

Report on the statutory review of the domestic violence provisions in the *Residential Tenancies Act 2010*

July 2025



Acknowledgement of Country

The NSW Department of Customer Service acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past and present and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this report.

Report on the statutory review of the domestic violence provisions in the *Residential Tenancies Act* 2010

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Glossary

The following is a list of terms and abbreviations used in this document.

Term/abbreviation	Meaning
AASW	Australian Association of Social Workers
ABS	Australian Bureau of Statistics
ACN	Australian College of Nursing
ADVO	apprehended domestic violence order
AIHW	Australian Institute of Health and Welfare
ANROWS	Australia's National Research Organisation for Women's Safety
AVO	apprehended violence order
CDPV Act	<i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW)
CPD	Continuing Professional Development
Crimes Act	<i>Crimes Act 1900</i> (NSW)
DCJ	NSW Department of Communities and Justice
DCS	NSW Department of Customer Service
DVNSW	Domestic Violence NSW
DVO	Domestic Violence Order, as defined under Section 105A of the RT Act, which refers to Part 13B of the CDPV Act
DVTN	domestic violence termination notice
Family Law Act	<i>Family Law Act 1975</i> (Commonwealth)
FSA	Full Stop Australia
Issues Paper	The Issues Paper released by the review for public consultation in October-December 2022
Law Society	Law Society of NSW
Legal Aid	Legal Aid NSW
MLC	Marrickville Legal Centre
MOH	NSW Ministry of Health
NSW	New South Wales
RBB	NSW Rental Bond Board
RBO	NSW Rental Bonds Online
REINSW	Real Estate Institute of NSW
RLC	Redfern Legal Centre
RT Act	<i>Residential Tenancies Act 2010</i> (NSW)
RT Regulation	Residential Tenancies Regulation 2019 (NSW)
SVdP	St Vincent de Paul Society NSW
Tribunal	NSW Civil and Administrative Tribunal
TUNSW	Tenants' Union of NSW
WLSNSW	Women's Legal Service NSW

Executive summary

The *Residential Tenancies Act 2010* (RT Act) provides the regulatory framework that governs the relationship between tenants and landlords in NSW. It establishes the rights and responsibilities of both landlords and tenants in residential tenancy agreements.

The RT Act is administered by the Minister for Better Regulation and Fair Trading (the Minister), and NSW Fair Trading, with the provisions covering social housing (Part 7) jointly administered with the Minister for Housing

The RT Act seeks to balance the interests of landlords and tenants while ensuring safe and habitable living conditions for tenants and promoting stability and security in the rental market.

In February 2019, crucial rental protections for victim-survivors of domestic violence first commenced. These provisions in the RT Act make it easier for a victim to either leave a violent home or end the tenancy of a violent co-tenant without financial penalty, and to avoid being penalised for property damage caused by a domestic violence offence, or listed on a tenancy database.

Under section 105I of the RT Act, the Minister is required to review these provisions within three years of their commencing, and a report is to be tabled in the NSW Parliament. NSW Fair Trading has conducted this statutory review on behalf of the Minister, to consider how the domestic violence provisions have been working and if improvements are needed.

As part of the review, Fair Trading has heard from a broad range of individuals and organisations. During public consultation in late 2022, the review received 20 written submissions, 220 survey responses and 163 quick poll responses. In 2024 and 2025, the review undertook targeted consultation with 40 government and non-government organisations. This engagement included a series of roundtables co-hosted by the NSW Rental Commissioner, Ms Trina Jones and the Women's Safety Commissioner, Dr Hannah Tonkin as well as individual meetings.

All feedback has been carefully analysed in preparing the review report. The review has found that the introduction of the domestic violence provisions has improved protections available to tenants experiencing domestic violence. The objectives of the provisions remain valid and the terms remain generally appropriate to secure those objectives.

Feedback also suggested that adjustments to the provisions could better support tenants experiencing domestic violence by:

- making it easier for victim-survivors to leave a tenancy
- further reducing risk and liability for victim-survivors
- supporting victim-survivors to access and sustain a new tenancy.

The review makes 37 recommendations that aim to further strengthen the protections available for victim-survivors. Areas of focus included:

- who should be able to make a declaration that a tenant is in domestic violence circumstances
- requirements relating to a domestic violence termination notice (DVTN)
- property damage liability
- tenancy database listings and disclosure of personal information
- security and privacy, including locks and other security devices as well as requirements relating to the publication of photos and visual recordings
- a victim-survivor's ability to recover their bond share
- a victim-survivor staying at home and terminating a perpetrator's tenancy
- the role of the Tribunal and its processes where domestic violence is present in tenancy matters
- education, training and guidance for all parties.

The review recommendations aim to balance the need to address the significant risks faced by victim-survivors, against potential implications for co-tenants, landlords, agents and any other parties involved, as well as the Government.

Recommendations

Competent persons

- Recommendation 1:** Amend the Residential Tenancies Regulation 2019 to expand the list of competent persons to include additional appropriate categories in order to improve access to competent person declarations, especially for tenants with a disability, Aboriginal or Torres Strait Islander peoples, tenants who are migrants, refugees or have limited English, or who are living in rural or remote areas.
- Further consultation with relevant organisations will be required to finalise the details of how the new categories should be defined, including ways to ensure that only people with relevant expertise and authority in those organisations can act as competent persons.
- Recommendation 2:** Amend section 105A(d) in the competent person definition to include an authorised employee of a government agency providing services relating to domestic violence or sexual assault, and refuge or emergency accommodation, in addition to authorised employees of non-government agencies in receipt of government funding to provide these services. Enable the regulations to prescribe the meaning of ‘authorised employees’.
- Recommendation 3:** Clarify the scope of the groups identified in the existing definition of competent persons under section 105A of the *Residential Tenancies Act 2010* in the following way:
- Amend ‘a person registered as a social worker with the Australian Association of Social Workers’ in paragraph (b) to ‘*a social worker who is a member of, or eligible for membership with, the Australian Association of Social Workers other than a student member*’.
 - ‘An employee of a government agency that provides services relating to child welfare’ be amended to ‘*an authorised employee of a government agency providing services to children and young people and their families directly in relation to child welfare and/or in relation to child abuse and neglect*’. Enable the regulations to prescribe the meaning of ‘authorised employees’ for this category.
- Recommendation 4:** NSW Fair Trading to review and update (as appropriate) guidance about the competent person categories, to assist competent persons, tenants and industry to understand who is permitted to provide competent person declarations.
- Recommendation 5:** NSW Fair Trading to review and amend (as appropriate) the prescribed competent person declaration form, with the aim of making it shorter, simpler and easier to complete and understand, and ensure it contains adequate guidance for competent persons.

Requirements for a domestic violence termination notice

- Recommendation 6:** Under the *Residential Tenancies Act 2010*, retain:
- the current prohibition on competent person declaration contents being reviewable in Tribunal proceedings; and
 - the current provisions and penalties for knowingly providing false or misleading information for a competent person declaration.
- Recommendation 7:** Amend section 105C(3) of the *Residential Tenancies Act 2010* to explicitly provide that the prohibition in that section does not prevent a person from

making a complaint to NSW Fair Trading about a breach or suspected breach of section 105H of the Act, or prevent them from providing Fair Trading with relevant evidence to inform inquiries regarding the complaint.

Recommendation 8:

NSW Fair Trading to provide more information and guidance, where appropriate:

- about reporting a suspected false or misleading competent person declaration to NSW Fair Trading, and
- for tenants, competent persons and landlords about the laws regarding providing false or misleading information.

Recommendation 9:

Improve the process of serving a domestic violence termination notice by:

- removing the requirement for a tenant in circumstances of domestic violence to serve a domestic violence termination notice on co-tenants,
- requiring the landlord/agent to advise each of the remaining co-tenant(s) individually in writing of the termination within 7 days after the termination date in the domestic violence termination notice, noting that if they fail to do so, this does not invalidate the notice,
- prohibiting the landlord/agent from advising the remaining co-tenants of the termination until after the termination date,
- developing a form and guidance for landlords/agents to use to carry out this requirement,
- specifically prohibiting the landlord/agent from forwarding a domestic violence termination notice and/or attached evidence to any remaining co-tenants,
- providing that the grace period when non-perpetrator co-tenant/s are only liable for a share of the rent runs for two weeks from the termination date,
- providing that if a tenant has appointed a person as the tenant's agent (section 221 of the *Residential Tenancies Act 2010*), this appointment is automatically revoked when the tenant gives a domestic violence termination notice to a landlord under section 105B(1) of the Act, if the tenant's agent is the relevant domestic violence offender named in the domestic violence termination notice,
- enabling the Tribunal to make an order for compensation due to loss or damage suffered by a person as a result of a breach of confidentiality by a landlord or agent regarding a domestic violence termination notice.

Recommendation 10:

NSW Fair Trading, in consultation with key Government agencies and stakeholders, develop a new continuing professional development course for real estate agents that:

- explains the provisions in the *Residential Tenancies Act 2010* relating to tenants experiencing domestic violence, including the domestic violence termination process,
- outlines agent/landlord rights and responsibilities, and the responsibilities of other parties,
- provides general information about domestic violence,
- is, at a minimum, included as part of the compulsory CPD requirements in the year following the commencement of any changes arising from the review, with consideration to be given to including it as a compulsory requirement in subsequent years, and

- is also a compulsory CPD requirement for new agents in their first year after becoming an agent.

Recommendation 11: NSW Fair Trading to work with key stakeholders, including representatives of real estate agents, landlords and domestic violence support organisations, to review and update guidance and information for all parties on the domestic violence termination provisions, particularly following changes arising out of this review.

Definition of domestic violence

Recommendation 12: Provide guidance for competent persons on behaviours that could be considered domestic violence, drawing on behaviours in the *Crimes (Domestic and Personal Violence) Act 2007* and relevant NSW Government domestic violence policy frameworks.

Property damage liability

Recommendation 13: Amend the *Residential Tenancies Act 2010* to provide that a tenant (and a co-tenant who is not the alleged perpetrator) is not liable for property damage if the damage occurred in the course of conduct that would constitute domestic violence. The meaning of ‘domestic violence’ should be considered further, whether by reference to the commission or apparent commission of an offence or an alternative threshold.

The Act should make it clear that, where liability is disputed, the Tribunal need only be satisfied on the balance of probabilities that the damage is likely to have occurred in the course of this conduct.

In deciding whether damage is likely to have occurred in the course of domestic violence, the Tribunal should be required to give weight to the existence of a Domestic Violence Order, family law injunction, certificate of conviction for a domestic violence offence or competent person declaration. This would not limit the evidence the Tribunal can consider.

Recommendation 14: Amend the *Residential Tenancies Act 2010* to require the landlord/agent to inspect the rental premises for property damage after a co-tenant’s tenancy has been ended and complete a dated assessment report that is shared with all vacating and current co-tenants/tenants, with similar requirements to section 29 of the Act.

The Act should also provide that the assessment of the property must be undertaken within a specified timeframe, the landlord can access the property, tenants can object to the report if necessary, and disputes be dealt with by the Tribunal.

Recommendation 15: NSW Fair Trading, in consultation with the NSW Department of Communities and Justice, provide additional guidance on the protections in sections 54 and 54A of the *Residential Tenancies Act 2010*, particularly as they relate to property damage liability, as part of broader education and awareness raising about the domestic violence provisions in the Act.

Database listing and personal information

Recommendation 16: NSW Fair Trading to review and update the information available to landlords, agents, database operators and the community about section 213A of the *Residential Tenancies Act 2010*, to improve awareness and understanding of section 213A. This should include information on making a complaint about a breach to Fair Trading (which is able to take enforcement action).

- Recommendation 17:** NSW Fair Trading to review the penalty in section 213A of the *Residential Tenancies Act 2010* and the penalty notice amount for section 213A in Schedule 4 of the Residential Tenancies Regulation 2019.
- Recommendation 18:** Amend the *Residential Tenancies Act 2010* to expand the current protection under section 213A to victim-survivors who have left their tenancy and can establish they had a right to end the tenancy using a domestic violence termination notice under Part 5 Division 3A of the *Residential Tenancies Act 2010*, even if they did not end their tenancy in that way.
- Recommendation 19:** Provide a process in the *Residential Tenancies Act 2010* to:
- allow a tenant to make an objection to a landlord/agent about being listed on a database in relation to a tenancy on the basis that they can rely on the proposed expanded protection under section 213A for that tenancy,
 - prohibit the landlord/agent from listing the victim-survivor on a database if they provide the required evidence set out in section 105C(2) of the *Residential Tenancies Act 2010* of being in circumstances of domestic violence during that tenancy,
 - require the landlord/agent to advise the database operator to remove a listing of a victim-survivor if the tenant has provided the evidence set out in section 105C(2) within 14 days of receiving the evidence, and to notify the tenant that they have done this,
 - require the landlord/agent to not disclose any such evidence and make it a penalty if it is disclosed (in the same way as section 105C(3)),
 - prohibit false or misleading competent person declarations with penalties for breach, in a similar way to Part 5 Division 3A,
 - require database operator/landlord/agent to advise a tenant whether they are listed or not, within 14 days of receiving a written request,
 - provide Fair Trading with the powers to make an order requiring a listing of a victim-survivor to be removed from a database if the victim-survivor produces the evidence listed in section 105C(2) of being in circumstances of domestic violence,
 - attach penalties for non-compliance with these requirements and with an order from Fair Trading,
 - provide that where a matter has already been dealt with by Fair Trading, a tenant may not re-apply to the landlord/agent directly under this proposed process,
 - prohibit the contents of a declaration by a competent person being reviewable in Tribunal proceedings, in a similar way to Part 5 Division 3A.
- Recommendation 20:** Increase the penalty for breach of section 105C(3) of the *Residential Tenancies Act 2010*, with the amount to be set following consultation with relevant stakeholders.
- Recommendation 21:** Add a penalty for breach of section 105C(4) of the *Residential Tenancies Act 2010*, with the amount to be set following consultation with relevant stakeholders.
- Recommendation 22:** As part of work on regulating the information that can be collected during the tenancy application process, the Government consider ways to limit information collected about a tenancy applicant's experience with domestic violence and whether their previous tenancy was terminated due to domestic violence.

Security and privacy

- Recommendation 23:** Amend the *Residential Tenancies Act 2010* as follows:
- Without limiting ‘reasonable excuse’ in section 71(1) or changing the current reasonable excuses listed in section 71(2) of the *Residential Tenancies Act 2010*, add a further specific ‘reasonable excuse’ to section 71(2) that a tenant or their dependent child is in circumstances of domestic violence as defined in section 105B(2)(b) or (c) of the *Residential Tenancies Act 2010* and the DVO or injunction (as relevant) prohibits a tenant or occupant from having access to the premises.
 - Amend section 72(2) of the *Residential Tenancies Act 2010* to also provide that section 72 does not require a copy of a key or other opening device or information to be given to a person who is prohibited from having access to the residential premises by such a DVO or injunction.
- Recommendation 24:** Without limiting ‘reasonable excuse’ in section 71(1) or changing the current reasonable excuses listed in section 71(2) of the *Residential Tenancies Act 2010*, add a further specific ‘reasonable excuse’ to section 71(2) that:
- the perpetrator is not a tenant of the premises,
 - the changing of the lock or other security device is necessary to prevent a domestic violence offence that a tenant believes on reasonable grounds is likely to be committed against them or their dependant, and
 - the tenant ensures co-tenants are not excluded from the premises and are provided with a key or other opening device or information.
- Recommendation 25:** Amend the *Residential Tenancies Act 2010* to require tenants to use a locksmith or qualified tradesperson to change locks or other security devices if they are relying on a ‘reasonable excuse’ to do this without the landlord’s consent.
- Recommendation 26:** NSW Fair Trading should review and update guidance to landlords, agents and tenants on sections 71 and 72 of the *Residential Tenancies Act 2010*, including the requirements for providing a copy of a key or other opening device to the landlord if a lock has been changed or added by the tenant.
- Recommendation 27:** NSW Fair Trading to provide guidance to landlords, agents and tenants on the installation of security cameras, including on the interaction between requirements under the *Residential Tenancies Act 2010* and Residential Tenancies Regulation 2019 and the *Surveillance Devices Act 2007*.
- Recommendation 28:** The *Residential Tenancies Act 2010* be amended to include a requirement to seek consent to publish photos or visual recordings of the exterior of a rented premises, including any outdoor area or backyard, if a tenant’s possessions are able to be discerned. This could include, but is not limited to, through a window, or in the form of outdoor furniture, equipment, toys or motor vehicles.
- Recommendation 29:** Amend the *Residential Tenancies Act 2010* to make it clear that a tenant’s consent to publish photographs or visual recordings of the interior or exterior of the premises in which the tenant’s possessions are visible needs to be obtained in writing each time before a publicity campaign to sell or lease the property is commenced, to allow for any change in the tenant’s circumstances.

