the perpetrator is not party to the agreement,<sup>289</sup> VCAT can hold that the victim/survivor is not liable for any loss or damage suffered by the landlord if it is satisfied that the damage was caused by the perpetrator and various protection orders have been granted.<sup>290</sup>

## Tenancy Databases

This section elaborates further on provisions discussed in Chapter 3 *Could the tenant be blacklisted on a residential tenancy database?*

In Victoria, a landlord or database provider must meet certain conditions before listing personal information about a person in a residential tenancy database.<sup>291</sup> VCAT may prohibit a landlord or database operator from listing personal information in a residential tenancy database.<sup>292</sup>

A person may apply to VCAT to prevent a landlord or database operator from listing personal information about that person that a landlord or database operator proposes to list on a residential tenancy database.<sup>293</sup> An application to amend or remove a listing already made can also be sought.<sup>294</sup> At the time of writing, there is no specific reference to family or domestic violence, nor is the Tribunal referred to a test of unfairness or other criteria.

However, the amendments to the Victorian legislation will prohibit landlords and database operators from listing personal information about a person in a residential tenancy database if:

- the information relates to *inter alia* termination and creation of a new residential rental agreement in circumstances of family violence as a result of a Tribunal order under new section 91W of the Act;<sup>295</sup>
- the person has objected to the residential rental provider, their agent, or the database operator about the listing of information on the grounds that it relates to an act or circumstance of family violence or personal violence experienced by the person.<sup>296</sup>

Furthermore, if a landlord who lists personal information in a residential tenancy database becomes aware that the information relates to an act or a circumstances of family violence or personal violence experienced by the person whose personal information is listed the landlord must notify the database operator within 7 days of becoming aware of that information.<sup>297</sup> The database operator must amend or remove the personal information in the residential tenancy database, within 14 days of receiving notification from the residential rental provider.<sup>298</sup>

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<sup>289</sup> Section 420B(1) RTAVIC.

<sup>290</sup> Section 420B(2)(a) and (b) RTAVIC.

<sup>291</sup> Section 439F RTAVIC.

<sup>292</sup> Section 439F RTAVIC.

<sup>293</sup> Section 439L(1)(a) RTAVIC.

<sup>294</sup> Equivalent orders can be made by the Tribunal under s439L (a), (b) and (c) RTAVIC.

<sup>295</sup> Section 439F(6) RTAVIC.

<sup>296</sup> Section 439F(7) RTAVIC. The objection must be accompanied by a copy of any prescribed documentary evidence.

<sup>297</sup> Section 439G (1),(2) RTAVIC.

<sup>298</sup> Section 439H(1) RTAVIC.

## Keeping of pets

This section considers provisions discussed in Chapter 3 *Are there any factors, for example, the presence of a family pet that could impact on X's ability to leave?*

Section 5(2)(e) *Family Violence Protection Act 2008 (Vic)* provides that the definition of family violence includes abuse and threats to abuse animals.

The Victorian amendments provide that a renter may keep a pet at rented premises with the consent of the residential rental provider, or through an order by VCAT.<sup>299</sup> A residential landlord is able to unreasonably refuse a request to keep a pet, and will be said to have consented to the request unless the landlord applies to VCAT for an order to refuse within 14 days after receiving the request.<sup>300</sup>

## Locks and security devices

This section provides elaboration on issues raised in Chapter 3 would the tenant be permitted to change locks and install security devices for protection?

The Victorian parliament passed significant amendments to the RTA in 2018 that will commence on March 21 2021. In relation to locks and security devices, landlords will be required to ensure that, with some exceptions, deadlocks are able to be secured to doors and that locks are provided on all windows to the premises. Special provision is made for locks on rental premises that are the subject of various intervention orders. Finally, s70B will deal expressly with circumstances where an existing lease has been terminated and the landlord is required to enter into a new lease with a specified person, in these circumstances, the victim/survivor. In this case, the victim/survivor is given wide powers to change existing locks on doors and windows.

Regarding alterations, the amendments will introduce provisions providing a tenant with more flexibility to make modifications to secure the premises. Any modifications are subject to the landlord's written consent, although a landlord cannot unreasonably refuse consent to modifications made by the tenant that are reasonable security measures or that are necessary to ensure the safety of a party to the existing agreement who has or is being subjected to family violence or is a protected person. Prescribed modifications will be able to be made without the landlord's consent.

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<sup>299</sup> Section 71A RTAVIC

<sup>300</sup> Section 71C RTAVIC

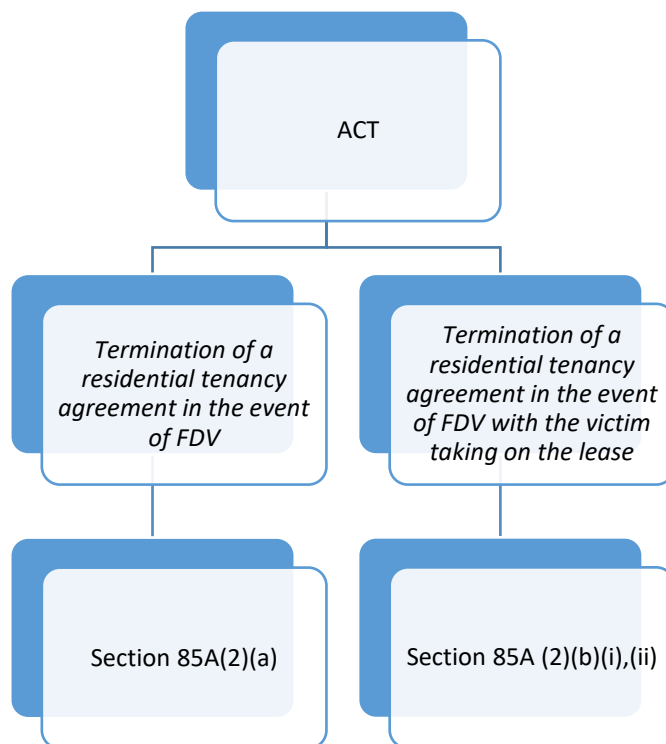
## Summary of legislative responses: ACT

### Introduction

In the ACT, s85A ACTRTA is the pivotal provision regulating early termination of leases in circumstances of FDV.

