



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

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

### **Explanation and analysis**

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## Introduction

The [Residential Tenancies Amendment Bill 2011](#) (RTA) was introduced before the Parliament of WA on May 18, 2011. First and second reading stages are complete. The RTA is an important piece of legislation. It sets out the rights and responsibilities of both tenants and landlords in the private rental market and in public and community rental properties. This is the first time that a Bill proposing amendments to the RTA has been before the WA Parliament since 1987.

The Bill proposes to insert a new section<sup>1</sup> into the legislation which relates exclusively to social housing. CHCWA believes that the intention of the new section is to provide a statutory basis for certain Government policy objectives relating to public housing. However, the definition of social housing provider strongly indicates that the new statutes will also apply to Community Housing Providers. Social Housing Providers are defined as (a) The Housing Authority, and (b) a body or persons prescribed, or of a class prescribed, for the purposes of this definition.<sup>2</sup>

The purpose of this document is to provide a summary and interpretation of the key proposals in the aforementioned new section.

## What does the new section say?

If adopted by Parliament as part of the overall Bill, the new section will provide for significantly expanded grounds on which social housing providers can terminate tenancy agreements. These grounds are:

1. The tenant is no longer eligible for social housing premises.
2. The tenant is offered alternative social housing premises by the landlord.
3. The tenant is guilty of 'objectionable behavior.'

Please note that these new grounds for terminating a tenancy are in addition to the grounds for terminating a tenancy that are detailed in Section 73 (Termination of agreement where tenant causing serious damage or injury), Section 39 (where illegal activity is being carried out on the premises or where a nuisance is being caused or permitted) and Section 64 (Notice of termination without any ground), of the RTA and which the Bill does not propose to omit from the resultant act.

The new section also proposes that notices of termination will not be required in certain cases. Specifically, under sections 73, 74, 75a, or 75. This will be dealt with in further detail in this paper. First, let us deal with the new termination of tenancy grounds in more detail in the order outlined above.

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<sup>1</sup> Part 3- Amendments relating to terminating social housing tenancy agreements, Residential Tenancies Amendment Bill 2011, p 97-109.

<sup>2</sup> Ibid, Section 71A, p98

In relation to 1, the tenant is no longer eligible for social housing premises, the proposed legislation states the following:

***71c-Notice of termination by lessor<sup>1</sup> 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.

Eligibility criteria are defined under Section 71 E. The Minister for Housing is given the sole power to decide what the criteria are. No specific criteria defining eligibility is detailed. However the section does state the following:

- 1. The criteria may differ from the criteria used to assess a person's eligibility to commence residing in social housing premises, or in a particular class of social housing premises.*
- 2. The criteria must not relate to whether or not the tenant has complied with any term of the residential tenancy agreement.*
- 3. The criteria must be publically available*
- 4. A copy of the criteria must be provided, on request, to any tenant under a social housing tenancy agreement free of charge and to other persons free of charge or on payment of the reasonable cost incurred in copying the criteria.*

In terms of the assessment process<sup>3</sup>, if a request is made by the lessor, tenants are obliged to provide any information that is 'reasonably required' to allow the lessor to make a determination regarding the tenant's eligibility. A refusal on the part of the tenant to provide the information will allow the lessor to determine without further enquiry that the tenant is ineligible. Where the tenancy is for a fixed term, an eligibility assessment may not be carried out prior to six months before the end.

Provision is made in the proposed legislation for a review process which works as follows.<sup>4</sup>

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<sup>3</sup> See section 71d,p99 for exact wording.

<sup>4</sup> See Sections 71f-71g, p100-101.

1. If the tenant is deemed ineligible the lessor must inform the tenant in writing. The notice must contain the reason(s) why the tenant is considered ineligible.
2. The letter must also state that the tenant has a right to have the decision reviewed and that the tenant is entitled to make representations to the lessor in writing and/or orally as to why the tenancy should not be terminated.
3. If a review is requested by the tenant or representations made, the lessor is obliged to carry out a review in line with procedures stipulated by the Minister for Housing.
4. The tenant has 30 days following the initial letter to ask for a review/make representations.
5. The Lessor must wait for that 30 days to elapse or, in the event of a review being requested, the conclusion of that process before proceeding.
6. When the review process has been exhausted, the lessor is obliged to inform the tenant in writing of their intention to terminate the tenancy and give 60 days notice for the tenant to vacate the premises.

In relation to 2, the tenant is offered alternative social housing premises by the landlord; the proposed legislation states the following:

***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 utilization,' 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*.

Under the terms of the provision, the review system is more or less identical to that outlined in relation to terminating a tenancy on grounds of ineligibility. However, there are some differences and other items of note:

1. The lessor may give notice of termination and identify the location of the alternative property simultaneously.
2. The lessor's notice must contain details as to why he/she wants the tenant to move.
3. Following a review, the lessor may offer a different property to the one that was identified in the initial offer if one was identified as part of the original notice of termination.

4. If an alternative property is offered following the first review, the tenant can apply for a second review but they are not entitled to any further reviews.
5. The alternative property must be available for occupation no later than seven days before the date specified in the notice as the day on which vacant possession is to be delivered up to the lessor.

In relation to 3, the tenant is guilty of 'objectionable behavior;' the proposed legislation states the following:

**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 behavior, illegality, property damage etc.

Finally, notice should be taken of the proposal to insert section 73A which states:

**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.

These are:

Section 73: Termination of agreement where tenant causing serious damage or injury. Section 74: Termination of agreement where owner would otherwise suffer undue hardship. Section 75: Termination of agreement for breach by owner and 75a: Termination of social housing tenancy agreement due to objectionable behavior.

## **Conclusion**

CHCWA believes that the proposed new section in the Residential Tenancies Amendment Bill represents a significant expansion in the rights of social housing landlords with regard to terminating tenancies.

We assume that the intention behind the legislation is to underpin Government policy vis-à-vis public housing as it relates to addressing issues of under occupancy/utilisation of the public housing stock, continued eligibility for social housing, anti-social behavior and transitioning social housing tenants from one social housing premises to another.

As stated, however, the definition provided for a 'social housing provider' does strongly indicate that Community Housing Providers will be covered by the new section. We also note the power of discretion given to the Minister for Housing under the proposed legislation in terms of deciding on eligibility criteria for social housing and the nature of reviews borne from notices of termination. It is not clear at this stage whether these ministerial decisions will apply equally to public and community housing providers who evoke legislation under the new section for the purposes of terminating a tenancy.

CHCWA understands that tenants groups in WA strongly oppose the inclusion of the new section into the new Residential Tenancies Act and are making representations in relation to same to parliamentarians and others.

Please be assured that CHCWA will keep the Community Housing Sector abreast of any developments in this issue as they occur.