Also provide a requirement that copies of proposed photographs and recordings need to be provided to the tenant, at the landlord's cost, with the request for consent.

Recommendation 30: Amend the *Residential Tenancies Act 2010* to provide for a tenant to be given reasonable notice of a landlord's/agent's intention to take photographs or visual recordings of the interior or exterior of the premises for the purposes of advertising the premises for sale or lease and a reasonable opportunity to move their possessions, whether or not they have consented to the landlord's/agent's entry.

A landlord or agent should also be required to store and dispose of any such photos or recordings securely, except for those published with the tenant's consent or with authorisation from a relevant Tribunal order (for example, in the context of the Tribunal finding consent has been unreasonably withheld).

Recommendation 31: Amend section 55A(3) of the *Residential Tenancies Act 2010* to make it clear that a tenant can reasonably withhold consent to the publication of photos or visual recordings of either the interior or exterior of the premises that show their possessions under section 55A if they or their dependent child are in circumstances of domestic violence as set out in section 105B(2) of the *Residential Tenancies Act 2010*, or were in the circumstances described in sections 105B(2)(a) or (d) of the *Residential Tenancies Act 2010* during a previous tenancy.

Recovery of bond share

Recommendation 32: Amend the *Residential Tenancies Act 2010* to ensure the Tribunal has explicit power to:

- make orders in bond disputes between co-tenants to require co-tenants to pay to a departing tenant an amount equal to their entitlement to the rental bond, consistent with section 174 of the Act,
- for the purposes of these orders, allow the Tribunal to determine co-tenants' shares of the bond based on the contribution of each co-tenant, or if there is no evidence of what that contribution was, on the basis of equal shares,
- order that where a victim-survivor is not liable for property damage, they be paid their share of the bond minus any amounts owing, and
- with the consent of the victim-survivor, allow an authorised representative to act on their behalf under these provisions of the Act.

Recommendation 33: Amend the standard form residential tenancy agreement in the Residential Tenancies Regulation 2019 to provide a mechanism for the amount of bond paid by each co-tenant to be recorded for a shared tenancy.

Recommendation 34: Amend the Change of Shared Tenancy Arrangement form to capture data on whether a change to co-tenancy arrangements is due to a domestic violence termination notice.

Victim-survivor staying home and terminating the perpetrator's tenancy

Recommendation 35: NSW Fair Trading to work with the NSW Department of Communities and Justice to improve awareness and education among tenants, victim-survivors, landlords and agents about existing programs established to support domestic violence victim-survivors, including, for example, Staying Home Leaving Violence, Integrated Domestic and Family Violence Services, Financial Counselling, and the Victims Support Scheme.

Tribunal processes

Recommendation 36: As part of the broader review of the role of the Tribunal in tenancy disputes being undertaken by the Department of Communities and Justice, that consideration be given to the feedback to and findings of this review and to opportunities to better support tenants in cases involving domestic violence.

Education, training and guidance

Recommendation 37: NSW Fair Trading undertake a comprehensive campaign to raise awareness about the operation of the *Residential Tenancies Act 2010* provisions for tenants in circumstances of domestic violence, underpinned by education, training and updated guidance materials for relevant parties to the process. This campaign will:

- promote the protections available to tenants in circumstances of domestic violence,
- assist all parties involved in the process to better understand their rights, roles and obligations, and
- explain any changes to the legislation arising from the review, if these are implemented prior to the campaign.

Section 1 – Introduction

1.1 The NSW *Residential Tenancies Act 2010*

In NSW over one third of residents are renters. Renting has become the fastest growing tenure type in Australia, climbing from 25 per cent of households in 1981 to 31 per cent today, with most renters residing in the private rental market.

NSW has the largest rental market in Australia. Over 32.6 per cent of households in NSW are occupied private rental dwellings,¹ and over 4.6 per cent of NSW households are living in social housing (including public, community and Aboriginal Housing).² This represents over two million people in rental homes, with over 940,000 rental bonds held, and around 620,000 landlords.

In NSW, the relationship between landlords and tenants is governed by the *Residential Tenancies Act 2010* (the RT Act) and the Residential Tenancies Regulation 2019 (the RT Regulation).

These laws establish the rights and responsibilities of both landlords and tenants in residential tenancies in NSW. The RT Act and Regulation aim to provide a framework for fair and transparent rental arrangements, and cover matters such as:

- rent payments
- bond requirements
- property maintenance
- termination of leases, and
- dispute resolution.

The RT Act is administered by the Minister for Better Regulation and Fair Trading, with the provisions covering social housing jointly administered with the Minister for Housing.

The Role of Fair Trading

NSW Fair Trading aims to ensure a fair and safe marketplaces for goods, services, and homes in NSW. It focuses on protecting and empowering renters and consumers, supporting businesses and property providers to operate within a framework of fairness and transparency, and maintaining fair trading practices across various industries.

Fair Trading is working to deliver a fair, quality and affordable rental market for tenants and landlords through law reform, education, compliance and enforcement. NSW Fair Trading's responsibilities include:

- providing information and guidance for tenants, landlords and agents about their rights and responsibilities under the Act
- educating consumers and raising awareness to help the public understand rental laws and avoid common issues
- promoting fair and transparent leasing practices
- oversight of the rental bond system, including administering bond lodgement and refunds,
- proactively monitoring compliance with residential tenancies laws, investigating complaints and breaches,
- issuing penalty notices and taking appropriate action against unlawful practices, and

¹ Australian Bureau of Statistics (2021) *Census All person Quickstats*, ABS Website (<https://www.abs.gov.au/census/find-census-data/quickstats/2021/1>).

² Roth, L. and Gilyana, D. (2023) Social and affordable housing shortages., Parliament of New South Wales.

- regulation of real estate agents and property managers through the *Property and Stock Agents Act 2002*.

The NSW Civil and Administrative Tribunal (the Tribunal) is empowered to make decisions and orders in relation to disputes between tenants and landlords under the RT Act, providing a critical impartial escalation point to resolve disputes.

1.2 Domestic violence in NSW

Domestic violence is a serious problem affecting millions of lives across Australia. Data from the latest Australian Bureau of Statistics' (ABS) 2021-22 Personal Safety Survey³ (released in March 2023) highlighted that:

- an estimated 8 million Australians (41%) have experienced violence since the age of 15
- approximately 1 in 4 women and 1 in 8 men have experienced violence by an intimate partner or family member.

A further breakdown of this data showed that in NSW an estimated 1.1 million women (37%) have experienced physical and/or sexual violence since the age of 15. An estimated 794,100 women in NSW (25%) have experienced violence, emotional abuse or economic abuse by a cohabiting partner since the age of 15.

Domestic and family violence is the leading cause of homelessness in Australia, and was the leading cause of presentations to specialist homelessness services (SHS) in NSW in 2024. In 2023–24 in NSW, 67,900 people were assisted by specialist homelessness services. Of those, 31% were experiencing domestic and family violence. Ensuring support for victim survivors in the rental market is essential to preventing homelessness, promoting housing security, and fostering safer communities.

1.3 Overview of the domestic violence provisions in the *NSW Residential Tenancies Act 2010*

Tenants who are victim-survivors of domestic violence have specific rights under NSW residential tenancy laws. Around one third of NSW households rent⁴, which further underscores the importance of having adequate protections for tenants who may be facing domestic violence.

New protections for domestic violence victim-survivors were added to NSW rental laws in February 2019. One of the key changes allowed tenants experiencing domestic violence to end their tenancy immediately without any penalty.

Under these changes, victim-survivors of domestic violence can end their tenancy immediately in order to escape violence, without having to pay a break fee or give the usual notice for ending a lease.

To end a tenancy because of domestic violence, a person must give the landlord a domestic violence termination notice and attach evidence that they are experiencing domestic violence. Acceptable evidence can be a:

- certificate of conviction for a domestic violence offence;
- family law injunction;
- provisional, interim or final Domestic Violence Order; or
- declaration made by a 'competent person' in the set form that the person, or their child, was a victim of domestic violence during the tenancy.

³ <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>

⁴ <https://www.abs.gov.au/census/find-census-data/quickstats/2021/1>

The RT Act allows victim-survivors of domestic violence to obtain a declaration from a competent person to use as evidence of domestic violence because some people may not want to contact the police or go through a Court process.

There are a range of professionals who are authorised 'competent persons' who can give a person a declaration. These professionals include doctors, persons registered as a social worker with the Australian Association of Social Workers (AASW) and an employee of a Government agency that provides services relating to child welfare, among others.

The RT Act also provides for victim-survivors to stay in the rental property if they wish to. They can do so by applying to the NSW Civil and Administrative Tribunal (Tribunal) to become a tenant under the residential tenancy agreement when a perpetrator's tenancy is terminated because of a final apprehended violence order. Other protections include:

- a ban on listing on a tenancy database those tenants who leave a tenancy due to domestic violence,
- not holding tenants responsible for damage committed during a domestic violence offence by another person,
- supporting tenants who are victim-survivors of domestic violence to maintain their safety and security by allowing them:
 - to refuse consent to the publishing of photographs or videos of their rental property, and
 - to change, remove or add a lock after a domestic violence perpetrator is banned from accessing the premises by an apprehended violence order.

1.4 National Cabinet's *A Better Deal for Renters*

In August 2023, National Cabinet agreed to *A Better Deal for Renters* to strengthen renters' rights. The commitments agreed to include protections for tenants experiencing domestic violence.

National Cabinet agreed that tenancy laws should enable tenants to:

- end agreements without penalty and with a streamlined process and evidence,
- change the locks and make security improvements without the landlord's permission, and
- have their name removed from databases due to property damage caused by family or domestic violence.

Jurisdictions also agreed to consider further actions to protect tenants who are victim survivors of domestic or family violence, such as applying to remove a perpetrator from the tenancy.

The RT Act in NSW already provides for these protections for tenants experiencing domestic violence.

Section 2 – The Statutory Review

2.1 Requirement for review of domestic violence provisions

Under section 105I of the RT Act, the responsible Minister is required to conduct a statutory review of the domestic violence provisions three years after they commence. NSW Fair Trading initiated the statutory review in 2022.

The statutory review is an opportunity to assess whether the domestic violence protections are working as intended, and if improvements are required to better protect victim-survivors of domestic violence.

2.2 Consultation

On 20 October 2022, an issues paper for the statutory review of the domestic violence provisions in the RT Act (Issues Paper) was published on the NSW Government's Have Your Say website at <https://www.haveyoursay.nsw.gov.au/dv-rental-laws-review>. The public consultation closed on 2 December 2022.

The survey questions and the Issues Paper sought feedback on whether the legislative provisions are working adequately and whether there is scope for improvement that can help further strengthen protections for victim-survivors of domestic violence.

Specifically, questions were asked on the following topics:

- Ending a tenancy due to domestic violence
- Competent person declaration
- Giving the domestic violence termination notice
- Confidentiality
- Impacts on co-tenants and occupants
- Limits on liability for damage to rental property
- Repayment of rental bond
- Security of domestic violence victim-survivors in a rental property
- Role of the Tribunal.

Submissions

The review received 20 written submissions, including from the following stakeholders:

- Australian College of Nursing
- Australia's National Research Organisation for Women's Safety
- Cat Protection Society of NSW
- Domestic Violence NSW
- Legal Aid NSW
- Marrickville Legal Centre
- NSW Department of Communities and Justice
- Real Estate Institute of NSW
- Redfern Legal Centre
- St Vincent de Paul Society NSW
- Tenants' Union of NSW
- The Law Society of NSW
- Women's Legal Service NSW.

The NSW Ministry of Health (MOH) did not provide a submission but provided informal feedback to NSW Fair Trading at the time of the public consultation.

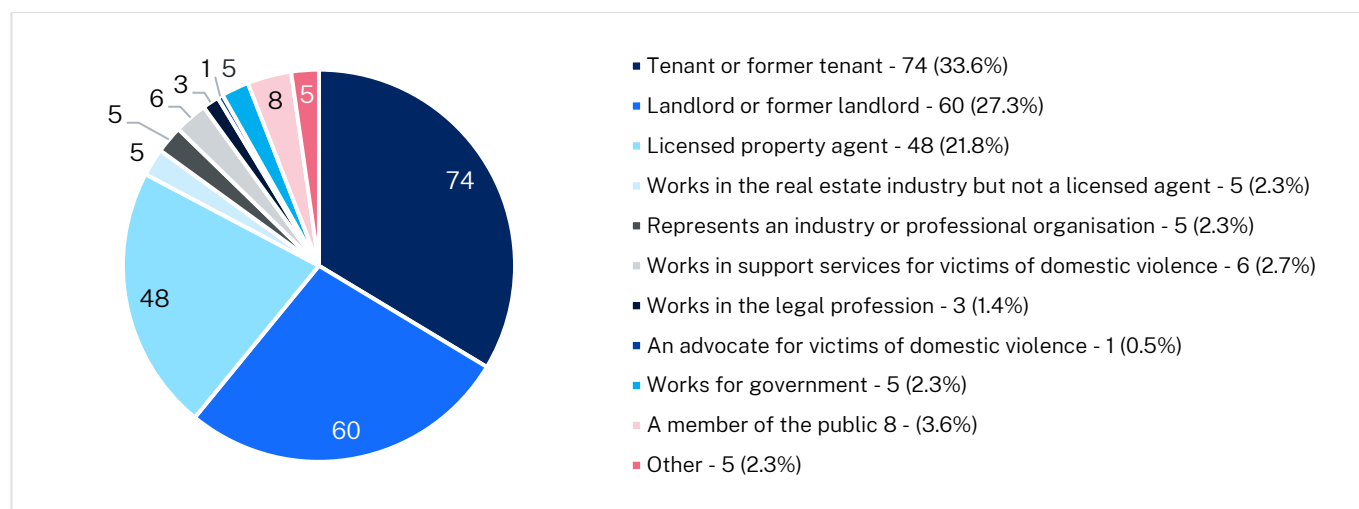
Online poll and survey

The Have Your Say website for the public consultation included a quick poll and a survey that stakeholders could complete online.

The quick poll asked whether participants knew the NSW rental laws have special provisions to support victims of domestic violence end their tenancy more easily. There were 163 responses to the quick poll question. 113 quick poll respondents (69%) were aware of the domestic violence provisions and 50 respondents (31%) were not aware of the provisions.