- i. The legislation extends to *protected person* as defined under the *Family Violence Act 2016 (ACT)*. This term means a person protected under a Family Violence Order.<sup>301</sup> *Family* for this purpose extends to relatives and people in ‘family – like’ relationships that, it seems, would include carers.<sup>302</sup>
- ii. The definition of family violence is broad and includes emotional and<sup>303</sup> economic abuse,<sup>304</sup> coercion<sup>305</sup> and extends to harming an animal<sup>306</sup> and stalking.<sup>307</sup>

### Overview of paths to early termination of a lease in circumstances of FDV.



<sup>301</sup> Section 4, Dictionary *Family Violence Act 2016*

<sup>302</sup> Section 8(1), 11(2) FVA

<sup>303</sup> 8(1)(iii)FVA

<sup>304</sup> 8(1)(iv), 8(3)FVA

<sup>305</sup> 8(1)(vi)FVA

<sup>306</sup> 8(2)(c)FVA

<sup>307</sup> 8(2)(d)FVA

Early termination of residential tenancy agreements in the ACT is regulated by Division 6.5A RTAACT. A protected person can apply to ACAT for an order:

- terminating the existing residential tenancy agreement<sup>308</sup> or
- an order requiring the lessor of the premises to enter into a residential tenancy agreement with the protected person and any other person mentioned in the application.<sup>309</sup>

The 2019 amendments to the RTAACT will insert an additional subsection that will provide the option to seek an order to terminate a residential tenancy agreement and grant vacant possession of the relevant premises to the landlord.<sup>310</sup>

A protected person is a person who is subject to certain protection orders under the *Family Violence Act 2016 (ACT)* or the *Personal Violence Act 2016 (ACT)*.

As is the case in most other jurisdictions, there are several conditions precedent that must be satisfied before the order can be sought being:<sup>311</sup>

- (a) the Magistrates Court has made a protection order;
- (b) the perpetrator is a party to the residential tenancy agreement;
- (c) the protected person under the order:
  - (i) is also a party to the residential tenancy agreement; or
  - (ii) has been living in the premises as their home but is not a party to the agreement; and
- (d) either—
  - (i) The order includes an exclusion condition<sup>312</sup> or a condition prohibiting the respondent from being within a particular distance from the protected person; or
  - (ii) The respondent has given an undertaking to the court to leave the premises.

The protected person, the lessor, the respondent and any other existing tenants are deemed to be party to the proceedings.<sup>313</sup>

ACAT can make the order requested under s85A if the Tribunal is satisfied in relation to factors in s85B(2). These factors include the length of the protection order, the length of time remaining on the term of the existing agreement, the interests of any other tenant (other than the perpetrator) and whether other tenants (if any) support the protected person's application.<sup>314</sup>

Additional factors for consideration are listed where an order is granted under section 85(2)(b).<sup>315</sup> In this case, factors include whether the protected person or the protected persons dependent children

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<sup>308</sup> Section 85A(2)(a) RTAACT.

<sup>309</sup> Section 85A(2)(b)(i), (ii) RTAACT.

<sup>310</sup> *Residential Tenancies Amendment Act 2019 (ACT)* Cl 15 and 16. The amendment act has been passed but has not commenced.

<sup>311</sup> Section 85A(1) RTAACT.

<sup>312</sup> As defined in section 85A (4) RTAACT.

<sup>313</sup> Section 85A(2) RTAACT.

<sup>314</sup> Section 85B (2) (a), (b) RTAACT.

<sup>315</sup> Section 85B(2)(c) RTAACT.

would experience hardship if compelled to leave the premises<sup>316</sup> and that the protected person could be reasonably expected to comply with the terms of the residential tenancy agreement.<sup>317</sup>

If ACAT makes an order mentioned in section 85A (2) (b), the new residential tenancy agreement must be subject to the same rental scheme, term and conditions as the original agreement.<sup>318</sup> ACAT can make changes if appropriate. The existing residential tenancy agreement is terminated when the new residential tenancy agreement is signed by the parties to the agreement.<sup>319</sup>

## Outstanding payments and security bonds

This section elaborates further on provisions discussed in Chapter 3 Will X bear any responsibility for outstanding rental or repairs? What impact will this have on the security deposit?

In the ACT, ACAT may determine the liabilities of the all parties to the lease under in relation to the bond paid under the agreement.<sup>320</sup>

## Tenancy Databases

This section elaborates further on provisions discussed in Chapter 3 *Could the tenant be blacklisted on a residential tenancy database?*

An application can be made to ACAT to prevent the proposed listing of personal information in a residential tenancy database.<sup>321</sup> Furthermore, if personal information about a person is already listed, a person may apply to the ACAT for an order that the landlord or database operator remove or amend the personal information in the database.<sup>322</sup> Such order can only be made where the listing of the personal information is unjust in the circumstances. The criteria ACAT may refer to in determining whether the listing is unjust is identical to that listed in the equivalent Queensland and New South Wales provisions.<sup>323</sup> A specific example is provided involving domestic violence.

## Keeping of pets

This section considers provisions discussed in Chapter 3 *Are there any factors, for example, the presence of a family pet that could impact on X's ability to leave?*

Section 8(2)(c) *Family Violence Act 2016* (ACT) includes harm to an animal in the definition of family violence. Until recently, the ACT legislation made no reference to pets. However, the *Residential Tenancies Amendment Act 2018 (No 2)*, provides that advertisements for the lease of a residential property must include notice of any conditions regarding the keeping of animals.<sup>324</sup> Furthermore, proposed new section 71AE(4)(b) allows the lessor to obtain prior approval from the ACAT to impose a condition on the consent of keeping an animal in a particular dwelling.

<sup>316</sup> Section 85B(c)(i) RTAACT but note to ss(ii) re hardship experienced by the landlord.

<sup>317</sup> Section 85B(c)(iii) RTAACT.

<sup>318</sup> Section 85(3)(a) – (c) RTAACT.

<sup>319</sup> Section 85B(4) RTAACT.

<sup>320</sup> Section 85B(5) RTAACT.

<sup>321</sup> Section 100(1) RTAACT.

<sup>322</sup> Section 99(1),(2)(a),(b)) RTAACT.

<sup>323</sup> Section 99(3)(b)(i)-(iv) RTAACT.

<sup>324</sup> Section 11AA

## Locks and security devices

This section provides elaboration on issues raised in Chapter 3 would the tenant be permitted to change locks and install security devices for protection?

Interestingly, the obligation to ensure that the premises are reasonably secure only seems applicable only to the start of the tenancy. Furthermore, such obligation can be contracted out of by agreement in writing.

