



**Part 3 of the Residential Tenancies
Amendment Bill 2011:**

**“Amendments relating to terminating social
housing tenancy agreements.”**

A Position Paper

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Introduction

The [Community Housing Coalition of Western Australia \(CHCWA\)](#) is the peak body for Community Housing Organisations (CHOs) in Western Australia. CHCWA's primary role is to support the development of community housing in WA. We do this by working with Federal, State and Local Governments to increase the provision of community housing and by assisting Community Housing Organisations to deliver quality outcomes for low income and vulnerable Western Australians by providing a range of training and development opportunities.

CHCWA represents about 250 Community Housing Organisations operating throughout the State. Community Housing accounts for almost 20 per cent of the State's entire social housing stock and continues to grow. The majority of our members are smaller providers who manage anything from a handful to 100 properties. However, we also represent larger CHOs known as 'Growth Providers' who manage housing portfolios of more than 500 units. Enabling the 'Growth Providers' to grow further and the growth and development of the sector as whole, is a central tenet of Government policy to address WA's social and affordable housing deficit as detailed in the State Affordable Housing Strategy 2010-2020.

The passage of the Residential Tenancies Amendment Bill through the State Houses of Parliament is of great interest to the sector. The current Residential Tenancies Act (RTA) is a powerful regulatory tool and CHOs, like private sector landlords, are bound by it in terms of their rights and responsibilities as landlords.

CHCWA held a discussion forum on June 17, 2011, to allow representatives of the Community Housing Sector to voice their views on the RTA Amendment Bill. Specifically, we debated Part 3 of the Bill: 'Amendments relating to terminating social housing tenancy agreements'¹ as this is an entirely new section which, if passed in to law, will affect social housing providers and social housing tenants exclusively. We also invited CHOs not in a position to attend the forum to communicate their views to us by contacting us directly. CHCWA has incorporated the views and concerns expressed in the course of the consultation process into this position paper.

The position paper will be circulated to members of the West Australian Parliament in advance of the next round of debates on the Residential Tenancies Amendment Bill. We hope that its contents will help inform discussion in Parliament when the debate takes place.

The paper will also be available to all community housing organisations in the State and a range of other stakeholders who receive our weekly electronic newsletter, 'CHCPEN.' The paper will also be available for download on our website.

¹ Henceforth referred to as "Part 3"

Some General Points regarding Part 3 of the Bill.

- The definition of social housing in Part 3 strongly indicates that the Community Housing Sector comes under that definition. However, some ambiguity remains in that the proposed legislation does not use the term 'Community Housing' or, indeed, 'Public Housing.' Both terms are widely used and understood in policy discourse about social housing. CHCWA believes that the clarification is required from the Bill's sponsor as to what the term 'social housing' is intended to refer to in the Bill. We see no reason, for example, that the terms 'public housing' and 'community housing' cannot be used explicitly in the proposed statute or the explanatory memorandum to remove any ambiguity.
- Notwithstanding our concerns about how social housing is defined in the Bill, our interpretation of the Bill is that the definition of social housing in Part 3 is intended to include CHOs. As such, CHCWA wishes to note that no consultation took place with the sector through either direct dialogue with our members, or with us as the sector peak. A failure to consult with the regulated entity before advancing new regulatory measures would, in other areas of economic activity, be considered poor practice. CHCWA sees no reason why that same principle should not apply here especially as the regulation in question is of such importance to the sector.
- The lack of consultation regarding Part 3 has contributed to a situation where there is a deficit of information as to the exact intent of the proposed legislation in Part 3. In the absence of such information, we are left to guess what policy objectives the proposed legislation is intended to serve.
- In several respects, the Bill gives the Minister for Housing too much discretionary power in areas of key regulatory importance to the community housing sector.
- CHCWA believes that Part 3, specifically section 73a, is intrinsically discriminatory against social housing tenants and has a strong philosophical objection to it on that basis. Its inclusion in the RTA would, in effect, create a 'two- tiered' system of rights for tenants; one for social housing tenants and another, less onerous set of obligations, for tenants living in the private rental market. Such a proposal, CHCWA believes, runs contrary to the democratic and egalitarian principles that underpin the Western Australian political and legal system and should be rejected for that reason.

More Detailed Commentary

Having outlined some general points, we believe require consideration by parliamentarians and other stakeholders in relation to the Part 3, this paper will now provide more detailed analysis and commentary regarding the specific proposed amendments in Part 3: Sections 71C,71H,75A and 73A.

71c-Notice of termination by lessor¹ on ground that tenant not eligible for social housing premises. A lessor under a social housing tenancy agreement may give notice of termination of the agreement to the tenant on the ground that the lessor has determined, as the result of an assessment carried out under section 71D, that the tenant is not eligible to reside in social housing premises, or to reside in the class of social housing premises to which the agreement relates.