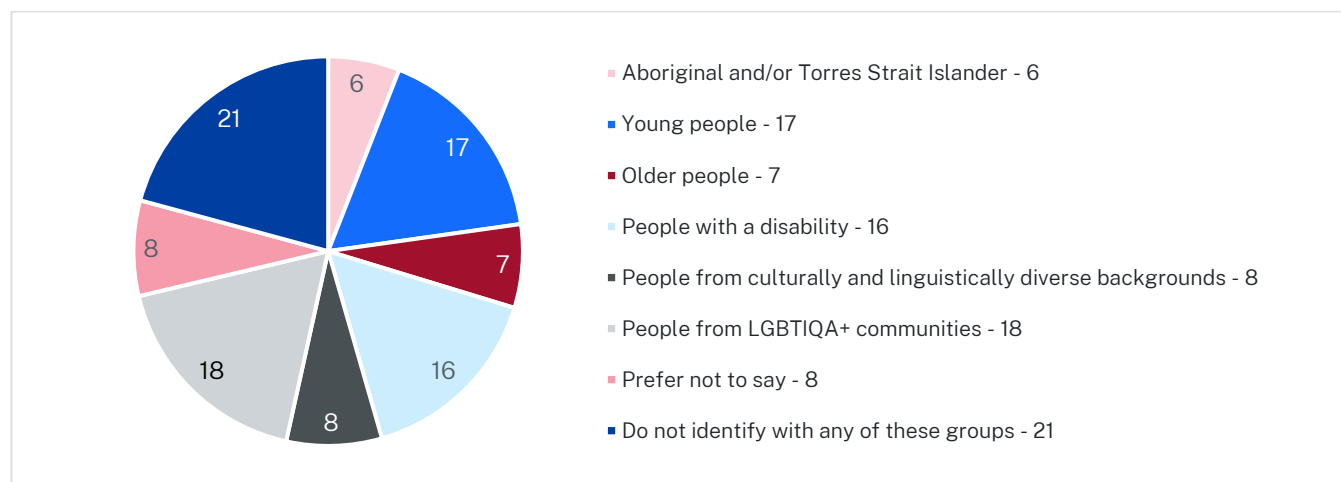
The review received 220 responses to the online survey. Survey respondents were asked to select the group that best described themselves. Figure 1 shows a breakdown of the group selected by the 220 survey respondents:

Figure 1: Group the 220 respondents selected to describe themselves



Survey respondents were also asked to indicate if they identified with certain demographic groups. Respondents could select more than one type of group. Figure 2 below shows a breakdown of the responses from the 74 respondents who described themselves as a 'tenant or former tenant'.

Figure 2: Groups the 74 'tenant or former tenant' survey respondents identified with



Survey respondents were also asked whether they had lived experience with domestic violence. 219 survey respondents answered this question – 126 (57.5%) said yes and 93 (42.5%) said no.

Further stakeholder consultation

In addition to analysing the written feedback to the public consultation, Fair Trading undertook extensive targeted consultation with relevant government and non-government stakeholders on issues arising as part of the statutory review and reform proposals.

Key government stakeholders consulted include the Department of Communities and Justice including Homes NSW, the Tribunal, MOH, Legal Aid NSW, NSW Police, Multicultural NSW, the Information and Privacy Commission NSW, and the NSW Ageing and Disability Commission.

Targeted consultation with non-government stakeholders included a roundtable with domestic and family violence sector representatives, Aboriginal legal services, other legal services, and

advocates for people with disability, for migrants/refugees and for tenants. A roundtable was also held with property provider stakeholders as well as meetings with other key industry representatives.”.

Roundtable with stakeholders from the domestic and family violence sector and tenancy advocates

On 21 October 2024, the Rental Commissioner and the Women’s Safety Commissioner co-hosted a roundtable attended by key stakeholders in the domestic and family violence and tenancy advocacy sectors. The purpose of the roundtable was to seek further feedback from the sector on how the domestic violence provisions in the RT Act are working, and any specific barriers for tenants who are victim-survivors, or their dependents, to access the provisions.

Stakeholders who attended the roundtable included:

- Domestic Violence NSW
- Women's Legal Service NSW
- Tenants’ Union of NSW
- The Law Society of NSW
- Wirringa Baiya Aboriginal Women’s Legal Service
- Aboriginal Legal Service
- Marrickville Legal Centre
- Redfern Legal Centre
- Mudgin-Gal Aboriginal Women’s Centre
- St Vincent de Paul Society
- Women’s and Girls Emergency Centre (WAGEC)
- People with Disability Australia
- Australia’s National Research Organisation for Women’s Safety (ANROWS)
- YWCA Australia
- Lucy's Project
- The Northern Centre
- Settlement Services International.

Roundtable and meetings with property provider stakeholders

Consultation was also undertaken with relevant industry stakeholders, including engagement with representatives from the Community Housing Industry Association, the Real Estate Institute of NSW and several real estate agency franchises, including:

- Laing & Simmons
- Bresic Whitney
- Ray White Group
- Harcourts
- LJ Hooker

Consideration of feedback and other information for the review

NSW Fair Trading has carefully considered all submissions, survey responses and other relevant feedback received from stakeholders during the statutory review. Fair Trading’s consideration and this report on the review have also been informed by relevant research, data, and analysis as indicated in the report. This review represents the outcome of this process.

The review has considered whether the existing legislative framework for protecting tenants, or their dependents, who are victims of domestic violence is working as intended, and if improvements are required to better protect victim-survivors of domestic violence. The review makes recommendations where changes may be required to improve the operation of the provisions or supporting policy and processes.

Section 3 – Review findings and recommendations

3.1 Competent persons

3.1.1 Current provisions

The term ‘competent person’ is defined under the RT Act. A competent person is authorised to provide a declaration that a tenant was a victim of domestic violence by the relevant domestic violence offender during the current tenancy. This declaration can be relied upon by a tenant as evidence to end a tenancy due to domestic violence under Part 5 Division 3A of the RT Act.

The current list of competent persons is set out in section 105A of the RT Act as:

- (a) a registered health practitioner within the meaning of the *Health Practitioner Regulation National Law (NSW)*, but only if the health practitioner is registered under Division 1 or 2 of Part 7 of that Law,
- (b) a person registered as a social worker with the Australian Association of Social Workers (AASW),
- (c) an employee of a government agency that provides services relating to child welfare,
- (d) an employee of a non-government agency in receipt of government funding to provide services relating to —
 - (i) domestic violence or sexual assault, or
 - (ii) refuge or emergency accommodation,
- (e) a person approved by the Commissioner of Victims Rights under the *Victims Rights and Support Act 2013* to provide approved counselling services for the purposes of that Act,
- (f) a person prescribed by the regulations.

3.1.1.1 Health Practitioners under the RT Act

Health practitioners in the first category above may be registered to practise in any of the following health professions:

Aboriginal and Torres Strait Islander health practice	Occupational therapy
Chinese medicine	Optometry
Chiropractic	Osteopathy
Dental	Paramedicine
Medical	Pharmacy
Medical radiation practice	Physiotherapy
Midwifery	Podiatry
Nursing	Psychology

If each health practitioner group is counted as a separate category, there are 21 categories of ‘competent person’ currently under section 105A of the RT Act.

When the domestic violence reforms first started in February 2019, only medical practitioners were authorised as ‘competent persons’. In November 2019, the NSW Parliament passed an amendment that expanded the definition of a competent person to the current list. This expanded list started in December 2020. The competent person declaration form prescribed in the RT Regulation was also amended at that time to accommodate the expanded list.

3.1.1.2 Competent Person Declaration

A competent person who gives a declaration that a tenant, or their child, is a victim of domestic violence must, in the course of their professional practice, have consulted with:

- that tenant, if they are the victim, or
- the tenant's dependent child, if the child is the victim (section 105C(5)).

If the competent person forms the view, based on that consultation, that the tenant or their dependent child is a victim of domestic violence perpetrated by a 'relevant domestic violence offender' during the current tenancy, they may provide a declaration to that effect. This must be in the prescribed form. The current prescribed form for a competent person declaration is in Schedule 3 of the RT Regulation. NSW Fair Trading has made online versions of the form available⁵.

A competent person is under no legal obligation to provide a declaration – it is voluntary.

The RT Act prohibits the contents of a competent person declaration being reviewable in any proceedings before the Tribunal (section 105F). This is primarily aimed at protecting victim-survivors of domestic violence who use a declaration to end their lease, and competent persons, from being cross-examined in proceedings about the contents of declarations, which can be highly sensitive and put victims' safety at risk.

In addition, the RT Act prohibits any person from using or disclosing any document, or any information contained in any document, attached to a domestic violence termination notice (DVTN), except in accordance with Part 5 Division 3A of the RT Act, unless the person is permitted or compelled by law to disclose it (section 105C(3)). The maximum penalty for breach of this provision is 20 penalty units (\$2,200).

In providing a competent person declaration, it is an offence for that person to provide information, or do any other thing, knowing that it is materially false or misleading (section 105H). It is also an offence for a tenant to give a competent person information they know is materially false or misleading for the purposes of a competent person declaration. The current maximum penalty for these offences is 100 penalty units (\$11,000), imprisonment for 2 years, or both.

3.1.1.3 Other jurisdictions

Under Queensland's and Western Australia's residential tenancy laws, there have been processes similar to competent person declarations since at least 2021⁶. The Northern Territory's, South Australia's and the Australian Capital Territory's residential tenancy laws have included a similar process since 2 January 2024⁷, 1 July 2024⁸ and 10 December 2024⁹ respectively.

The persons who can currently provide the evidence equivalent to a competent person declaration in these other Australian jurisdictions are:

- **Queensland** – Aboriginal and Torres Strait Islander health practitioners, medical practitioners, midwives, nurses, occupational therapists, and psychologists; persons eligible for membership of the AASW; refuge or crisis workers; domestic and family violence support workers or case managers; an Aboriginal and Torres Strait Islander medical service; solicitors.
- **Western Australia** – medical practitioners; psychologists; social workers (as defined in the *Mental Health Act 2014* (WA)); police officers; person in charge of a women's refuge; person in charge of an Aboriginal legal, health or welfare organisation; an officer authorised for that purpose by their CEO under the *Children and Community Services Act 2004* (WA); a family support

⁵ <https://www.nsw.gov.au/housing-and-construction/rules/making-a-domestic-violence-declaration-to-end-a-tenancy#toc-completing-a-declaration-form>

⁶ Section 71AB(2) *Residential Tenancies Act 1987* (WA) commenced on 15 April 2019. In Queensland, their process was introduced as a temporary measure under the *COVID-19 Emergency Response Act 2020* (Qld) in 2020 and made permanent by the insertion and commencement of section 308B in the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) and section 25A in the *Residential Tenancies and Rooming Accommodation Regulation 2009* (Qld) in 2021.

⁷ Sections 4A and 92A *Residential Tenancies Act 1999* (NT) and clause 9A *Residential Tenancies Regulations 2000* (NT)

⁸ Section 85D *Residential Tenancies Act 1995* (SA) and regulation 19B *Residential Tenancies Regulations 2010* (SA)

⁹ Section 46D *Residential Tenancies Act 1997* (ACT) and Part 4 *Residential Tenancies Regulation 1998* (ACT)

worker employed under an agreement under section 15 of the *Children and Community Services Act 2004* (WA).

- **South Australia** – health practitioners; social workers; legal practitioners; a person employed or engaged by a domestic and family violence support service or a sexual abuse support service.
- **Australian Capital Territory** - Aboriginal and Torres Strait Islander health practitioners, medical practitioners, midwives, nurses, and psychologists; a person with a social work qualification that provides eligibility for membership of the AASW; anyone employed or engaged by a not-for-profit entity receiving funding from the Territory to provide a service in relation to family violence, sexual assault, a refuge or other emergency accommodation for people in crisis, or children or young people, including their families; employees of the Territory providing a service in relation to child welfare; the Aboriginal and Torres Strait Islander Children and Young People Commissioner; a member of the Human Rights Commission; for a declaration made in relation to a tenant with a dependent child or in relation to the dependent child – a person who is a mandated reporter.
- **Northern Territory** – medical practitioners; psychologists; social workers with a qualification endorsed or accredited by the AASW; police officers; Australian legal practitioners; persons in charge of a domestic violence support service.

Victoria's and Tasmania's residential tenancy laws do not currently include a process comparable to competent person declarations.

The review also notes that one of the proposals agreed at the National Cabinet meeting on 16 August 2023 in relation to 'A Better Deal for Renters' was to allow tenants experiencing domestic or family violence to end tenancy agreements without penalty and with a streamlined process and evidence, for example, with a declaration by a prescribed professional, such as, a doctor or support service worker.

3.1.2 Consideration of issues and recommendations

3.1.2.1 Definition of competent person – expansion or reduction of list?

Evidence of use of competent person declarations

There is limited data available on the number of domestic violence termination notices (DVTNs) used by tenants who are domestic violence victim-survivors since the reforms started in February 2019. This is due to limited data collection on the use of domestic violence terminations or matters relating to DFV heard by the Tribunal. It is therefore difficult to accurately assess what types of evidence are used to support DVTNs, and the use of competent person declarations as one form of evidence for those terminations.

The results of the NSW Fair Trading end of tenancy survey¹⁰ provide some limited information about the use of competent person declarations for domestic violence terminations. The end of tenancy survey is a voluntary survey of tenants and landlords (or their agents) about the reasons why a residential tenancy agreement has ended, based on the legislation in force at the time.

Data from the survey for the period August 2021 to April 2025 shows that of the 447 domestic violence terminations recorded by the survey, only 3 respondents (1%) used a certificate of conviction as a form of evidence for the DVTN and none of the respondents used a family law injunction. Of the remaining responses citing domestic violence as the reason the tenancy ended:

- 253 terminations (57%) used a Domestic Violence Order, and
- 191 terminations (43%) used a declaration from a competent person.

As this survey is voluntary and self-reported, the number of domestic violence terminations is expected to be higher than suggested by these results. However, the data provides some insight into the usage of each type of acceptable evidence available to end a tenancy in circumstances of domestic violence.

¹⁰ <https://www.nsw.gov.au/housing-and-construction/renting-a-place-to-live/ending-a-residential-tenancy/end-of-tenancy-survey>

The end of tenancy survey results do not indicate which type of competent persons provided declarations where these were used. However, Domestic Violence NSW (DVNSW), Tenants' Union of NSW (TUNSW) and Women's Legal Service NSW (WLSNSW) surveyed 70 domestic violence victim-survivors or their advocates in October – November 2022. The results of this survey indicated:

- Over 44% of survey respondents used a competent person declaration for a DVTN. Most survey respondents (51%) reported using an apprehended domestic violence order (ADVO) as evidence and no respondents reported using a certificate of conviction or a family law injunction as evidence.
- Where a declaration by a competent person was used, the majority were made by a domestic and family violence or sexual assault worker (43%), followed by a General Practitioner (17%), refuge/emergency accommodation worker (15%), social worker (9%) and victims services counsellor (4%).
- 75% of survey respondents said it was not difficult to find a competent person, but 25% either did not know whether it was difficult or had difficulty finding a competent person.¹¹

DVNSW suggested in its submission that these results show that earlier changes made to the RT Act to expand the list of competent persons beyond General Practitioners have been critical for enabling victim-survivors to end a tenancy due to domestic violence. These results are indicative only and not at a scale that can be relied upon as a comprehensive representation.