The lessor or the tenant may change locks with the agreement of the other party, agreement to which must not be unreasonably withheld. Furthermore, locks can be changed by either party in an emergency or in circumstances equivalent to those required under the Victorian provision. If a lock is changed, a key must be provided to the other party unless doing so would affect the safety of a protected person. Unless otherwise agreed, the expense of the replacement is borne by the person wanting to change the locks. Proposed amendments to the legislation will address modifications to the premises. This will include fixtures and alterations. Section 71AA addresses definitions of minor and special modifications. ‘Special modification’ means a renovation, alteration, or addition for various reasons including the safety of and security of the premises, or the tenant or other people on the premises.

A residential tenancy agreement may require the tenant to obtain consent in writing for modifications. In the case of a special modification:

- the landlord will be taken to consent to the application within 14 days of making the application, unless an application has been made under s71AC;
- the landlord cannot refuse an application for a special modification unless the landlord has obtained prior approval from ACAT.

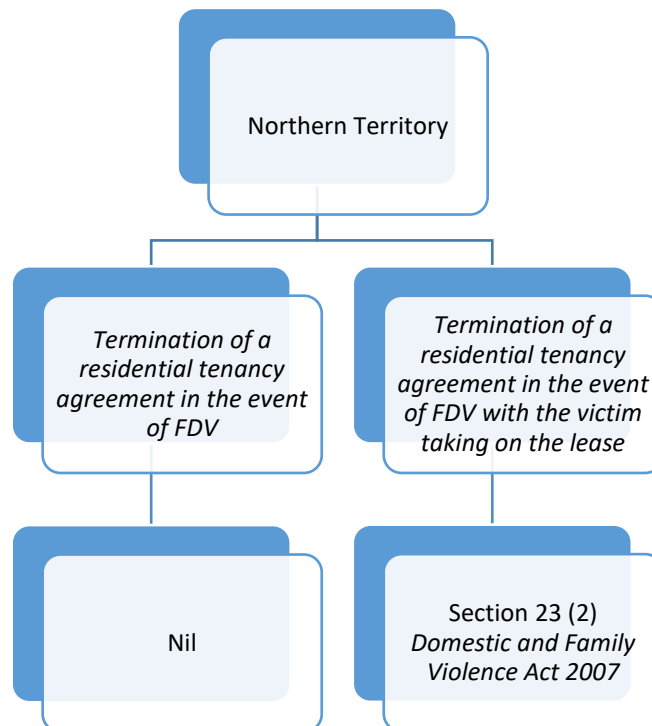
Where the landlord objects to the modification and makes application to ACAT, ACAT may approve or refuse the application or order that the landlord consent but impose stated conditions on the approval. Considerations include of hardship or additional maintenance on the landlord.

## Summary of legislative responses: Northern Territory

### Introduction

Section 23 *Domestic and Family Violence Act 2007* provides for a lease to be terminated and a new lease be entered into by the victim.

- i. The provision refers to a protected person.<sup>325</sup> A protected person is a person for whose protection a DVO is sought or in force. Section 23 is quite prescriptive and has interesting constraints such as the necessity for defendant and PP living together or previously living together and there is either a court DVO or the protected person no longer wants to live on the premises.
- ii. Reference is made in to ‘domestic’ violence conduct<sup>326</sup> that is necessary to obtain a DVO. Again, there is a broad view of domestic and family relationship, including Aboriginal kinship.<sup>327</sup>



<sup>325</sup> Section 13(1) DFVA

<sup>326</sup> Section 5 DFVA

<sup>327</sup> Section 10(2) DFVA

## Overview of paths to early termination of a lease in circumstances of FDV

### 1. Termination of a residential tenancy agreement in the event of FDV

To date, the Northern Territory RTA does not provide for termination of a lease in circumstances of FDV. There is reference in the legislation to termination as a result of hardship to the tenant.<sup>328</sup>

### 2. Termination of a residential tenancy agreement in the event of FDV with the victim/survivor taking on the lease

Section 23 (2) *Domestic and Family Violence Act 2007* provides that the court may terminate tenancy agreements and replace them so that the protected person rather than the defendant is the tenant. There needs to be a DVO in place or, interestingly, the protected person no longer wants to live in the premises.<sup>329</sup> Before making the order, the court must satisfy itself of certain matters.<sup>330</sup> The replacement agreement must have the same conditions as the terminated agreement other than the names of the tenants<sup>331</sup> and, if the terminated agreement is for a fixed term, the date of expiry of the replacement agreement must be the same as that of the terminated agreement.<sup>332</sup>

## Outstanding payments and security bonds

This section elaborates further on provisions discussed in Chapter 3 Will X bear any responsibility for outstanding rental or repairs? What impact will this have on the security deposit?

Section 12 *Domestic and Family Violence Act 2007* provides that a tenant is responsible for acts or omissions made by a person on the tenant's premises.<sup>333</sup> However, this does not extend to where the conduct is the result of domestic violence.<sup>334</sup>

## Tenancy Databases

This section elaborates further on provisions discussed in Chapter 3 *Could the tenant be blacklisted on a residential tenancy database?*

In 2018, significant amendments were made to the *Residential Tenancies Act* with the introduction of Part 14 that addresses residential tenancy databases.<sup>335</sup>

<sup>328</sup> Section 99 RTA.

<sup>329</sup> Section 23(1)(c) FDVA.

<sup>330</sup> Section 23(3) FDVA

<sup>331</sup> Section 23(5) FDVA

<sup>332</sup> Section 23(6) FDVA

<sup>333</sup> Section 12(1) RTANT

<sup>334</sup> Section 12 (3) RTANT

<sup>335</sup> Indeed, until this year, the Northern Territory had not adopted the national principles.



Deliberations leading up the amendments considered whether to include specific references to domestic violence and the introduction of a test of unjustness but did not do so due to concerns of ‘unintended consequences’.<sup>336</sup> The matter is still under consideration with Recommendation 3 stating:

*The Committee recommends the Government undertake a comprehensive assessment to determine the most appropriate way to provide protections for people that may be unjustly listed on a residential tenancy database.*

As it stands, a person may apply to the Tribunal for an order if personal information about the person is, or is proposed to be, listed in a tenancy database.<sup>337</sup> The Tribunal may make any orders it considers appropriate including an order prohibiting a landlord or database operator from listing personal information about a person in a tenancy database or to amend or remove the listing.<sup>338</sup>

## Keeping of pets

This section considers provisions discussed in Chapter 3 *Are there any factors, for example, the presence of a family pet that could impact on X’s ability to leave?*

The relevant legislation in the Northern territory makes no explicit mention of pets.