- CHCWA understands this provision to mean that a social housing provider, which in the majority of cases will mean the Department of Housing or a Community Housing Provider, has the right to terminate a tenancy on the grounds that the tenant is no longer eligible to live in the social house for which they were eligible when the lease was initiated. An example of this could include a tenant who has increased his or her income and is thus no longer 'income eligible' for the social house in which they reside. We believe that the purpose of this statute is to strengthen Government attempts to transition ineligible tenants from social housing to either other forms of social housing or tenure in the private market.
- CHCWA is broadly supportive of transitioning ineligible tenants either out of social housing or to different tenures in social housing and as such is in favor of a statutory backing for that policy objective. However, we have some concerns about the proposed amendment. The eligibility requirements alluded to in section 71c are not stipulated. Moreover, the power to set and change the eligibility requirements is vested in the Minister for Housing. We do not believe that this represents a desirable outcome. The legislation proposes to give excessive power to the Minister of Housing over not just the public housing system but also the Community Housing system in terms of setting eligibility requirements. If changes to the role and composition of the Department of Housing and the public housing system envisaged in the Affordable Housing Strategy 2010-2010 come to fruition, we could see a competitive market dynamic emerging between the Department of Housing and large Community Housing Growth Providers. This, CHCWA believes, lends considerable weight to the already persuasive argument that an independent regulator be established for the entire social housing system in which the power to set eligibility requirements for social housing, as well as other key functions, would reside.

71H-Notice of termination by lessor where tenant offered alternative social housing premises
A lessor under a social housing tenancy agreement may give notice of termination of the agreement (the existing agreement) to the tenant on the ground that the lessor has offered to enter into a new social housing tenancy agreement with the tenant in respect of alternative premises to the premises the subject of the existing agreement.

- CHCWA understands this provision to mean that the lessor will have the right to relocate a tenant from one social housing premises to another at their discretion but subject to a review if one is requested by the tenant. We believe that the provision has been designed to address the issue of perceived 'under utilisation,' particularly in the public housing stock and may also be intended to provide statutory support for Government in the likely event that it begins the process of transferring stock from the public housing system into the community housing sector or a not-for-dividend housing company, created by the State Government, with the tenants in situ. Again, in principle, we are broadly supportive of this policy objective but we have some concerns:
 1. The power to determine and alter the review process for tenants who seek to challenge the notice of termination is vested in the Minister for Housing. Again, we believe that this function should reside with a regulatory body independent of the Minister of Housing or the Department of Housing.
 2. If the intent of the legislation is to make it easier for the Department of Housing to move tenants within the public housing system then the wording of section 71H is adequate. However, if the intent of section 71H is to provide a statutory basis to transfer tenants from the public housing system to the community housing system or from the public housing system to a not-for-dividend housing company operated by the State, the wording of the section is problematic. If, for example, a tenant was found to be over the income threshold in a public house and was transitioned into a community housing premises where a higher rent could be charged, the CHO operating the premises in question would expect to offer their new tenant a new lease agreement entirely independent of the one that the tenant had as a public housing tenant. In other words, the tenant would be entering into a wholly new tenancy agreement with a new social housing provider but the wording of section 71H does not provide allowance for this.
 3. Given the inadequacy of the definition of social housing in Part 3, is it possible that tenants could be obliged to transfer to forms of social housing tenure other than public or community housing? CHCWA understands that the Government is looking to create alternative forms of social and affordable housing other than public and community housing e.g. the Private Rental Brokerage Scheme, which may meet the definition but are, arguably, not as secure a form of tenure as traditional forms of social housing.

75A. Termination of social housing tenancy agreement due to objectionable behavior.

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

(a) Used the social housing premises, or caused or permitted the social housing premises to be used, for an illegal purpose; or

(b) Caused or permitted a nuisance by the use of the social housing premises; or

(c) Interfered, or caused or permitted any interference, with the reasonable peace, comfort or privacy of any person who resides in the immediate vicinity of the premises, and that the behavior justifies terminating the agreement.

CHCWA understands this provision to mean that the social housing providers will have grounds to apply for the termination of a tenancy beyond those grounds already provided for in the RTA, e.g. Section 73 and 64. We believe that this provision is most likely being inserted in line with recent Government assertions that it is looking to introduce tougher and more effective eviction policies for social housing tenants who engage in anti-social behaviour, illegality or property damage.

- CHCWA strongly opposes the introduction of section 75a if it is to apply to Community Housing Organisations for the following reasons:
 1. We believe that the Section is fundamentally discriminatory against social housing tenants insofar as the new grounds apply only to social housing tenants and exclude tenants in the private rental market.
 2. The new grounds 'lower the bar' for social housing tenants in relation to perceived 'objectionable behaviour' when compared with private market tenants. This is fundamentally unfair.
 3. The Community Housing Sector strongly believes that supporting high need tenants maintain their tenancy is, based on considerable experience, preferable to evicting tenants. In some cases evictions are unavoidable, but best practice in the sector is to evict tenants only as a last resort. As such, this proposal which seeks to expand the grounds on which high needs tenants can be evicted on grounds of behavior constitutes a retrograde step.

4. Should Section 75a pass into law, Community Housing Providers might come under pressure from third parties e.g. aggrieved neighbours or a Government body, to use the new powers to evict their tenants. This would place CHOs in an invidious position. The sector did not ask for these increased powers and does not want them.

73A. Notice of termination not required in certain cases. An application under section 73, 74, 75A or 75 may be made whether or not notice of termination has been given.

- CHCWA believes that this proposed amendment to the RTA should also be rejected. We believe that under each of these sections the right of tenants to receive notice of termination should be unimpeachable.

Conclusion

CHCWA hopes that this position paper has succeeded in conveying our sector's views and concerns regarding the Residential Tenancies Amendment Bill 2011 and, specifically, Part 3: 'Amendments relating to terminating social housing tenancy agreements.'

The RTA was last before State Parliament in 1987 so it may be a long while before this crucial piece of legislation is amended again.

We urge Parliamentarians, in particular, to consider the views expressed here in terms of formulating their own views in advance of debates and votes on the Bill in the near future.