Feedback about changes to the current list of competent persons

The Issues Paper for the review sought feedback on whether the current list of competent persons remains appropriate. It noted some stakeholders had suggested adding certain further groups to make the process more accessible, especially for victim-survivors who may not come into regular contact with mainstream services. The Issues Paper noted the following types of workers from services receiving government funding as possible additions to the list of competent persons:

- disability advocate/support workers
- community access workers
- homelessness or housing workers
- tenancy workers or tenant advocates/solicitors
- workers from Aboriginal corporations registered by the Office of the Registrar of Indigenous Organisations.

Overall, there was strong support in stakeholder feedback to the review for maintaining the current competent person declaration option and the current competent person list, and for adding further groups of competent persons to the current list to improve accessibility. This support was particularly strong from stakeholders such as DVNSW, WLSNSW, TUNSW, the Law Society of NSW (Law Society), Legal Aid NSW (Legal Aid) and the NSW Department of Communities and Justice (DCJ).

Australia's National Research Organisation for Women's Safety's (ANROWS') submission noted a recent ANROWS study suggested that the current definition of 'competent person' captures the support services accessed by the majority of domestic violence victim-survivors, with the most commonly accessed services being health services, then specialist services and then justice services. Less commonly accessed services were housing and financial services and other community services.

ANROWS also suggested barriers for certain groups should be considered in relation to the definition, for example, Aboriginal and Torres Strait Islander people, and migrants who can have trouble with communication or language and access to information.

Several submissions (DVNSW, WLSNSW, TUNSW) suggested all of the groups listed in the Issues Paper should be added to the competent person definition. Other submissions (such as, Law Society) supported adding some of these groups but not others. Some submissions (such as DCJ, Legal Aid,

¹¹ DVNSW's submission

Law Society, the Australian College of Nursing (ACN), Marrickville Legal Centre (MLC), St Vincent de Paul Society NSW (SVdP)) suggested alternative or additional groups that could be added.

The Law Society supported the addition of workers providing certain specialist services (such as homelessness and disability support workers), tenant advocates or solicitors, and workers from registered Indigenous corporations, although they suggested conducting targeted consultation with Indigenous stakeholders to potentially identify other appropriate Indigenous organisations.

The Real Estate Institute of NSW (REINSW) suggested that the current list is sufficient, but it would not object to further expansion of the list to include the groups listed in the review Issues Paper. However, it did not support the inclusion of tenant advocates, suggesting that they may not be considered a 'qualified field' like some of the other proposed additional categories, and there is a risk they may not be sufficiently impartial due to the nature of their role.

Some of the survey response feedback received by the review did not support the current competent person list and suggested this evidence option, or some groups on the list, should be removed. Some of these responses raised concerns about the qualifications of some of the groups to assess and identify domestic violence and the risk of misuse of competent person declarations. Most of the survey respondents who answered questions about the evidence that can currently be attached to a DVTN were generally supportive of competent person declarations being available¹². However, more survey respondents who answered the question about whether the list should be further expanded answered no rather than yes, but 26% were not sure¹³.

Findings of the review and recommendations

The review has considered all feedback and finds there is a strong argument for maintaining competent person declarations as a form of permitted evidence for domestic violence terminations and for the current definition of competent person. There is no cause to remove any of the current categories from the list of competent persons.

Some stakeholders have provided feedback about clarifying the wording or scope of some of the current competent person categories – this is discussed in section 3.1.2.2 below.

Generally, submissions to the review supported further groups along the lines of those listed in the Issues Paper, except for tenant advocates, although there was support for tenant solicitors. Some stakeholders (such as DCJ, Legal Aid, Law Society, ACN, MLC and SVdP) have suggested some additional or alternative groups that could be considered.

Some stakeholders (MOH, Law Society) suggested that the list of any additional groups be finalised after consultation with relevant stakeholders, including representatives of the proposed additional groups.

Legal Aid NSW suggested the addition of registered financial counsellors as they are a reasonably frequent touch point for domestic violence victim-survivors, especially those experiencing financial abuse. They noted financial counsellors often support people experiencing domestic violence, both before and after fleeing violence, and provide advocacy for them with creditors.

Inclusion of police in the list of competent persons was not supported by NSW Police, which noted that this would go beyond police officers' law enforcement responsibilities. Officers can already apply for an apprehended domestic violence order (ADVO) if they consider a person to be in need of protection and ADVOs may be submitted as evidence to support domestic violence termination notices. The review supported this approach and does not recommend police officers be added as competent persons.

The review finds there is a strong argument for adding further appropriate groups to the list of competent persons to improve access to this evidence option. This is especially important for certain

¹² In response to a question as to whether any changes are needed to the current list of evidence that can support a domestic violence termination notice, out of 215 responses, 35% said yes, 43% said no and 22% did not know. In response to a question as to whether any persons should be removed from the current list of competent persons, out of 194 responses, 36% said yes, 41% said no and 24% were not sure.

¹³ In response to a question as to whether anyone else should be added to the list of competent persons, out of 194 responses, 27% said yes, 47% said no and 26% were not sure.

groups who may have difficulty with access, such as Aboriginal and Torres Strait Islander people, migrants or people with limited English, people with a disability, people who are experiencing homelessness, and people living in regional or remote areas.

The expansion could include the following additional groups, subject to further consultation:

- authorised employees of a government agency or a government-funded non-government agency that provides services directly to adults with disability or older people in relation to their safety and welfare,
- authorised employees of Aboriginal corporations, such as those registered by the Office of the Registrar of Indigenous Corporations, or employees of Aboriginal and Torres Strait Islander legal, health, housing or welfare organisations that receive relevant government funding,
- authorised employees of migrant/refugee organisations that receive government funding for legal, health, housing or welfare services to migrants, refugees and people from non-English speaking backgrounds,
- financial counsellors registered with the Financial Counsellors' Association of NSW,
- solicitors,
- authorised employees of government housing and homelessness services or non-government housing and homelessness services that receive relevant government funding or support and/or are accredited by DCJ.

The review recommends further consultation be undertaken with relevant organisations to finalise the details of how the new categories of competent person should be defined, including ways to ensure that only those with the appropriate training, or skills and experience are included.

The review proposes to implement this recommendation through an amendment to the RT Regulation.

Recommendation

1. Amend the Residential Tenancies Regulation 2019 to expand the list of competent persons to include additional appropriate categories in order to improve access to competent person declarations, especially for tenants with a disability, Aboriginal or Torres Strait Islander peoples, tenants who are migrants, refugees or have limited English, or who are living in rural or remote areas.

Further consultation with relevant organisations will be required to finalise the details of how the new categories of competent person should be defined, including ways to ensure that only people with relevant expertise and authority in those organisations can act as competent persons.

3.1.2.2 Definition of competent person – amendments to current categories

Since the changes to the list of competent persons in 2019, a range of feedback has been received about the scope of the different categories.

For example, there has been feedback that section 105A(d) should be expanded to include employees of a government agency providing services relating to domestic violence or sexual assault, and refuge or emergency accommodation, in addition to employees of non-government agencies providing these services. This is supported by the review, as the review notes that both non-government and government agencies provide these services and may be supporting tenants to flee circumstances of domestic violence during their tenancy.

MOH's feedback to the review suggested further clarity is needed on the meaning of 'an employee of a government agency that provides services relating to child welfare'. MOH suggested it is not clear whether it applies to all staff in the agency or just persons directly involved in child welfare.

The review agrees that the category 'an employee of a government agency that provides services relating to child welfare' should be clarified. The guidance on the current competent person

declaration form is that it means a child protection worker employed by a NSW government agency. In further consultation, MOH suggested 'child protection worker' could be too limiting in terms of the agencies and workers captured. MOH suggested this category could instead be amended to 'an employee of a government agency providing services to children and young people and their families directly in relation to child welfare and/or in relation to child abuse and neglect'.

The review recommends that this category be amended as suggested by MOH to provide more clarity as to the workers and agencies included in this category and ensure appropriate government employees providing relevant services to children and their families are able to provide competent person declarations.

Some feedback also noted that the category of an employee of a non-government agency in receipt of government funding to provide services relating to domestic violence or sexual assault or refuge or emergency accommodation, suggests that all employees of these non-government organisations could provide a competent person declaration. In order to ensure that only employees in relevant roles or with the relevant skills can make competent person declarations, the review recommends that the category be limited to authorised employees, with consultation on the drafting to finalise whether the term 'authorised' should refer to employees authorised by the Chief Executive or equivalent or should be limited in some other way. Likewise, the recommended extension of the category in section 105A(d) to government agency employees and amendment to section 105A(c) discussed above should also be limited to 'authorised employees', with consultation to finalise the employees captured by that term.

The review recommends that 'authorised employees' for the purposes of these competent person groups be prescribed by the regulations. This will allow for further consultation on who should be 'authorised employees' and provide for more flexibility to make changes to the employees captured than if they were specified in the RT Act.

Although not specifically raised in stakeholder feedback, the review also recommends clarifying the current wording of the category 'a social worker registered with the Australian Association of Social Workers'. The Australian Association of Social Workers (AASW) does not offer a 'registration' procedure for social workers, other than for use of a trademark. The guidance provided on the competent person declaration form is that this category means a social worker who is a current member of the AASW, other than a student member.

The review also received feedback that government departments, such as MOH, often use social workers on the basis that they are eligible for membership with the AASW, rather than requiring them to be members. Expanding the category to include these social workers would ensure other social workers with appropriate qualifications are captured. As noted in section 3.1.1.3 above, Queensland, the Australian Capital Territory and the Northern Territory include a similar category in their residential tenancy laws.

The review therefore recommends that the social worker category be amended to social workers who are a member of, or eligible for membership with, the AASW other than a student member.

The review also recommends that the current guidance provided about the categories, including the guidance on the competent person declaration form, be reviewed and updated as appropriate. Both the categories and the guidance about them should be as clear as possible and assist both competent persons and tenants to understand who is able to provide competent person declarations.

Recommendation

2. Amend section 105A(d) in the competent person definition to include an authorised employee of a government agency providing services relating to domestic violence or sexual assault, and refuge or emergency accommodation, in addition to authorised employees of non-government agencies in receipt of government funding to provide these services. Enable the regulations to prescribe the meaning of 'authorised employees'.
3. Clarify the scope of the groups identified in the existing definition of competent persons under section 105A of the *Residential Tenancies Act 2010* in the following way:
 - Amend 'a person registered as a social worker with the Australian Association of Social Workers' in paragraph (b) to '*a social worker who is a member of, or eligible for membership with, the Australian Association of Social Workers other than a student member*'.
 - 'An employee of a government agency that provides services relating to child welfare' be amended to '*an authorised employee of a government agency providing services to children and young people and their families directly in relation to child welfare and/or in relation to child abuse and neglect*'. Enable the regulations to prescribe the meaning of 'authorised employees' for this category.
4. NSW Fair Trading to review and update (as appropriate) guidance about the competent person categories, to assist competent persons, tenants and industry to understand who is permitted to provide competent person declarations.

3.1.2.3 Competent person declarations – the prescribed form and other procedural requirements

Schedule 3 of the RT Regulation¹⁴ prescribes the form that a declaration by a competent person must take. Several submissions (Legal Aid, REINSW, DCJ, MOH) provided feedback about the form.

Submissions proposed certain changes to the form, including:

- making the language as plain English as possible (DCJ);
- adding a qualifier to the reference to consultation with a dependent child to indicate that it should only occur if applicable and appropriate (DCJ), having regard to the child's age and maturity and taking a trauma-informed approach;
- ensuring supporting documentation requirements remain simple and that any changes should not make the process of providing evidence more complex or restrictive (MOH);
- updating the form (and any supporting guidance) to provide competent persons with more information about what is and is not required of them, including that their declaration is not reviewable by the Tribunal and they will not be required to give evidence in any subsequent Tribunal proceedings (Legal Aid).

In relation to guidance on the declaration form and more generally, REINSW recommended that NSW Fair Trading compiles a comprehensive guide, linked in the declaration form, which includes scenarios and best practice protocols to help competent persons complete the form.

Some stakeholders also provided general feedback about the form during consultation when the form was developed in 2020. Legal Aid's suggestions included making the form easier to read and

¹⁴ See <https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2019-0629#sch.3>. Downloadable declaration forms are available here: <https://www.nsw.gov.au/housing-and-construction/rules/making-a-domestic-violence-declaration-to-end-a-tenancy#toc-completing-a-declaration-form>

complete by generally shortening it and using more plain English language and terms, and they compared it to the comparable Queensland form¹⁵.

DCJ suggested that consideration should be given to including plain English explanations or providing references to information in an accessible format in the form. DCJ also suggested enabling online form submission and digital signatures for the declaration form.

The review notes that the prescribed competent person declaration form in New South Wales is longer than the equivalent forms in Western Australia¹⁶ and Queensland. Any changes to simplify or shorten the form would need to consider the need for certain requirements or information to be addressed in the form under NSW residential tenancy laws.

The review recommends that the prescribed form for a competent person declaration be reviewed and, if appropriate, amended with a view to making it simpler, easier and faster to complete. Consideration should also be given to any guidance on the form, particularly for competent persons, to ensure it is clear and assists understanding of the process and what is required. If the form is to be updated, Fair Trading will also investigate opportunities to enhance the digital functionality of the form to support these improvements.

Recommendation

5. NSW Fair Trading to review and amend (as appropriate) the prescribed competent person declaration form, with the aim of making it shorter, simpler and easier to complete and understand, and ensure it contains adequate guidance for competent persons.

3.1.2.4 Competent person declarations – misleading or false information

Submissions provided mixed feedback on the current provisions and penalties in the RT Act for giving false or misleading information relating to a competent person declaration (section 105H).

There was overall support (for example, Legal Aid, DCJ and ANROWS) for these provisions and penalties as a safeguard against misuse of the competent person declaration, including by domestic violence perpetrators. These stakeholders considered the current provisions and penalties to be appropriate and sufficient. Legal Aid's submission cautioned against increasing the penalties in section 105H as this may deter competent persons from providing declarations at all.

REINSW raised concerns in its submission that it is unclear what steps a party can take where a declaration form or other evidence has apparently been misused. REINSW suggested further clarity should be provided on what recourse is available to co-tenants, landlords and third parties where the information in the declaration or other evidence supporting a DVTN is suspected of being false or misleading. They also suggested that NSW Fair Trading should implement clear investigatory and enforcement procedures to deal with false or misleading statements made in a declaration form or other evidence supporting a DVTN.

REINSW and other property industry stakeholders also provided feedback about situations they had heard about or experienced where two co-tenants under the same tenancy agreement both gave a DVTN to end their tenancy and named each other as the relevant domestic violence offender. The feedback suggested this scenario is rare but indicated that landlords and agents may be uncertain about what to do in that situation. Feedback from industry representatives suggested that some agents' approach would be to leave the matter to the Tribunal to resolve.

The RT Act makes it clear that naming a relevant domestic violence offender in a DVTN is only for the purposes of the processes in the Act and does not amount to a finding of criminality against that person. However, being named a relevant domestic violence offender in a DVTN could have other

¹⁵ Queensland's current comparable form can be found here: <https://www.rta.qld.gov.au/forms-resources/forms/forms-for-general-tenancies/domestic-and-family-violence-report>.

¹⁶ Western Australia's current comparable form can be found here: <https://www.commerce.wa.gov.au/publications/family-violence-report-evidence-form>.

impacts on a tenant, such as not being able to rely on the current exemption from liability for property damage occurring during a domestic violence offence, or the exemption from being listed on a residential tenancy database for breaches after the end of their tenancy.