## Locks and security devices

This section provides elaboration on issues raised in Chapter 3, would the tenant be permitted to change locks and install security devices for protection?

The legislation states that the premises must be secure. Therefore, the landlord must take reasonable steps to provide and maintain the locks and other security devices that are necessary to ensure the premises and ancillary property are reasonably secure. A tenant cannot alter, remove or add a lock or a security device without the landlord’s consent unless there is a reasonable excuse. Reasonable excuse is not defined although it is assumed this would include matters regarding security in circumstances of FDV. Where the modification is made without seeking the landlord’s consent, the tenant is obliged to provide the landlord with a key to the lock or security device as soon as practicable after installation.

There is no specific reference to the installation of fixtures that would enhance security in the legislation. Section 55(1) RTANT states that the tenant must not, without the landlord’s written consent or otherwise in accordance with the Act, make an alteration or addition to the premises or ancillary property. Where an alteration is installed on the premises, and to do so causes damage, the tenant must notify the landlord and is likely to have to pay compensation.

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<sup>336</sup> Although these inclusions were recommended by several submissions, an inquiry by the Northern Territory Legislative Assembly’s Economic Policy Scrutiny Committee decided against this. Legislative Assembly of the Northern Territory Economic Scrutiny Committee *Inquiry into the Residential Tenancies Amendment Bill 2018*, May 2018 < [https://parliament.nt.gov.au/\\_\\_data/assets/pdf\\_file/0017/500453/43-2018-Report-Residential-Tenancies-Amendment-Bill-2018.pdf](https://parliament.nt.gov.au/__data/assets/pdf_file/0017/500453/43-2018-Report-Residential-Tenancies-Amendment-Bill-2018.pdf) > para 3.71 – 3.73.

<sup>337</sup> Section 134(1) RTA

<sup>338</sup> Section 134(2)(a), (b) RTA

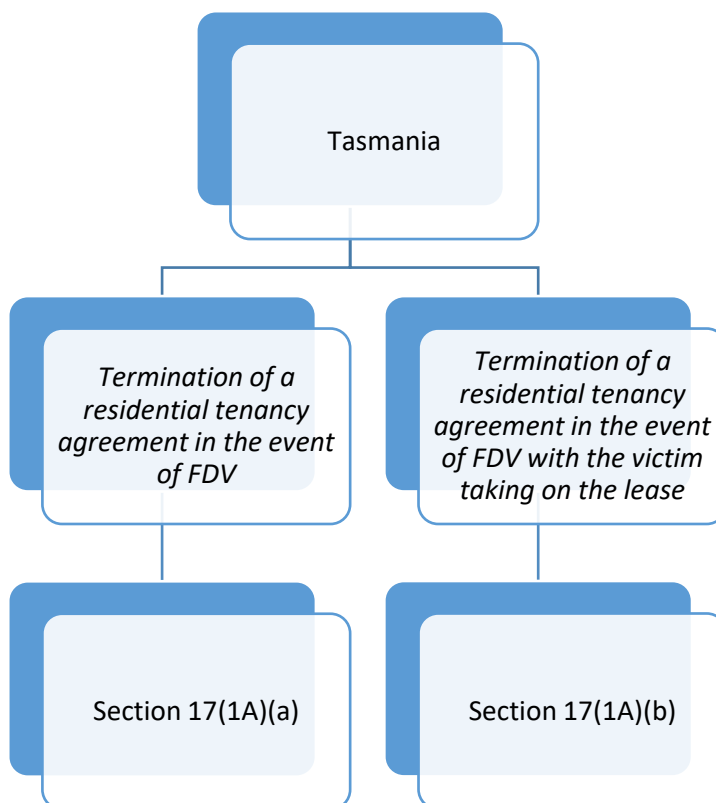
## Summary of legislative responses: Tasmania

### Introduction

In Tasmania, the relevant provision regulating early termination of leases in the event of FDV is ss17(1A).

- i. The legislation is directed towards an *affected person*; a person against whom family violence is directed.<sup>339</sup> Family violence is defined to focus upon spouses, partners and children.<sup>340</sup> Certain actions require a Family Violence Order.<sup>341</sup>
- ii. Again, the nature of the conduct that is recognised as proscribed behaviour towards a family member is comprehensive.<sup>342</sup>

### Overview of paths to early termination of a lease in circumstances of FDV.



<sup>339</sup> Section 4 FVA

<sup>340</sup> Section 7 FVA. Section 4 RTATAS affected child means a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence

<sup>341</sup> Section 16 FVA

<sup>342</sup> Section 7(a),(b),(c) FVA

### 1. Termination of a residential tenancy agreement in the event of FDV

Until recently, Tasmanian legislation did not expressly address termination of a lease in circumstances of FDV. However, amendments passed in December 2018 will see s17 (1A) *Family Violence Act 2004 (Tas)* provide the option to either terminate the lease or terminate the lease and enter into a new one with either the FDV victim/survivor or the perpetrator.<sup>343</sup> Provision is made for other co-tenants who may also be occupying the premises. This option will be available where a person, against whom a Family Violence Order has been made<sup>344</sup> and shares the residential premises with an affected person.<sup>345</sup>

### 2. Termination of a residential tenancy agreement in the event of FDV with the victim/survivor taking on the lease

Section 17(1A)(b) FVA provides that the original tenancy agreement can be terminated, and a new agreement established for the benefit of a person experiencing FDV or with the perpetrator. The application must be evidenced by a FVO or a Police Family Violence Order (PFVO).<sup>346</sup>

The extension of the legislation to include the possibility of entering into a new lease with the perpetrator is an interesting one because, as discussed under Question 4 above, a perpetrator may be left without premises to live in which may exacerbate the situation.

## Outstanding payments and security bonds

This section elaborates further on provisions discussed in Chapter 3 Will X bear any responsibility for outstanding rental or repairs? What impact will this have on the security deposit?

In Tasmania, where an order has been made terminating a residential tenancy agreement and establishing a new residential tenancy agreement and a security deposit has been paid in respect of the original agreement, the court may make an order stating that the deposit in respect of the original agreement is the security deposit in respect of the replacement agreement.<sup>347</sup> On the termination of the replacement agreement, the security deposit is to be disbursed or refunded as if it were the termination of the original agreement.<sup>348</sup>

## Tenancy Databases

This section elaborates further on provisions discussed in Chapter 3 *Could the tenant be blacklisted on a residential tenancy database?*

<sup>343</sup> Clause 11, *Residential Tenancy Amendment Act 2018*

<sup>344</sup> Section 16 FDVTAS.