The current maximum penalties for providing false or misleading information in breach of section 105H (noted above) are significant. In view of the overall support from stakeholders for those penalties to remain, the review does not propose any change to them.

In view of the feedback from REINSW and other industry stakeholders, the review proposes that NSW Fair Trading should provide more information about the steps a landlord can take if they suspect a competent person declaration is false or misleading or based on information that is false or misleading in breach of section 105H. The first step would be to make a complaint to NSW Fair Trading. Fair Trading can investigate the complaint and initiate any enforcement action if appropriate. This may include commencing proceedings for an offence, noting that section 202(1A) of the RT Act provides that proceedings for an offence under section 105H may only be instituted by or with the approval of the Director of Public Prosecutions.

Improving awareness of these steps may provide some reassurance to landlords and co-tenants/occupants about the process. Also, raising awareness about the complaints and enforcement process may help ensure the existing penalties are taken seriously and serve their purpose.

Section 105C(3) of the RT Act prohibits a person, including landlords and agents, from using or disclosing a competent person declaration attached to a DVTN, or information in it, except in accordance with Part 5 Division 3A of the RT Act, unless otherwise permitted or compelled by law.

To ensure it is clear to landlords, agents or other persons that they can make a complaint to NSW Fair Trading about a suspected breach of section 105H regarding a competent person declaration, notwithstanding the prohibition in section 105C(3), the review also recommends that the RT Act be amended to make this explicit.

Tenants are not required to give co-tenants or occupants the evidence they give to a landlord/agent with a DVTN, and landlords/agents receiving a DVTN from a tenant are restricted from sharing it by section 105C(3). If, despite these restrictions, co-tenants or occupants somehow access a copy of a competent person declaration attached to a DVTN, or information in it, they would also be bound by the confidentiality obligation under section 105C(3) as it applies to 'a person'.

Also, even though co-tenants would not be given the evidence attached to a DVTN, they may be able to infer that they are the relevant domestic violence offender identified in the evidence from the different rent consequences that apply to co-tenants for the two weeks after a DVTN is given under section 105D(3).

Co-tenants or occupants who believe they may have been misidentified as a perpetrator may choose to seek support from existing tenancy and domestic violence support services, and if they believe the contents of a competent person declaration may be false or misleading, may also contact Fair Trading.

The review also recommends that NSW Fair Trading improve guidance for tenants and competent persons about the provisions to help reduce the risk of abuse or misuse of the competent person declaration process, including by perpetrators.

If there is a more general dispute about a DVTN, a landlord can apply to the Tribunal for appropriate orders under section 111 of the RT Act. The contents of a competent person declaration are not reviewable in Tribunal proceedings due to the prohibition in section 105F. However, the Tribunal can consider if a DVTN was given in accordance with the procedural requirements in the RT Act, for example, whether evidence was attached to the termination notice or whether the notice was served as required by the RT Act. Apart from the feedback from REINSW, no stakeholder feedback raised any particular issue with the current processes for challenging a DVTN, and the review does not recommend introducing another process to challenge a DVTN.

Recommendation

6. Under the *Residential Tenancies Act 2010*, retain:
 - the current prohibition on competent person declaration contents being reviewable in Tribunal proceedings; and
 - the current provisions and penalties for knowingly providing false or misleading information for a competent person declaration.
7. Amend section 105C(3) of the *Residential Tenancies Act 2010* to explicitly provide that the prohibition in that section does not prevent a person from making a complaint to NSW Fair Trading about a breach or suspected breach of section 105H of the Act, or prevent them from providing Fair Trading with relevant evidence to inform inquiries regarding the complaint.
8. NSW Fair Trading to provide more information and guidance, where appropriate:
 - about reporting a suspected false or misleading competent person declaration to NSW Fair Trading, and
 - for tenants, competent persons and landlords about the laws regarding providing false or misleading information.

3.2 Requirements for a domestic violence termination notice (DVTN)

3.2.1 Current provisions

Under the RT Act, a tenant in circumstances of domestic violence is able to end their tenancy immediately without incurring any penalty or paying compensation to the landlord or other co-tenants. A tenant in these circumstances is required to give the landlord/agent a DVTN in accordance with the RT Act, attaching one of the permitted forms of evidence.

The list of acceptable forms of evidence is set out in section 105C of the RT Act:

- certificate of conviction for a domestic violence offence during the tenancy,
- provisional, interim or final DVO,
- family law injunction, or
- declaration that the tenant or their dependent child is a victim of domestic violence, made by a competent person in the prescribed form.

The DVTN must include a termination date. This can be on the same day as the notice is given or a date after the notice is given. Tenants are also required to give each of the co-tenants, if any, a termination notice, but are not required to attach any evidence to this notice. The termination notice can be delivered by a range of methods, including in person, in a mailbox at their home or business address, or sent by post or email¹⁷.

3.2.2 Consideration of issues and recommendations

The review sought feedback about the adequacy of the current acceptable forms of evidence and whether additional types of evidence should be included, any barriers relating to the use of DVTNs, and the overall experience of landlords, agents, tenants and co-tenants with such notices.

¹⁷ See section 223 of the RT Act “Service of notices and other documents”, which sets out how a document may be given to a person <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2010-042#sec.223>.

Use of different forms of evidence to support a domestic violence termination

As noted above, there is very limited data on the number and nature of domestic violence terminations under the RT Act since the provisions started in 2019.

The voluntary NSW Fair Trading end of tenancy survey collects limited data on the type of evidence used for a domestic violence termination. Care needs to be taken in extrapolating this data to all tenants in circumstances of domestic violence. Nonetheless, the data¹⁸ provides some insight into the usage of each type of acceptable evidence available to end a tenancy in circumstances of domestic violence. For tenants citing domestic violence as the reasons the tenancy ended, the majority (57%) used a Domestic Violence Order, and 43% used a competent person declaration.

This data suggests that almost no domestic violence terminations rely on a certificate of conviction or family law injunction as evidence for a DVTN. While not representative, this could suggest that there are barriers for victim-survivors in easily accessing these forms of evidence in a timely way to support a DVTN.

Some submissions to the review (MLC, DCJ) suggested allowing additional forms of evidence to support a DVTN, including those that may be more readily available to victim-survivors such as:

- medical certificates or other medical or hospital records relating to an injury caused by recent domestic violence,
- certificate of injury forms completed in support of a Victims' Services application which relates to ongoing domestic and family violence,
- police reports,
- statutory declarations by victims about ongoing domestic violence experience, or by a third party such as a relative, friend, neighbour,
- a letter or report from a medical professional or support worker (such as a social worker or community worker).

Other submissions (REINSW, Legal Aid) support retaining the current forms of evidence without further additions. Survey responses received by the review did not indicate major support for expanding the current list of permitted evidence. Only 3 out of 203 respondents who answered questions regarding 'giving the termination notice' suggested adding other types of evidence, such as a police report.

All of the current permissible forms of evidence under the RT Act are legal orders, except for the competent person declaration. The declaration may only be completed by a competent person as defined under the RT Act and in the prescribed form. Competent persons were originally included as they occupy a trusted position in the community and are considered relatively independent and reliable. Introducing forms of evidence that are self-reported or from people who are not independent of the tenant could diminish the legitimacy of the domestic violence termination notification process in some cases. However, the review notes that timing is generally critical in domestic violence situations, so providing additional sources of independent evidence may enable more victim-survivors to leave violence more quickly and easily.

The review undertook targeted consultation on the option of using other forms of independent evidence to support a DVTN including police reports, medical certificates or other medical or hospital records relating to an injury caused by domestic violence, certificate of injury forms completed in support of a Victims Services' application which relates to domestic violence, and victims support certificates.

The feedback did not support the use of these forms of evidence for various reasons. Stakeholder feedback noted concerns around the privacy and confidentiality of information, duplication of forms of evidence, that medical evidence provided may not demonstrate that an injury or other medical condition was due to domestic violence, and that victim support forms are very purpose-specific and may also contain confidential clinical or medical information about a person.

¹⁸ Data from the Fair Trading end of tenancy survey for the period August 2021 to April 2025. Also see discussion about the survey data in section 3.1.2.1 of this report.

In view of this feedback, the review does not recommend any amendment to allow other forms of evidence to support a DVTN. The expansion of the competent person list recommended by the review is aimed at improving accessibility, especially for more vulnerable tenants.

Serving a DVTN on co-tenant/s

The Issues Paper sought feedback on any difficulties faced by victim-survivors when giving a DVTN, as well as the experience of other parties to the tenancy agreement.

Feedback to the review raised significant concerns about the requirement for victim-survivors to serve a DVTN on each co-tenant (where applicable), especially if the co-tenant is the perpetrator. Several submissions (TUNSW, DVNSW, WLSNSW, ACN, MLC, Redfern Legal Centre (RLC), DCJ) noted that this requirement can lead to delays in a victim-survivor serving the notice, pose a risk to their safety by inciting further violence, and create further trauma.

In Queensland¹⁹, Western Australia²⁰ and the Australian Capital Territory²¹, a victim-survivor only need to serve their equivalent of a DVTN on the landlord. It is then the landlord's responsibility to advise any co-tenant/s. South Australia²² only requires the victim-survivor to serve their notice on the landlord and the Northern Territory²³ requires the victim-survivor to serve their notice on the landlord and any co-tenants.

Submissions to the review indicated strong support for ending the requirement for a victim-survivor to serve the DVTN on co-tenants (DVNSW, ACN, MLC, RLC, WLSNSW, TUNSW, Legal Aid, Law Society, DCJ).

TUNSW, WLSNSW and DVNSW jointly conducted a survey of renters who had ended their tenancy using a DVTN, to help inform their input to the review. This survey received 70 responses, 2 of which had ended their tenancy using a DVTN, and the remaining 68 had supported someone to end their tenancy²⁴. The survey findings include:

- the majority of respondents (82%) indicated the perpetrator had been a co-tenant. Many shared that the process of serving a DVTN was often fraught, and very stressful for the tenant.
"The client was terrified of what the perpetrator would do to her once he received the notice."
- in some instances respondents reported that the real estate agent had assisted the victim-survivor by passing on the notice to the co-tenant (perpetrator), while others reported they could not rely on the landlord or agent.²⁵

Some stakeholder submissions provided case studies of victim-survivors and their experiences (TUNSW, MLC, RLC, Legal Aid), particularly where victim-survivors had feared for their safety in serving a DVTN on a perpetrator co-tenant or used others such as family members to serve the notice. Other examples include failing to serve the DVTN on a perpetrator due to safety concerns, with the result that a landlord then sought arrears from the victim-survivor on the basis they believed she was still a co-tenant and liable for the rent.

¹⁹ Section 308C *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) requires the landlord to inform the vacating tenant of the following matters within 7 days of receiving the tenant's notice: whether the landlord proposes to apply to the tribunal to have the notice set aside and, if there are co-tenants, that the other tenants will be informed that the tenant is vacating the premises, when the other tenants will be informed the tenant is vacating the premises and that the tenancy agreement continues for the other tenants. Section 308E(3) requires the landlord to give written notice to any remaining co-tenants, after the vacating tenant's interest in the tenancy agreement ends, that the vacating tenant's interest in the agreement has ended and the agreement continues for the remaining tenants on the same terms. The notice must not be given to the remaining co-tenants earlier than 7 days after the vacating tenant's interest ends and no later than 14 days after their interest ends.

²⁰ Section 71AD *Residential Tenancies Act 1987* (WA) requires a landlord who receives a termination notice on the ground of family violence from a tenant under section 71AB to give a copy of the notice (but not the evidence accompanying the notice) to each co-tenant under the tenancy agreement within 7 days after receiving the notice from the terminating tenant.

²¹ Section 46F *Residential Tenancies Act 1997* (ACT)

²² Section 85D *Residential Tenancies Act 1995* (SA)

²³ Section 92A(1) *Residential Tenancies Act 1999* (NT)

²⁴ Also see discussion of this survey in sections 3.1.2.1, 3.4.2 and 3.7.2 of this report.

²⁵ TUNSW's submission

In the survey responses received by the review, only 34% of respondents agreed that the rules relating to giving a DVTN are working well. Reasons included the difficulty or safety risk for a tenant in giving notice to a co-tenant who is the perpetrator.

The review has considered all feedback and finds there is a need to improve the existing requirements for a tenant in circumstances of domestic violence to serve a DVTN on co-tenants.

The review recommends removing the requirement for a tenant to serve a DVTN on co-tenants. Instead, it is recommended that the landlord/agent should be required to inform any remaining co-tenant/s of the termination notice, using one of the methods outlined in section 223 of the RT Act (for example, email), and without sharing with any other person a copy or any details of the DVTN or the attached evidence. Section 105C(3) of the RT Act should be amended to make the prohibition on sharing the DVTN or evidence clear.

The review found strong support for this proposed change from domestic violence and tenancy advocate stakeholders in targeted consultation. However, both these and industry stakeholders strongly supported the provision of a clear, prescribed form and guidance for landlords/agents to assist them in understanding the need to keep information relating to the DVTN confidential.

While some industry stakeholders expressed concern about the agent's involvement in serving the notice on co-tenants, the review notes that requiring an agent to serve a notice does not require face to face contact and that notices are usually served by email or post. Further, the landlord/agent will need to interact with the perpetrator for other matters relating to the tenancy. The review also notes that research focusing on domestic violence and patterns of behaviour by perpetrators suggest that perpetrators are rarely indiscriminately violent²⁶. Many perpetrators are not violent in their workplaces, social networks or communities but choose when, where and how they use violence. Perpetrators are known to use tactics such as coercion and control specifically targeted at their victims. It is therefore considered critical, as much as is reasonable, to remove barriers to a victim-survivor escaping violence.

The review notes that SafeWork NSW and SafeWork Australia provide guidance on dealing with aggression, and that this may be a useful additional source of information for landlords and agents. The review recommends NSW Fair Trading consult further with SafeWork NSW to identify available resources and supports for landlords/agents.

The review considers it is also important to impose a timeframe for a landlord/agent to notify remaining co-tenants of the termination. Notice should be given in writing within 7 days after the date of termination in the DVTN, but not until after the termination date to ensure that the victim-survivor has time to leave before the notice is given to the perpetrator (if a co-tenant).

The RT Act requires the tenant to specify a termination date in the DVTN that is on or after the day on which they give the DVTN. If they are in a co-tenancy, their tenancy ends on the termination date once they serve the DVTN and vacate the premises. Some victim-survivors may choose to vacate the premises first and then give a DVTN, while others may give a DVTN first that specifies a future termination date and then vacate the premises by the termination date. This means a victim-survivor may not have vacated the premises at the time they give the DVTN to the landlord/agent and it may not be safe for co-tenants to be notified of the termination at that point. The termination date is the date specified by the victim-survivor for their tenancy to end. They also remain liable for rent until that date. It is preferable to allow the victim-survivor to have until the termination date to vacate before the landlord/agent notifies the co-tenants of the termination.

If the landlord/agent fails to notify the remaining co-tenants, this should not invalidate the DVTN.

The RT Act currently provides remaining co-tenants who are not the relevant domestic violence offender with a 'grace period' of 2 weeks, commencing on the date on which the DVTN is given. During this time, they are only liable for a share of the rent calculated in accordance with section 105D(4) of the RT Act. As landlords/agents will need to notify any co-tenants of a termination within

²⁶ Empirical studies in published journals such as "Violence against women" and "Journal of interpersonal violence" have consistently found that domestic violence is characterised by a pattern of coercive control and targeted aggression towards intimate partners and their dependents/family. Law enforcement and criminal justice records often indicate that domestic violence incidents are typically directed at family members or intimate partners, rather than the general public. This is evident in reports from police departments and studies examining the context of domestic violence arrests.

7 days of the DVTN termination date (and not earlier), the review recommends that the RT Act be amended so the rental grace period in section 105D(3) also runs from the termination date in the DVTN. This is also appropriate because a co-tenant giving a DVTN will remain liable for rent until the termination date.

With respect to the confidentiality obligations on landlords/agents regarding the documents attached to a DVTN, some feedback suggested explicitly giving a victim-survivor a right to claim compensation for a breach of these obligations, noting there are currently applicable penalties. The Tribunal currently has power under section 187 of the RT Act to make an order for compensation in certain circumstances, but it may not be clear that this power would extend to ordering compensation for a breach of the confidentiality obligations. A victim-survivor could potentially suffer damage if a landlord/agent breaches these obligations. The review recommends the RT Act be amended to make it clear the Tribunal has power to order compensation relating to such a breach.

The review notes that there have been some concerns raised about the form used by victim-survivors to notify co-tenants about the DVTN, particularly if one of them is the perpetrator. The form advises that the termination is due to a DVTN, and the concern raised is that victim-survivors may be reluctant to use the form due to fear that it will cause an escalation of violence.

However, as well as informing the co-tenant(s) of the termination of the tenancy, the form also informs the co-tenant(s) of their rights and obligations under the RT Act as a result of the termination. These rights and obligations are different depending on whether the co-tenant is the alleged perpetrator or another co-tenant. For example, a perpetrator co-tenant is required to pay the whole rent for the property, while other co-tenants are able to pay a share of the rent for two weeks while they look for another tenant or decide whether to apply to the Tribunal to terminate the tenancy.

The form is a legal document which has significant financial and legal implications for a co-tenant, and it is important for them to understand the legal basis on which the tenancy has been terminated and what their resulting rights and obligations are. The section of the form where co-tenants are notified of their different rights and obligations needs to clearly outline what these rights and obligations are and how they differ for the alleged perpetrator and for another co-tenant.

The review considered whether a different form could be given to an alleged perpetrator and other co-tenants. The review is concerned this would place an additional administrative burden on landlords/agents and could increase the risk of each co-tenant mistakenly being given the wrong form. Further, as co-tenants who share the rent payments, each co-tenant needs to be aware of the rent payment obligations of the other co-tenant.

The review has consulted with stakeholders on whether the title of the notice should be amended, for example, to simply refer to the relevant section of the RT Act rather than referring to it being a DVTN, and whether other changes should be made to the form to address the concerns around the reference to domestic violence in the form. In general, stakeholders were not concerned about the title or the reference to domestic violence in the form and agreed it was important for landlords/agents and co-tenants to know the ground of the lease termination and how it affects their legal rights and responsibilities.

The review therefore does not make any recommendation about changing the title of a domestic violence termination notice.

The review has also received feedback about whether a tenant's appointment of a perpetrator as their agent for a tenancy should be automatically revoked when the tenant gives a DVTN naming the tenant's agent as the relevant domestic violence offender. Section 221 of the RT Act allows a tenant to appoint an agent for certain purposes relating to their tenancy. It is not clear from information available to the review how frequently this section is used by tenants. However, the review considers it appropriate for the appointment to be automatically revoked under the RT Act if the tenant has given a DVTN naming the tenant's agent as the relevant domestic violence offender.

The review also received a suggestion that information on ending a tenancy due to domestic violence be included in the 'ending a tenancy' section on the Landlord Information Statement and Tenant Information Statement. NSW Fair Trading has updated those documents so there is information on ending a tenancy due to domestic violence in the 'ending a tenancy' section. The

Landlord Information Statement and Tenant Information Statement will be further reviewed and updated as necessary as part of implementation of the review's recommendations.

Recommendation

9. Improve the process of serving a domestic violence termination notice by:

- removing the requirement for a tenant in circumstances of domestic violence to serve a domestic violence termination notice on co-tenants,
- requiring the landlord/agent to advise each of the remaining co-tenant(s) individually in writing of the termination within 7 days after the termination date in the domestic violence termination notice, noting that if they fail to do so, this does not invalidate the notice,
- prohibiting the landlord/agent from advising the remaining co-tenants of the termination until after the termination date,
- developing a form and guidance for landlords/agents to use to carry out this requirement,
- specifically prohibiting the landlord/agent from forwarding a domestic violence termination notice and/or attached evidence to any remaining co-tenants,
- providing that the grace period when non-perpetrator co-tenant/s are only liable for a share of the rent runs for two weeks from the termination date,
- providing that if a tenant has appointed a person as the tenant's agent (section 221 of the *Residential Tenancies Act 2010*), this appointment is automatically revoked when the tenant gives a domestic violence termination notice to a landlord under section 105B(1) of the Act, if the tenant's agent is the relevant domestic violence offender named in the domestic violence termination notice,
- enabling the Tribunal to make an order for compensation due to loss or damage suffered by a person as a result of a breach of confidentiality by a landlord or agent regarding a domestic violence termination notice.

Awareness and understanding of the domestic violence termination process

Feedback to the review argued there is insufficient awareness and understanding of the domestic violence termination provisions among all parties (TUNSW, WLSNSW, DVNSW, Law Society), as well as the need to build workforce capacity and knowledge for all parties involved in DVTNs, including support workers and competent persons (ANROWS, DCJ).

Submissions have described circumstances in which an agent or landlord did not understand the DVTN process, resulting in threats to blacklist a tenant using a DVTN (TUNSW) or blacklisting the tenant (Law Society), or making a claim on some or all of a bond where the damage allegedly arose during a domestic violence offence (TUNSW), or demanding payment of a break lease fee (WLSNSW).

In the review survey, 12% of respondents were aware of situations where tenants using a DVTN were asked to pay a break fee or other fee for ending their tenancy early using a DVTN.

Feedback to the review (DVNSW, TUNSW, WLSNSW, Law Society) suggested introducing mandatory training for landlords and agents on the domestic violence provisions in the RT Act and the DVTN process, to improve understanding of the provisions and of victim-survivor and agent/landlord rights and responsibilities. These submissions suggested training should also provide general information about the nature and dynamics of domestic and family abuse and how this may impact on property matters.

ANROWS, in its submission, also supports workforce capacity building to ensure tenancy provisions are implemented as intended to protect the safety of victim-survivors. TUNSW also supports this,

noting that training and guidance for advocates and support workers in particular would be beneficial, as well as resources for the general community.

The joint survey by TUNSW, WLSNSW and DVNSW²⁷ found that while 61% of respondents reported the landlord/agent had been supportive/cooperative when the tenant served a DVTN, a significant number (33%) reported experiencing difficulties with the landlord/agent when using a DVTN to end the tenancy. This was particularly significant for tenants in regional NSW: 44% of real estate agents and landlords in regional NSW were reported to not be cooperative or supportive versus 18% in the Sydney metropolitan area.

In its submission, REINSW noted that it can sometimes be difficult for agents to navigate their way through what are often challenging situations: an agent can sometimes lack the necessary authority, experience and training. REINSW noted the dispute in these circumstances is between the tenants rather than between the tenant and the landlord, but it impacts on the landlord/agent. To provide additional professional guidance for its members, REINSW offers a Helpline service, and has seen an increase in calls seeking guidance on domestic violence matters.

The review notes that in July 2023, REINSW and NSW Fair Trading collaborated to develop a webinar for property agents on domestic violence in tenancies. This webinar explained the current provisions under the RT Act and discussed case studies applying the laws. The webinar also highlighted work led by a real estate agent in Maitland to develop collaborative partnerships with local domestic violence services. This is known as the “Domestic Violence Rapid Rehousing Partnership”²⁸. The aim of the partnership is to assist with rehoming victim-survivors in private rentals, accompanied by support from an allocated case worker, to improve outcomes for tenants, landlord/agents and the community. Agents also work closely with the case worker to identify other products and services available to the victim-survivor tenant. The webinar noted that the key to the program is access to the case worker for the duration of the tenancy. Work is now being undertaken with the support of REINSW, to educate other agents on the approach and support them in implementing similar initiatives.

Legal Aid recommended amending the RT Act to introduce a positive obligation on landlords and agents to inform a tenant of their right to use a DVTN, where the landlord or the agent becomes aware of domestic violence, including amending the Landlord Information Statement to reflect this. The review notes both the Landlord Information Statement and the Tenant Information Statement do already contain summary information about the rights of a tenant experiencing domestic violence, including a tenant’s right to end their tenancy immediately, without penalty, when they or their dependent child are in circumstances of domestic violence.

On balance, however, the review does not consider it appropriate to create a positive obligation on landlords/agents under the RT Act to inform tenants of the availability of the DVTN process if they are aware of possible domestic violence. This could place a victim-survivor at greater risk, particularly if a perpetrator became aware this information was provided to the victim, even if it had not yet been considered or actioned by the victim-survivor. Studies suggest that controlling and/or abusive behaviours of perpetrators can escalate in intensity or frequency immediately preceding, or after, separation²⁹.

The review recommends that a new topic be added to the continuing professional development (CPD) requirements for real estate agents that explains the provisions in the RT Act relating to tenants experiencing domestic violence, including the DVTN process, and the rights and responsibilities of all parties. The CPD should also provide general information about the nature and dynamics of domestic and family abuse. The review proposes that, at a minimum, in the year following the commencement of any changes arising from this review, that this CPD topic is made compulsory, with consideration being given to making it compulsory in subsequent years. The review also recommends it be included in compulsory CPD requirements for new agents in their first year.

²⁷ Also see discussion of this survey in sections 3.1.2.1, 3.4.2 and 3.7.2 of this report.

²⁸ For more information, see https://www.reinsw.com.au/Web/Web/Posts/Latest_News/201802/Helping_domestic_violence_victims.aspx

²⁹ Cox, P. (2016). *Violence against women: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012* (ANROWS Horizons: 01.01/2016 Rev. ed.). ANROWS, cited in ANROWS' submission

It is also proposed Fair Trading work with key stakeholders to review and update guidance and information on the domestic violence provisions in the RT Act for all parties. This should include updating the Landlord Information Statement and the Tenant Information Statement as necessary during implementation of the review's recommendations.

Fair Trading should also work with stakeholders to identify opportunities to provide webinars and information sessions as appropriate to ensure that there is improved understanding of the domestic violence provisions under the RT Act, including any amendments following review implementation.

Recommendation

10. NSW Fair Trading, in consultation with key Government agencies and stakeholders, develop a new continuing professional development course for real estate agents that:
 - explains the provisions in the *Residential Tenancies Act 2010* relating to tenants experiencing domestic violence, including the domestic violence termination process,
 - outlines agent/landlord rights and responsibilities, and the responsibilities of other parties,
 - provides general information about domestic violence,
 - is, at a minimum, included as part of the compulsory CPD requirements in the year following the commencement of any changes arising from the review, with consideration to be given to including it as a compulsory requirement in subsequent years, and
 - is also a compulsory CPD requirement for new agents in their first year after becoming an agent.
11. NSW Fair Trading to work with key stakeholders, including representatives of real estate agents, landlords and domestic violence support organisations, to review and update guidance and information for all parties on the domestic violence termination provisions, particularly following changes arising out of this review.

3.3 Definition of domestic violence

3.3.1 Current provisions

Under the RT Act, the term 'domestic violence' is not defined. The RT Act does define 'domestic violence offence' as having the same meaning as in the NSW *Crimes (Domestic and Personal Violence) Act 2007*³⁰ (CDPV Act) and 'family violence' as having the same meaning as in the Commonwealth *Family Law Act 1975*³¹ (Family Law Act).

Section 11 of the CDPV Act defines 'domestic violence offence' as:

an offence committed by a person against another person with whom the person who commits the offence has (or has had) a domestic relationship being:

(a) a personal violence offence, or

³⁰ See section 11, *Crimes (Domestic and Personal Violence) Act 2007*, <https://legislation.nsw.gov.au/view/html/inforce/current/act-2007-080#sec.11>

³¹ See section 4AB, *Family Law Act 1975*, <https://www.legislation.gov.au/C2004A00275/latest/text>

- (b) an offence (other than a personal violence offence) that arises from substantially the same circumstances as those from which a personal violence offence has arisen, or
- (b1) an offence under section 54D(1) of the *Crimes Act 1900*, or
- (c) an offence, other than a personal violence offence, in which the conduct that constitutes the offence is domestic abuse.³²

In this section, a personal violence offence (defined at section 4 of the CDPV Act³³) includes certain offences under the NSW *Crimes Act 1900* (Crimes Act) such as murder, conspiring to commit murder, sending documents containing threats to kill or inflict bodily harm, causing grievous bodily harm with intent, causing a dog to inflict grievous bodily harm or actual bodily harm, intentionally choking, suffocating or strangling a person, and assault occasioning actual bodily harm.

Section 6A of the CDPV Act now contains a statutory definition of ‘domestic abuse’. This definition provides that ‘domestic abuse’ is behaviour directed by one person against a person they have a ‘domestic relationship’ with that is:

- violent or threatening behaviour, or
- behaviour that coerces or controls the second person, or
- behaviour that causes the second person to fear for their own, or another person’s, safety or wellbeing.

The definition is also supported by an open list of examples of behaviour which may constitute domestic abuse, including coercion, sexually abusive behaviour, intimidation, economic or financial abuse, degrading or humiliating behaviour, or that causes death or injury to an animal.

‘Domestic abuse’, as defined in section 6A, is not a criminal offence under the CDPV Act. However, certain behaviours within ‘domestic abuse’ are criminal offences, for example, intimidation of a person by another person, stalking or physical or sexual assault.

In addition, certain behaviours that would be ‘domestic abuse’ may be an offence under section 54D(1) of the Crimes Act. Section 54D(1) makes it an offence for an adult to engage in a course of conduct against another person that consists of ‘abusive behaviour’ where:

- the adult and the other person are or have been ‘intimate partners’,
- the adult intends the course of conduct to coerce or control the other person, and
- a reasonable person would consider the course of conduct would be likely, in all the circumstances, to cause any or all of the following, whether or not the fear or impact is in fact caused—
 - (i) fear that violence will be used against the other person or another person, or
 - (ii) a serious adverse impact on the capacity of the other person to engage in some or all of the person’s ordinary day-to-day activities.

‘Abusive behaviour’ for the purposes of section 54D is defined in section 54F of the Crimes Act as behaviour that consists of or involves-

- (a) violence or threats against, or intimidation of, a person, or
- (b) coercion or control of the person against whom the behaviour is directed.

Section 54F sets out a non-exhaustive list of behaviours that may be ‘abusive behaviour’.

The Family Law Act defines family violence as:

violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family, or causes the family member to be fearful.

³² In this context, domestic abuse is defined in section 6A of the CDPV Act, <https://legislation.nsw.gov.au/view/html/inforce/current/act-2007-080#sec.6A>

³³ See section 4, *Crimes (Domestic and Personal Violence) Act 2007*, <https://legislation.nsw.gov.au/view/html/inforce/current/act-2007-080#sec.4>

This definition is followed by a non-exhaustive list of examples of behaviour that may constitute family violence.

3.3.2 Consideration of issues and recommendations

In order to prove that a tenant or their child is in circumstances of domestic violence under section 105B of the RT Act, the tenant must provide one of the following forms of evidence:

- certificate of conviction for a domestic violence offence during the tenancy
- provisional, interim or final DVO
- family law injunction, or
- declaration that the tenant or their dependent child is a victim of domestic violence made by a competent person in the prescribed form.