<sup>345</sup> Section 4 FDVTAS affected person means a person against whom family violence is directed.

<sup>346</sup> The Court may terminate the lease or change the tenants on a lease agreement in accordance with the Family Violence Act when a tenant has Family Violence Order (FVO) or a Police Family Violence Order (PFVO) made against another tenant.

<sup>347</sup> Section 17(3A) FVA

<sup>348</sup> Section 17(3B) (c) FVA

In 2018, significant amendments were made to the *Residential Tenancies Act* with the introduction of In Tasmania, an eligible person, that is, a person affected by information kept on a residential tenancy database can apply to the Residential Tenancy Commissioner for an order regarding to enforce compliance.<sup>349</sup> The Commissioner may make any order he or she thinks fit in respect of an application if the Commissioner is satisfied that *inter alia*, the inclusion of information that affects the eligible person is unjust in the circumstances with regard to the four listed factors.<sup>350</sup> Again, it is assumed that circumstances involving domestic violence would be regarded as unfair. No examples are provided within the provision.

## Keeping of pets

This section considers provisions discussed in Chapter 3 *Are there any factors, for example, the presence of a family pet that could impact on X's ability to leave?*

Section 7(c) *Family Violence Act 2004* (Tas) refers to definition of family violence and includes damage caused to the property of a spouse, partner or child. It is assumed that a pet would be regarded as the property of that person. Section 64B RTATAS states that a tenant is not to keep a pet on residential premises without permission of the owner of the premises or unless permitted to do so under the agreement.

## Locks and security devices

This section provides elaboration on issues raised in Chapter 3, would the tenant be permitted to change locks and install security devices for protection?

A landlord is obliged to ensure that locks are fitted such as to secure the premises and there is also an obligation to maintain the locks throughout the agreement. The legislation also refers to security devices. There is a prohibition on parties to a tenancy agreement adding, altering or removing a lock or security device but this is not applicable where there have been orders made for the protection the tenant.

With regard to alterations and additions, s54(1) RTATAS states that unless a residential tenancy agreement provides otherwise, a tenant, without the written consent of the owner of the premises to which the agreement relates, cannot affix any fixture to the premises or make any alteration or addition to the premises. There is no reference to circumstances of security for tenants, even in instances of FDV.

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<sup>349</sup>Section 48ZF(1),(2) RTA

<sup>350</sup> Section 48ZF(3)(b)(i)-(iv) RTA

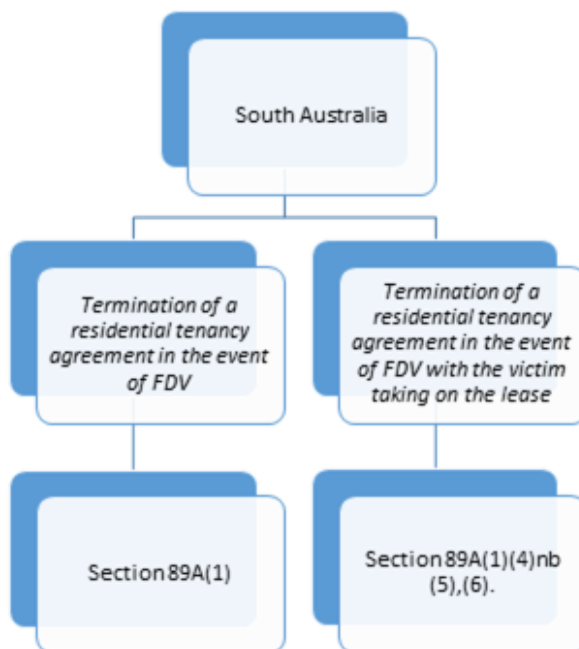
## Summary of legislative responses: South Australia

### Introduction

Section 89A *Residential Tenancies Act 1995* provides for early termination, or termination enabling the victim to assume responsibility for the lease.

- i. The South Australian legislation uses the terms *applicant* and *domestic associate* but expands on the definitions by providing a diverse list of relationships which come within the term including children under guardianship of an adult,<sup>351</sup> adoptees<sup>352</sup> and carers.<sup>353</sup>
- ii. The FDV provisions require that a person has committed domestic abuse, or an intervention is in force against a person who resides at the premises is in force for the protection of the applicant. Domestic abuse is defined as an act of abuse committed by a person against a domestic associate or a former domestic associate of the person.

### Overview of paths to early termination of a lease in circumstances of FDV.



Section 89A RTA regulates termination of an agreement based on domestic abuse. SACAT may terminate a residential tenancy where:

- there is an intervention order in force against a person who resides at the premises for the protection of the applicant or a domestic associate of the applicant or a person who resides at the premises;<sup>354</sup> or

<sup>351</sup> Section 3(1)(d) RTASA

<sup>352</sup> Section 3(1)(k)

<sup>353</sup> The legislation extends to the term ‘carer’ within the meaning of the *Carers Recognition Act 2005 (SA)*.

<sup>354</sup> Section 89A(1)(a), 89A(5)(a) RTA.

- A person has committed domestic abuse against the applicant or a domestic associate of the applicant or a person who resides at the premises.<sup>355</sup>

In relation to requiring a landlord to enter into a new lease, additional orders can be made under s89A(4), including an order to require the landlord to enter into a new residential tenancy agreement with the applicant under the terminated agreement for the remainder of the term of the tenancy.<sup>356</sup>

#### *1. Termination of a residential tenancy agreement in the event of FDV*

S89A addresses termination based on domestic abuse.<sup>357</sup> Pursuant to s89A(1), SACAT can terminate a residential tenancy from the date specified in the Tribunal's order, if satisfied that an intervention order is in place against a person living at the premises for the protection of the applicant or a domestic associate of the applicant<sup>358</sup> or where there is evidence a person resides on the premises has committed domestic abuse against the applicant or a domestic associate of the applicant.<sup>359</sup> To evidence this, it appears that it will be necessary to provide a report from SA Police or a specialist domestic violence service provider.<sup>360</sup> The landlord will be party to the proceedings. Provision is made also for the situation involving co-tenants.<sup>361</sup> SACAT can choose from a variety of orders that include an inspection,<sup>362</sup> an order for vacant possession<sup>363</sup> and, if a consequence of domestic violence, an order requiring the landlord to enter into a new residential tenancy agreement with the applicant or a co-tenant under the terminated agreement (or both) for the remainder of the term of the tenancy.<sup>364</sup>

#### *2. Termination of a residential tenancy agreement in the event of FDV with the victim/survivor taking on the lease*

The Tribunal must not make an order under subsection (4)(a) requiring the landlord to enter into a new residential tenancy agreement with a co-tenant who is the perpetrator or the landlord indicates, as part of proceedings before the Tribunal, that the landlord considers it would be unreasonable for such an order to be made.<sup>365</sup>

Before making an order the Tribunal must be satisfied that any tenant or cotenant under the new residential tenancy agreement could reasonably be expected to comply with the obligations under the agreement.<sup>366</sup> Furthermore, the existence of certain orders and legal proceedings must be considered.<sup>367</sup>

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<sup>355</sup> Section 89A(1)(b) RTA.