The first three pieces of evidence are based on legislation that contains a definition of domestic or family violence for the purposes of those orders. However, the fourth piece of evidence, the declaration by a competent person, does not contain a definition of domestic violence.

In the Issues Paper for the review, a definition for domestic violence was not specifically raised and only three submissions to the review made direct mention of this issue (ANROWS, RLC, DCJ).

Some submissions argued that a clear definition of ‘domestic violence’ under the RT Act would benefit all parties involved in a domestic violence termination process (RLC), noting that the range of other legislation and criminal offences referred to in the RT Act risks creating confusion for competent persons, property managers, support workers and the Tribunal.

Specifically, there was feedback that competent persons may not be aware of the kinds of behaviour which may constitute domestic violence, and that it is not clear whether a competent person needs to find that a domestic violence offence has been committed during the current tenancy in order to make a declaration (RLC).

DCJ noted that the definition of ‘domestic abuse’ inserted by the *Crimes Legislation Amendment (Coercive Control) Act 2022* (NSW) into the CDPV Act may provide useful additional guidance, particularly in the context of competent person declarations. DCJ suggested it may be beneficial to cross-reference or include this definition of ‘domestic abuse’ in the RT Act. DCJ also favoured consistency between any definition of domestic violence in the RT Act and the Crimes legislation. They noted there is no definition of domestic violence in the NSW Crimes legislation and it may be confusing to have one in the RT Act, whereas adopting the definition of ‘domestic abuse’ in the CDPV Act would provide consistency.

However, MOH noted the Crimes legislation definitions serve particular functions, such as, grounds for obtaining AVOs. MOH suggested that other definitions of domestic violence which are used for purposes other than criminal offences and are based on behaviours could be considered instead of adopting a legislative definition.

The review agrees that more guidance for competent persons about the meaning of domestic violence would be beneficial in assisting them to understand what is required for the purposes of providing a competent person declaration. However, there are different views among stakeholders on the definition that should be used for the purposes of the RT Act.

The review therefore recommends that NSW Fair Trading provide guidance for competent persons on behaviours that may constitute domestic violence for the purposes of completing a competent person declaration under the RT Act. The guidance should draw on relevant behaviours in the CDPV Act and NSW Government domestic violence policy frameworks, which may include, for example, the NSW Domestic and Family Violence Plan 2022-2027. The guidance should be developed in consultation with DCJ and other relevant stakeholders.

Recommendation

12. Provide guidance for competent persons on behaviours that could be considered domestic violence, drawing on behaviours in the *Crimes (Domestic and Personal Violence) Act 2007* and relevant NSW Government domestic violence policy frameworks.

3.4 Property damage liability

3.4.1 Current provisions

Under section 54 of the RT Act, a tenant is responsible for any act or omission by other people allowed on the premises that would be a breach of the residential tenancy agreement if done by the tenant (other than persons who have a right of entry without the tenant's consent).

There are two exceptions that remove liability if the act or omission is or results in damage to the property and occurred during the commission of a domestic violence offence. The exceptions have the same effect, but relate to different circumstances:

- section 54A relates to liability for another tenant breaching the tenancy agreement in co-tenancies, such as where the victim-survivor and perpetrator are both on the lease for the property and the perpetrator has a lawful right of entry because they are a co-tenant
- subsections 54(1A) and (1B) relate to liability in other cases, such as where the victim-survivor is a tenant and the perpetrator is not a co-tenant but is lawfully on the property as an occupant or guest.

Both provisions limit liability for the victim of the domestic violence offence and any co-tenant/s, provided they are not a relevant domestic violence offender named in a document attached to a DVTN for that tenancy agreement. The co-tenant must also be under the same tenancy agreement as the victim.

As noted in the previous section of this report, 'domestic violence offence' under the RT Act has the same meaning as in section 11 of the CDPV Act³⁴.

3.4.2 Consideration of issues and recommendations

The issues raised in stakeholder submissions about property damage liability can be broadly grouped into three key areas: the practical application of protections for victim-survivors from liability for property damage; the scope of the protections; and the impact on landlords. These are discussed in detail below.

A significant proportion of responses to the review survey were of the view that the property damage liability sections under the RT Act are not working well. Out of 204 responses:

- 25.5% said they were clear and working well,
- 25.5% said they were clear but not working well, or not clear but working well,
- 24% said they were not clear or working well, and
- 25% were not sure.

Responses to the review survey included a range of comments, particularly concerns about landlords having to bear the costs of property damage, difficulties with holding offenders liable for damage especially when they are not on the lease, the risk of the protections being misused, and domestic violence victims being held liable for damage despite the protections.

³⁴ See section 11, *Crimes (Domestic and Personal Violence) Act 2007*, <https://legislation.nsw.gov.au/view/html/inforce/current/act-2007-080#sec.11>

Although the feedback raised some concerns about the costs of repairing damage being borne by landlords where they could not recover them from the perpetrator or their insurance, the feedback was generally supportive of the principle underlying the current protections, that victim-survivors and other non-perpetrator co-tenants should not be liable for property damage resulting from a perpetrator's domestic violence. This was a key component of the domestic violence reforms, as highlighted in the Second Reading Speech.

However, the feedback to the review did highlight some practical issues with the current protections and suggestions for improvement.

Practical application of current protections

Several submissions suggested that some victim-survivors have had difficulty in practice in relying on the protections from liability for property damage resulting from a domestic violence offence under sections 54 and 54A of the RT Act. The feedback suggests that difficulties have been experienced both with landlords or agents not accepting that the tenant is covered by the protections and with the tenant not being able to establish that they are covered in matters being determined by the Tribunal (DVNSW, SVdP, RLC, Law Society, TUNSW, Legal Aid).

Stakeholder feedback (including DVNSW, Law Society, TUNSW, Legal Aid) suggests this may be due to the requirement in sections 54 and 54A that the damage occurred during commission of a domestic violence offence, and that this has been interpreted as requiring commission of an offence to have been proven to the criminal standard.

DVNSW's submission noted that a third of victim-survivors it surveyed (jointly with TUNSW and WLSNSW)³⁵ who had experienced property damage due to domestic violence were held liable for the damage. The submission refers to a Tribunal case where a tenant sought to rely on the property damage protections in the RT Act but was not successful. DVNSW suggested the reason why the tenant did not succeed in that case was because the perpetrator had not been convicted of a charge of malicious damage to the property. DVNSW suggested this should not be the level of proof required for the perpetrator to be liable for property damage.

TUNSW's submission noted that victim-survivors often experience considerable trauma before the Tribunal when required to prove they were not responsible for damage. A tenant before the Tribunal may seek to rely upon a range of evidence to establish entitlement to the liability exemptions, including AVOs, photographs and police records, and this has not necessarily been sufficient for a tenant to be successful.

Generally, stakeholders who raised these practical issues suggested that improving awareness, understanding and guidance about these protections and domestic violence generally may assist in addressing those issues. Some stakeholders (for example, Law Society) also suggested providing further guidance in the legislation as to the evidentiary requirements and/or having matters relating to these protections determined by Tribunal Members who specialise in domestic violence.

The review has found one Tribunal decision relating to the property damage protections under sections 54 and 54A from searching NSW Caselaw. In *Petrovic v Bluelone Pty Ltd atf Mark Hoffman Family Trust* [2021] NSWCATAP 364, the tenant sought to rely on the protection under section 54 in asserting that damage to the premises resulted from actions of her ex-husband during the commission of a domestic violence offence. From the published decision for the case, it appears the police charged the ex-husband with property damage some time after the incident, evidence of which was allowed in the Appeal. The Tribunal Appeal Panel accepted that the damage did occur during the commission of a domestic violence offence, but was not satisfied, on the evidence, that the ex-husband's actions caused the damage. It appears the evidence was unclear as to exactly how the damage came about and the nature of the damage.

Scope of current protections

Amendments to the scope and nature of the protections were also proposed by several stakeholders.

³⁵ Also see discussion of this survey in sections 3.1.2.1, 3.2.2 and 3.7.2 of this report.

MLC noted that it has had experience of victim-survivors receiving claims in relation to general property damage that has occurred after they have left the premises but before they terminated their tenancy. They suggested liability for such damage limits victim-survivors' ability to fully remove themselves from a violent situation and hinders recovery.

DCJ also suggested some victim-survivors may still be held liable for damage caused after they have left a property where they have not terminated their tenancy.

SVdP noted that liability for damage poses a challenge for victim-survivors who have fled violence and may be at greater risk of homelessness due to a bad reference or while they are still attempting to resolve disputes with a landlord about rental arrears or damage arising from the domestic violence situation. RLC also noted that fear of being held financially liable for leaving may in fact prevent victims from fleeing as they do not know how they will deal with the financial implications, placing them and their children at greater risk of harm.

In the joint survey by DVNSW, WLSNSW and TUNSW³⁶, 50% of respondents said there was damage to the property from domestic violence, and almost 36% said they were unable to persuade the landlord or the Tribunal that the victim-survivor should not be responsible for the cost of repairs³⁷.

RLC suggested that the scope of the protection in section 54A should be amended so it applies where the damage has occurred in 'circumstances of domestic violence' rather than the current requirement of 'during the commission of a domestic violence offence'.

DVNSW submitted that reform to these provisions is needed, and that the onus of proof should be placed on the alleged perpetrator or the landlord to show the damage was not caused by the alleged perpetrator.

REINSW's submission raised concerns about how property damage is defined, and potential difficulty differentiating property damage resulting from domestic violence and other damage, and what agents and landlords can rely on to make this determination. REINSW also raised concerns about landlords being able to recover costs for damage if the perpetrator is not a tenant and suggested that the Government establish a fund to compensate landlords who are left out of pocket due to damage caused in situations of domestic violence.

Proposed changes to current protections

The review has considered the issues raised by the feedback about the current scope of the limitation on liability under sections 54 and 54A (namely, damage to the premises that occurs during the commission of a 'domestic violence offence') and the practical difficulties experienced by some tenants in seeking to rely on the current protections.

The review considered the option of excluding a tenant from all liability for property damage if they end their tenancy using a DVTN or have the evidence required to use a DVTN. However, this would raise issues of fairness for landlords as it would exclude liability for all damage, whether or not caused by domestic violence. It would also increase the cost burden on landlords if they cannot recover from a perpetrator who is not a tenant or claim from their insurance. It could also have other consequences, such as increasing landlord insurance premiums.

The review proposes instead that the current protections in sections 54 and 54A should be amended to provide that a tenant (and a co-tenant who is not the perpetrator) is not liable for property damage if the damage occurred in the course of conduct that would constitute domestic violence. The meaning of 'domestic violence' for these provisions should be considered further, whether by reference to the commission or apparent commission of an offence or an alternative threshold. The Act should make it clear that, where liability is disputed, the Tribunal need only be satisfied on the balance of probabilities that the damage is likely to have occurred in the course of this conduct. In making its decision, the Tribunal should also be required to give weight to the existence of a Domestic Violence Order, family law injunction, certificate of conviction for a domestic violence offence or competent person declaration. This would not limit the evidence that

³⁶ Also see discussion of this survey in sections 3.1.2.1, 3.2.2 and 3.7.2 of this report.

³⁷ 33% said the victim-survivor was able to persuade the landlord or the Tribunal that they should not be responsible for the cost of repairs and 31% did not know.

the Tribunal can consider but may help to establish the likelihood that the damage was the result of domestic violence.

The review acknowledges that, where liability is disputed, this proposal would still require a victim-survivor tenant to satisfy the Tribunal that the damage occurred in the course of domestic violence. However, the lower evidentiary bar and the requirement to consider evidence that the tenant was in circumstances of domestic violence should make it easier to establish the exclusion from liability.

In the context of REINSW's suggestion for a Government fund to compensate landlords who cannot recover the costs of damage, the review notes that some landlord insurance products do cover damage caused by domestic violence. The review does not have access to data that would enable the modelling of the impact of the proposed changes on costs for landlords, but the changes would seem unlikely to result in widespread losses for landlords. A Government fund would also raise issues of how to prove the damage occurred in the course of domestic violence and is not recommended by the review.

To address the issue of damage that occurs after a victim-survivor leaves a property, the review proposes that if one co-tenant's tenancy is ended (whether due to domestic violence or any other reason) but other co-tenants remain in the property, the RT Act should require an inspection of the property by the landlord/agent to note any property damage existing at that time in a dated assessment report, which would be provided to all vacating and current co-tenants/tenants, with similar requirements to section 29 of the Act.

This would mean that a victim-survivor or other co-tenant who leaves the tenancy could use the inspection report as evidence of what damage existed at the time when they left, so that they could not be held liable for damage that occurred after they were no longer a tenant. Similarly, for a victim-survivor or other co-tenant who stays in the property when a perpetrator's tenancy is ended, the inspection could provide evidence that damage existed during the time when the perpetrator was a tenant, which can support a later claim that the damage was caused by the perpetrator's domestic violence, if proof is needed. The report could also be used as evidence during any dispute between co-tenants about paying out a share of the bond.

In relation to REINSW's feedback about defining 'damage' for the purposes of these sections, the meaning would appear to be sufficiently clear. Damage to the property is referred to in other sections of the RT Act and is not defined. The review is therefore not proposing to define 'damage' for the purposes of the limits on liability for property damage.

However, as part of broader education and awareness raising about tenancy terminations due to domestic violence and the other domestic violence provisions in the RT Act, the review recommends that NSW Fair Trading, in consultation with DCJ, develop further guidance on the protections in sections 54 and 54A of the RT Act, particularly as they relate to property damage liability, and any changes to the protections arising from this review.

Recommendation

13. Amend the *Residential Tenancies Act 2010* to provide that a tenant (and a co-tenant who is not the alleged perpetrator) is not liable for property damage if the damage occurred in the course of conduct that would constitute domestic violence. The meaning of 'domestic violence' should be considered further, whether by reference to the commission or apparent commission of an offence or an alternative threshold.

The Act should make it clear that, where liability is disputed, the Tribunal need only be satisfied on the balance of probabilities that the damage is likely to have occurred in the course of this conduct.

In deciding whether damage is likely to have occurred in the course of domestic violence, the Tribunal should be required to give weight to the existence of a Domestic Violence Order, family law injunction, certificate of conviction for a

domestic violence offence or competent person declaration. This would not limit the evidence the Tribunal can consider.

14. Amend the *Residential Tenancies Act 2010* to require the landlord/agent to inspect the rental premises for property damage after a co-tenant's tenancy has been ended and complete a dated assessment report that is shared with all vacating and current co-tenants/tenants, with similar requirements to section 29 of the Act.

The Act should also provide that the assessment of the property must be undertaken within a specified timeframe, the landlord can access the property, tenants can object to the report if necessary, and disputes be dealt with by the Tribunal.

15. NSW Fair Trading, in consultation with the NSW Department of Communities and Justice, provide additional guidance on the protections in sections 54 and 54A of the *Residential Tenancies Act 2010*, particularly as they relate to property damage liability, as part of broader education and awareness raising about the domestic violence provisions in the Act.

3.5 Database listing and personal information

3.5.1 Current provisions

Residential tenancy databases are used by landlords and their agents to find out rental history information about prospective tenants to help decide whether they wish to rent a property to them.

Part 11 of the RT Act contains certain restrictions and requirements relating to the listing of a person's personal information in a residential tenancy database. A person can only be listed in a tenancy database if:

- the person was named as a tenant in a residential tenancy agreement that has terminated or the person's co-tenancy was terminated, and
- the person breached the tenancy agreement, and
- because of the breach, the person owes the landlord an amount that is more than the rental bond for the agreement or the Tribunal has made a termination order, and
- the personal information identifies the nature of the breach and is accurate, complete and unambiguous.