<sup>356</sup> Section 89A(4)(a) RTA

<sup>357</sup> The section can apply to rental and also to SA Housing Trust property s89A(2) RTASA

<sup>358</sup> Section 89A(1)(a)(i) and (ii) RTASA.

<sup>359</sup> Section 89A(1)(b) (i) and (ii) RTASA.

<sup>360</sup> SACAT Guide <<http://www.sacat.sa.gov.au/types-of-cases/housing/domestic-violence>>

<sup>361</sup> Section 89A(3) RTASA

<sup>362</sup> Section 89A(4)(b) RTASA

<sup>363</sup> Section 89A(4)(c) RTASA.

<sup>364</sup> Section 89A(4)(a) RTASA.

<sup>365</sup> Section 89A(5)(a),(b) RTASA

<sup>366</sup> Section 89A(6)(a). Note too references to tenants in social and community housing.

<sup>367</sup> Section 89A(9) RTASA.

If SACAT makes an order mentioned under s89A(4)(a), the new residential tenancy agreement must be subject to the same rental scheme, term and conditions as the original agreement.<sup>368</sup> The Tribunal can make changes if appropriate.

SACAT is obliged to hear objections to the application by the landlord or any co-tenants. An assessment of hardship upon the applicant and the objector will be considered by the Tribunal.<sup>369</sup>

## Outstanding payments and security bonds

This section elaborates further on provisions discussed in Chapter 3 Will X bear any responsibility for outstanding rental or repairs? What impact will this have on the security deposit?

In South Australia, where the tenancy is terminated in circumstances of FDV, the Tribunal may order the perpetrator makes a payment of compensation to the landlord for loss and inconvenience resulting, or likely to result, from the termination of the tenancy or from any additional order made.<sup>370</sup>

## Tenancy Databases

This section elaborates further on provisions discussed in Chapter 3 *Could the tenant be blacklisted on a residential tenancy database?*

In South Australia, where there has been a termination based on domestic abuse, the Tribunal can make an order that prohibits the landlord, agent or database operator from listing an applicant's personal information on a residential tenancy database.<sup>371</sup> If the listing is already on the database, the Tribunal has a general power to make orders. Presumably, this would mean an order can be made that the listing be amended or removed.<sup>372</sup>

Section 89A(4)(d) RTA refers specifically to instances of domestic abuse and states that various orders can be made including prohibiting or removing a listing from the database where the Tribunal is satisfied that the tenant did not cause a breach of the residential tenancy agreement; or a breach resulted from an act of abuse or domestic abuse against the tenant.

## Keeping of pets

This section considers provisions discussed in Chapter 3 *Are there any factors, for example, the presence of a family pet that could impact on X's ability to leave?*

The RTASA makes no explicit mention of pets for general tenancy agreements with the exception of provisions in the lease to list pets.<sup>373</sup>

<sup>368</sup> Section 89A(8) RTASA.

<sup>369</sup> Section 89A(7) RTASA.

<sup>370</sup> Section 89A(1) RTASA.

<sup>371</sup> Section 99F (1)(e); s 89A(4)(d) RTA.

<sup>372</sup> Section under s99L RTA.

<sup>373</sup> See 49(1)(b)(vi)(G). The legislation also states that a resident subject to a rooming house agreement must not keep an animal on the premises without the proprietor's consent: s 105R RTASA.

The *Committed to Safety* proposals, the SA government's proposed responses to domestic, family and sexual violence suggested the introduction of pet bonds to improve the availability of private rental accommodation that permits pets.<sup>374</sup>

## Locks and security devices

This section provides elaboration on issues raised in Chapter 3, would the tenant be permitted to change locks and install security devices for protection?

In South Australia, the landlord is obliged to take reasonable steps to provide and maintain the locks and other devices that are necessary to ensure the premises are reasonably secure. Neither party can alter, remove or add a lock or security device without the consent of the other. To do so without a reasonable excuse is an offence. Consent cannot be unreasonably withheld.

Section 70 RTASA(1) provides It is a term of a residential tenancy agreement that a tenant must not, without the landlord's written consent, make an alteration or addition to the premises. Interestingly, pursuant to s70(1a) It is a term of a residential tenancy agreement that a landlord will not unreasonably withhold consent to an alteration or addition to the premises that is necessary to ensure the provision of infrastructure or a service of a prescribed kind. However, fixtures that would enhance security are not so prescribed.

If a tenant causes damage to the premises by making an alteration or addition to the premises or by removing a fixture, the tenant must notify the landlord and, at the option of the landlord, repair the damage or compensate the landlord for the reasonable cost of repairing the damage.

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<sup>374</sup> Office for Women (SA), *Committed to safety* 1 March 2019, 23  
< [https://officeforwomen.sa.gov.au/\\_data/assets/pdf\\_file/0007/78604/Committed-to-Safety.pdf](https://officeforwomen.sa.gov.au/_data/assets/pdf_file/0007/78604/Committed-to-Safety.pdf) >



## Summary of legislative responses: Western Australia

### Introduction

Section 71AB RTAWA provides that a tenant may give to the lessor notice of termination of the tenant's interest in the residential tenancy agreement on the ground that the tenant or a dependant of the tenant is, during the tenancy period, likely to be subjected or exposed to family violence.

- i. Family relationship is defined broadly in s4 *Restraining Orders Act 1997 (WA)* so as to incorporate a range of relationships.
- ii. *Family violence* is defined so as to be consistent with s5A(1) of the *Restraining Orders Act 1997 (WA)* being:
  - (a) violence, or a threat of violence, by a person towards a family member of the person;  
or
  - (b) any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.<sup>375</sup>

Section 71AE RTAWA provides for the termination of a lease with the victim assuming responsibility for the lease.

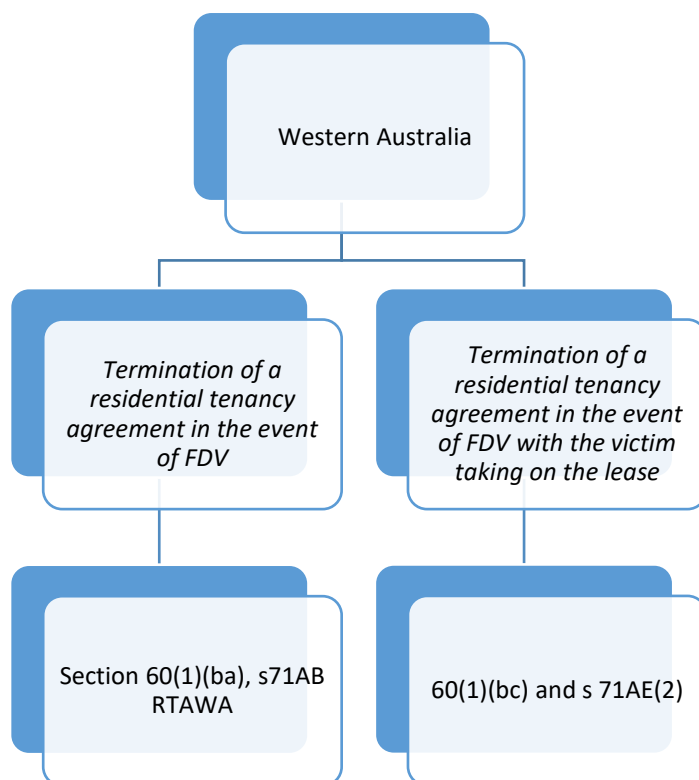
- i. Reference is made to a protected tenant and an excluded tenant who is denied a right of entry into the rented premises because of a family violence order.<sup>376</sup>
- ii. A family violence order means a DVO, Family Court injunction or other court order denying a tenant's right of occupancy in premises under a residential tenancy agreement.

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<sup>375</sup> S 5A(1), (2).

<sup>376</sup> Section 71AE(1),(2) RTAWA

## Overview of paths to early termination of a lease in circumstances of FDV



The Western Australian parliament has passed laws amending the *Residential Tenancies Act 1987 (WA)*<sup>377</sup> that will enable tenants to terminate a lease on the grounds of family violence.<sup>378</sup> The laws, stated to be ‘unashamedly victim focused,’<sup>379</sup> came into effect on 15 April 2019.

### 1. Termination of a residential tenancy agreement in the event of FDV

A residential tenancy agreement cannot be terminated except in accordance with the circumstances listed in s60 RTAWA. An agreement can be terminated where a notice and supporting documentation have been provided to the landlord pursuant to s71AB.<sup>380</sup>

Under s71AB(1), the tenant must provide the landlord with a prescribed notice of termination, accompanied by evidence that the tenant or a dependent of the tenant is likely to be subjected or exposed to family violence.<sup>381</sup> The evidence that can take various forms, including a Domestic Violence Order.<sup>382</sup> However, unlike the case in most other states and territories, a person experiencing family

<sup>377</sup> The *Residential Parks (Long-stay Tenants) Act 2006 (WA)* is also amended.

<sup>378</sup> *Residential Tenancies Legislation Amendment (Family Violence) Act 2018*. In the legislation, family violence has the same meaning as in s 5A(1) *Restraining Orders Act 1997 (WA)*. Therefore, family violence is a reference to violence, or a threat of violence, by a person towards a family member of the person; or any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.

<sup>379</sup> Western Australia, *Parliamentary Debates* Legislative Assembly 28 June 2018, 4133a, Alannah MacTiernan.

<sup>380</sup> Section 60(1)(ba) RTAWA.

<sup>381</sup> Section 71AB(2) and note s60(1)(ba)(i) RTAWA.

<sup>382</sup> Section 71AB (2)(a) RTAWA. Evidence can also consist of: (b) a Family Court injunction or application for a Family Court injunction; (c) a copy of a prosecution notice or indictment containing a charge relating to violence

violence will not necessarily have to navigate the court system first. There is an option to obtain a declaration, signed by a medical professional or other independent third party to confirm that the lease is being terminated because of family violence.<sup>383</sup> The legislation provides for a broad range of people who can make the declaration including police, psychologists, social workers or people in charge of refuges.<sup>384</sup>

The tenant may leave immediately for safety but is responsible for the rent until the end of the 7 day notice period.<sup>385</sup> A landlord may seek a review as to whether the notice was given validly<sup>386</sup> but cannot examine whether the tenant, or a dependent of the tenant, has been or might be subject to family violence.<sup>387</sup>

## *2. Termination of a residential tenancy agreement in the event of FDV with the victim/survivor taking on the lease*

In some circumstances, for example, if children are in school in the local area, it is best for a tenant to be able to remain in the rented premises. To this end, the court may make an order terminating the perpetrator's interest in the lease where a family violence order is in force against that person or that person has committed family violence against the tenant or a dependent of the tenant.<sup>388</sup> In determining whether to make the order the court must consider certain listed factors, including the best interests of any child ordinarily resident on the premises<sup>389</sup> or the effect the order might have on any pets kept on the premises.<sup>390</sup>

## Outstanding payments and security bonds

This section elaborates further on provisions discussed in Chapter 3 Will X bear any responsibility for outstanding rental or repairs? What impact will this have on the security deposit?

Section 17B RTAWA requires the court to determine the rights and liabilities of the parties to a tenancy agreement where at least one of the tenant's interests in the tenancy agreement has been terminated. The section will allow the court to apportion the disposal of a security bond to individual tenants and/or the landlord as is considered appropriate in the circumstances. The provision will enable the

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against the tenant or a court record of a conviction of a charge; or (d) a report of family violence, in a form approved by the Commissioner for Consumer Protection.

<sup>383</sup> Section 71AB(2)(d) RTAWA.

<sup>384</sup> Section 71AB(2)(d)(i) RTAWA – (vi). New South Wales has recently introduced a similar procedure although, at present, only a medical practitioner can sign the declaration.

<sup>385</sup> Section 60(1)(ba)(ii), s71AB(5) RTAWA.

<sup>386</sup> Section 71AC(2) RTAWA.

<sup>387</sup> Section 71AC(3)(a), (b) RTAWA.

<sup>388</sup> See s 60(1)(bc) and s 71AE(2) RTAWA. Note that the tenant is referred to as 'the protected tenant' and the perpetrator is referred to as 'the excluded tenant' (s71AE(1)) The order takes effect on a day specified in the order, being a day that is not less than 7 days and not more than 30 days after the order is made: Section 71AE(6) RTAWA.

<sup>389</sup> Section 71AE(4)(a) RTAWA. This factor is to be of primary importance: Section 71AE(5) RTAWA.

<sup>390</sup> Section 71AE (4) (d) RTAWA.

court to address disputes around property damage, unpaid rent and bond disbursement to ease the financial burden when leaving a tenancy.

## Tenancy Databases

This section elaborates further on provisions discussed in Chapter 3 *Could the tenant be blacklisted on a residential tenancy database?*

Part VIA of the Western Australian legislation considers residential tenancy databases. The legislation utilises the unjustness standard and the criteria from the legislation discussed but will make specific reference to instances of family violence.<sup>391</sup> The court may make an order where the listing is unjust and<sup>392</sup> a listing is deemed to be unjust if the applicant being subjected or exposed to family violence.<sup>393</sup> Furthermore, the court may order personal information about a person in a residential tenancy database to be wholly or partly removed, amended in a stated way, or not listed in a residential tenancy database.<sup>394</sup>

## Keeping of pets

This section considers provisions discussed in Chapter 3 *Are there any factors, for example, the presence of a family pet that could impact on X's ability to leave?*

For the purposes of the RTAWA, family violence has the meaning given in s5A Restraining Orders Act 1997. Section 5A(2) provides examples of behaviour that may constitute family violence including s5A(2)(f), *causing death or injury to an animal that is the property of the family member.*

Section 29 RTAWA provides for an additional bond to be paid by the tenant if they are permitted to keep a pet on the premises. The pet bond is stated to cover the cost of fumigation on the termination of the tenancy. The 2018 amendments require consideration pets where an order is sought to terminate the lease and permit the FDV victim/survivor to take over the lease. Therefore, before the court can make an order under s71AE, the court must consider a number of matters including s71AE(4)(d), the effect the order might have on any pets kept on the premises.

## Locks and security devices

This section provides elaboration on issues raised in Chapter 3, would the tenant be permitted to change locks and install security devices for protection?

In Western Australia, it is a term of every residential tenancy agreement that the landlord must provide and maintain such features necessary for the reasonable security of the premises. Locks and other security devices cannot be altered removed or added without the consent of the other party, ch consent not to be unreasonably withheld. However, the 2018 amendments provide that a tenant does not have to obtain the consent of the landlord to alter a lock or other means of securing the premises if to do so is necessary to prevent family violence that the tenant believes, on reasonable grounds, is likely to be committed against the tenant or any dependant. Consent is also not required

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<sup>391</sup> Section 82J RTAWA.

<sup>392</sup> Section 82J (2) (b) RTAWA.

<sup>393</sup> Section 82J(2A) RTAWA.

<sup>394</sup> Section 82J (2B) RTAWA.



where a former tenant's interest in the tenancy agreement has been terminated and the victim/survivor will remain in the premises.

## Appendix 3 – Summary of the USA legislation

**Table 11: Summary of the USA legislation**

State	Early Termination	Bifurcation	Exclude the abuser	Abuser pays	Liability of abuser	Confidentiality	Locks	Proof of DV	False reporting	Refusal to rent to FDV victim/ survivor	LL can't terminate FDV victim/ survivor Lease
Alabama						✓					
Alaska			✓								
Arizona	✓			✓	✓	✓	✓	✓	✓		
Arkansas		✓	✓	✓	✓	✓	✓	✓		✓	✓
California	✓	✓	✓			✓	✓	✓		✓	✓
Colorado	✓					✓		✓			✓
Connecticut	✓					✓		✓			
Delaware	✓					✓		✓			✓
Dist of Columbia	✓	✓					✓	✓		✓	
Florida						✓					
Georgia											
Hawaii	✓	✓	✓				✓	✓	✓		
Idaho						✓					
Illinois	✓	✓				✓	✓	✓			
Indiana	✓			✓	✓	✓	✓	✓		✓	✓
Iowa						✓		✓			✓
Kansas			✓			✓					
Kentucky	✓	✓	✓		✓	✓	✓	✓		✓	✓
Louisiana	✓					✓		✓		✓	✓
Maine	✓	✓		✓	✓	✓	✓	✓			✓
Maryland	✓		✓			✓	✓	✓			
Massachusetts	✓		✓			✓	✓	✓		✓	
Michigan	✓	✓						✓			✓
Minnesota	✓					✓		✓			✓
Mississippi			✓			✓✓					
Missouri			✓			✓					
Montana			✓			✓					
Nebraska			✓			✓					

State	Early Termination	Bifurcation	Exclude the abuser	Abuser pays	Liability of abuser	Confidentiality	Locks	Proof of DV	False reporting	Refusal to rent to FDV victim/survivor	LL can't terminate FDV victim/survivor Lease
Nevada	✓		✓	✓	✓	✓	✓	✓			✓
New Hampshire		✓	✓			✓	✓	✓			✓
New Jersey	✓		✓			✓ ✓		✓			
New Mexico		✓				✓					
New York	✓	✓				✓ ✓				✓	✓
North Carolina	✓		✓			✓	✓	✓		✓	
North Dakota	✓		✓			✓		✓		✓	✓
Ohio			✓			✓					
Oklahoma						✓ ✓					
Oregon	✓	✓	✓ (p)			✓ ✓	✓	✓		✓	✓ (l)
Pennsylvania			✓			✓					
Rhode Island		✓				✓				✓	✓
South Carolina			✓								
South Dakota			✓								
Tennessee		✓	✓			✓		✓			✓ (l)
Texas	✓					✓		✓			
Utah	✓					✓	✓	✓			
Vermont	✓	✓	✓			✓	✓	✓			✓
Virginia	✓		✓			✓ ✓	✓				✓
Washington	✓					✓ ✓	✓			✓	✓
West Virginia						✓					
Wisconsin	✓		✓			✓	✓			✓	✓
Wyoming	✓					✓		✓			✓

(p) = partial; (l) = limited right to evict