In addition to these restrictions, section 213A of the RT Act prohibits a landlord or agent listing a tenant or co-tenant whose tenancy was terminated by using a DVTN.

Breach of section 213A is an offence, with a maximum penalty of 20 penalty units (\$2,200). This is comparable to other penalties in Part 11 of the RT Act. Breach of section 213A is a penalty notice offence, with the penalty amount currently set at \$1,100.

Part 11 of the RT Act also includes section 217 which gives the Tribunal power to make certain orders about the listing of personal information about a person in a residential tenancy database.

3.5.2 Consideration of issues and recommendations

The review survey feedback was mixed. There were 184 responses to a question about the prohibition on database listing and the confidentiality obligation relating to documents attached to DVTNs. Of these, 37% thought the rules were clear and working well, 16% thought they were clear but not working well or working well but not clear, 14% thought they were not clear or working well and 33% did not know.

The survey responses included a range of comments, particularly concerns about 'informal blacklisting', landlords and agents viewing and holding sensitive information relating to domestic

violence, agents not removing details from databases, and future landlords not having access to tenants' history because of the restrictions.

Compliance with section 213A

Some stakeholders indicated in their feedback (Law Society, TUNSW) that they are aware of instances where tenants who ended their tenancy using a DVTN were listed on a residential tenancy database, despite the restriction in section 213A.

When a tenant is placed on a residential tenancy database in a way that portrays them as undesirable tenants, this is known colloquially as 'blacklisting'³⁸.

To improve compliance with section 213A, stakeholders suggested considering mandatory training for landlords and agents on the relevant provisions in the RT Act (Legal Aid, Law Society).

The review recommends that NSW Fair Trading review the information available to landlords, agents and database operators about section 213A and consider possible ways of improving knowledge and understanding of that section. The review has made a recommendation (recommendation 10) about continuing professional development for real estate agents, including on the domestic violence provisions in the RT Act.

Raising awareness of the restrictions on listing among tenants and what tenants can do to object to, or remove, a listing in breach of the RT Act may also be helpful. Despite the feedback about non-compliance with section 213A, Fair Trading does not appear to have received complaints from tenants about their information being listed in a database in breach of section 213A.

As another way to improve compliance, some stakeholders also suggested increasing the current penalty for breach of section 213A (TUNSW, Law Society), whereas others, such as Legal Aid, indicated that they consider the current penalty for breach of section 213A appropriate.

Increasing the penalty may help deter non-compliance with section 213A, although it is difficult to gauge the level of non-compliance on the data currently available to Fair Trading. The penalty for breach of section 213A seems relatively low compared to some similar provisions in other Australian jurisdictions³⁹. The review recommends that the penalty in section 213A, as well as the penalty notice amount for breach of section 213A in Schedule 4 of the RT Regulation, be reviewed, along with the other penalties for breach of the tenancy database provisions.

Recommendation

16. NSW Fair Trading to review and update the information available to landlords, agents, database operators and the community about section 213A of the *Residential Tenancies Act 2010*, to improve awareness and understanding of section 213A. This should include information on making a complaint about a breach to Fair Trading (which is able to take enforcement action).
17. NSW Fair Trading to review the penalty in section 213A of the *Residential Tenancies Act 2010* and the penalty notice amount for section 213A in Schedule 4 of the *Residential Tenancies Regulation 2019*.

Expansion of database listing restrictions for victim-survivors of domestic violence

Several stakeholder submissions (DVNSW, WLSNSW, TUNSW, Law Society) suggested that the current restriction under section 213A should be extended to all tenants who are victim-survivors of domestic violence and in fact ended their tenancies due to domestic violence, even if they did not

³⁸ For example, see <https://www.choice.com.au/money/property/renting/articles/tenancy-databases-and-screening>

³⁹ For example, certain restrictions on listing information in a database under South Australia's residential tenancy laws include if an order has been made under section 89A(4)(d) prohibiting the listing on an application to terminate a tenancy due to domestic abuse. The current maximum penalty for breach of the section setting out these restrictions is \$35,000 (section 99F *Residential Tenancies Act 1995* (SA)).

use a DVTN. These stakeholders submitted that the current protection in section 213A is too narrow and does not assist a tenant who was in circumstances of domestic violence but did not end their tenancy using a DVTN for some reason, for example, because they were not aware of that right in the RT Act.

Submissions noted that this could help victim-survivors experiencing ongoing debt and homelessness, for example, because of debt they incurred due to property damage when in relationships involving domestic violence.

TUNSW suggested this issue could be addressed by expanding the protection in section 213A so it also applies to a tenant who had the right to end the tenancy with a DVTN, or by adding a further specific ground to section 217 to allow the Tribunal to order that a person's information not be listed in, or be removed from, a database if they were a victim of domestic violence during the tenancy.

Having considered this feedback, the review proposes that the protection in section 213A be expanded to prevent the listing on a database of tenants who had the right to end the relevant tenancy with a DVTN as they were in 'circumstances of domestic violence' within the meaning of section 105B(2) of the RT Act, but did not do so. This exemption will operate more fairly as it will focus on the domestic violence rather than whether or not the victim-survivor used a DVTN to end their tenancy.

Improving the process for victim-survivors to challenge proposed or existing listings

The current requirements in Part 11 of the RT Act relating to tenant databases mean that:

- A tenant who applies for a rental property must be notified and given certain information by the landlord/agent if the landlord/agent uses a tenancy database in considering the victim-survivor's application and finds information listed on the database about the tenant (section 211).
- A tenant must not be listed by a landlord/agent on a tenancy database unless they have given the tenant a copy of the proposed information and at least 14 days to make submissions objecting to the listing, which must be considered by the landlord/agent (section 213).
- If a tenant becomes aware that they have been listed in breach of the RT Act, they can advise the landlord/agent who listed them that the information listed is inaccurate, incomplete, ambiguous or out-of-date. The landlord/agent then has 7 days to notify the database operator how the information can be corrected.
- A tenant who is listed on a database can apply to the Tribunal for an order to amend/remove the listing. The Tribunal can make an order if the information included is inaccurate, incomplete, ambiguous or out-of-date, or if the Tribunal otherwise considers the listing is unjust in the circumstances, having regard to the reason for the listing, the tenant's involvement in acts/omissions that led to the listing, adverse consequences from the listing and any other relevant matter.

In the case of a victim-survivor who used a DVTN to end their tenancy, the landlord/agent would be aware of the DVTN and could not then propose to list the victim-survivor.

However, in other cases the landlord/agent may not be aware of the existence of domestic violence during the tenancy. Further, the requirement in section 213 to give the victim-survivor notice of a proposed listing would not apply if the landlord or agent could not locate the victim-survivor after making reasonable inquiries. This may occur if the victim-survivor is keeping their location confidential or is otherwise not contactable.

However, if that victim-survivor then applied for a rental property in NSW, a landlord/agent who found they were listed on a database would be obliged to inform them about the listing under section 211. They could then make an objection to the landlord/agent responsible for the listing at that point or apply to the Tribunal to have the listing removed.

In order to make the process as easy as possible for victim-survivors, it is proposed to expressly provide in the RT Act that if a victim-survivor provides a landlord/agent with the evidence set out in section 105C(2) of the RT Act to show that they were in circumstances of domestic violence during a tenancy, the landlord/agent is prohibited from listing them on a tenancy database. If the victim-survivor is already listed on a database for that tenancy, the landlord/agent would be required to

advise the database operator to remove the listing within 14 days of receiving the evidence and notify the victim-survivor that they have done so.

If the landlord/agent or the database operator does not comply, the tenant would be able to apply to NSW Fair Trading, which would be able to order that the listing be removed. The review proposes penalties should apply for breach of these obligations, so Fair Trading will also be able to take enforcement action for non-compliance by landlords, agents and database operators.

The RT Act should also provide that, where a matter relating to a listing has already been dealt with by Fair Trading, a tenant may not re-apply to the landlord/agent directly under this proposed process.

Giving these powers to Fair Trading would align with its compliance function and potentially avoid the victim-survivor having to apply to the Tribunal to have a listing removed.

The review also recommends that landlords/agents be prohibited from using or disclosing the evidence provided by victim-survivors for this purpose, in a similar way to section 105C(3) of the RT Act, with a penalty applying for breach. Prohibitions on the contents of a declaration by a competent person being reviewable in Tribunal proceedings and on false or misleading competent person declarations, similar to those in Part 5 Division 3A of the RT Act, should also apply.

The review received feedback that tenants can sometimes have difficulty finding out from landlords, agents or database operators whether they have been listed on a database, and that persons assisting or acting for victim-survivors have also had difficulty obtaining this information on behalf of their clients. Making these rights clearer and easier to exercise can help victim-survivors after they have left a domestic violence situation, when they are often dealing with many issues and may be reliant on domestic violence and other support services for assistance. To address these issues, the review recommends the RT Act be amended to require landlords, agents and database operators to advise tenants whether they are listed on a database or not, within 14 days of receiving a written request.

Recommendation

18. Amend the *Residential Tenancies Act 2010* to expand the current protection under section 213A to victim-survivors who have left their tenancy and can establish they had a right to end the tenancy using a domestic violence termination notice under Part 5 Division 3A of the *Residential Tenancies Act 2010*, even if they did not end their tenancy in that way.
19. Provide a process in the *Residential Tenancies Act 2010* to:
 - allow a tenant to make an objection to a landlord/agent about being listed on a database in relation to a tenancy on the basis that they can rely on the proposed expanded protection under section 213A for that tenancy,
 - prohibit the landlord/agent from listing the victim-survivor on a database if they provide the required evidence set out in section 105C(2) of the *Residential Tenancies Act 2010* of being in circumstances of domestic violence during that tenancy,
 - require the landlord/agent to advise the database operator to remove a listing of a victim-survivor if the tenant has provided the evidence set out in section 105C(2) within 14 days of receiving the evidence, and to notify the tenant that they have done this,
 - require the landlord/agent to not disclose any such evidence and make it a penalty if it is disclosed (in the same way as section 105C(3)),
 - prohibit false or misleading competent person declarations with penalties for breach, in a similar way to Part 5 Division 3A,

- require database operator/landlord/agent to advise a tenant whether they are listed or not, within 14 days of receiving a written request,
- provide Fair Trading with the powers to make an order requiring a listing of a victim-survivor to be removed from a database if the victim-survivor produces the evidence listed in section 105C(2) of being in circumstances of domestic violence,
- attach penalties for non-compliance with these requirements and with an order from Fair Trading,
- provide that where a matter has already been dealt with by Fair Trading, a tenant may not re-apply to the landlord/agent directly under this proposed process,
- prohibit the contents of a declaration by a competent person being reviewable in Tribunal proceedings, in a similar way to Part 5 Division 3A.

‘Informal blacklisting’

In addition to the prohibition on listing on a tenancy database, the RT Act contains confidentiality provisions relating to the information associated with a DVTN.

If a tenant ends their tenancy using a DVTN, section 105C(3) of the RT Act prohibits any person from using or disclosing a document referred to in section 105C(2) (or information in such a document) except in accordance with Part 5 Division 3A of the RT Act, unless the person is permitted or compelled by law to disclose the document or information.

Breach of section 105C(3) is an offence currently carrying a maximum penalty of \$2,200. This is also a penalty notice offence in Schedule 4 of the RT Regulation, with a prescribed penalty notice amount of \$1,100.

Section 105C(4) of the RT Act requires a person in possession of a document referred to in section 105C(2) to store and dispose of it securely. This subsection does not currently have a penalty for breach.

The *Property and Stock Agents Act 2002* and *Property and Stock Agents Regulation 2022* also impose some general, potentially relevant obligations on real estate agents. These include obligations to act honestly, fairly and professionally; to exercise reasonable skill, care and diligence; and not to use or disclose confidential information unless this use is authorised by the client or customer, or it is otherwise required by law.

Some stakeholders suggested reviewing and considering an increase to the penalty for breach of section 105C(3) of the RT Act (TUNSW, Law Society). The Law Society also suggested the obligation to keep documents attached to a DVTN confidential could be added as a term of the standard form tenancy agreement.

TUNSW noted the limited application of the *Commonwealth Privacy Act 1988* (Privacy Act) to landlords and agents. Some landlords and agents may have privacy obligations under this legislation, but those obligations are limited by the small business exemption that excludes organisations with an annual turnover of under \$3 million.

TUNSW’s submission also raised concerns about landlords or agents being able to ask a prospective tenant about their domestic violence circumstances.

There is limited data available on the level of any non-compliance with the confidentiality obligation in section 105C(3) of the RT Act.

The stakeholders who suggested reviewing and considering an increase to the penalty in section 105C(3) did not refer to any particular examples of non-compliance with this obligation, although they did refer to examples of ‘informal blacklisting’. ‘Informal blacklisting’ refers to informal information sharing between landlords or agents, which can lead to adverse rental outcomes and

discrimination against tenants⁴⁰. These stakeholders raised concerns about the need to protect tenants' personal information and privacy, particularly sensitive information attached to a DVTN that might place the safety of a tenant or others at risk.

The review notes that compared to the current penalties for breach of comparable obligations in Western Australia⁴¹ (\$5,000), Queensland⁴² (\$16,130), South Australia⁴³ (\$50,000) and the Australian Capital Territory⁴⁴ (\$3,200 for an individual or \$16,200 for a corporation), the current penalty for breach of section 105C(3) (\$2,200) is quite low.

The review also notes that the offence in section 105C(3) is currently a penalty notice offence with the penalty notice amount set at \$1,100.

Given the potential risks of a breach of the obligation in section 105C(3) for tenants and their dependent children, and possibly others such as competent persons, the review recommends the penalty in section 105C(3) should be reviewed and increased to an appropriate level to emphasise its importance and encourage compliance. The amount by which the penalty is increased should take into consideration the penalties for comparable obligations in other Australian jurisdictions as well as views of key stakeholders, including DCJ.

Although not raised in feedback to the review, the review has noted that no penalty for breach of the complementary obligation in section 105C(4) is currently provided in the RT Act. That section requires a person in possession of a document attached to a DVTN to store and dispose of it securely. Comparable provisions in Western Australia⁴⁵ and South Australia⁴⁶ do include a penalty for breach, currently \$5,000 and \$50,000 respectively. As secure storage and disposal of the sensitive documents attached to a DVTN is also important to protect tenants giving such a notice, the review recommends a penalty be added to section 105C(4) so that this obligation is taken seriously and compliance action can be taken if a breach is identified. The penalty should be set at a similar level to the penalty in section 105C(3).

The review has considered a suggestion by the Law Society that the obligations under section 105C to keep documents attached to a DVTN confidential could be added as a term to the standard form tenancy agreement. The review does not consider this appropriate, given the obligation would arise (at least for landlords or agents) when the tenant has given a notice terminating the agreement and it is not an obligation that would arise for every tenancy. Given the obligation is imposed in the legislation, it does not seem necessary to make it a term of the tenancy agreement unless this would provide tenants with additional legal rights in the event of a breach. The obligations also extend to other persons who may come into possession of the documents, such as a competent person, and they are not a party to the tenancy agreement.

Some stakeholder feedback to the review (DVNSW, TUNSW) suggested that 'informal blacklisting' of tenants occurs, for example, by agents sharing information not on a database. This leads to tenants being discriminated against because of their domestic violence experience. Some stakeholders (including WLSNSW, TUNSW) suggested that NSW laws should be amended to make discrimination against a tenant because of their experience of domestic violence, or termination of a tenancy due to domestic violence, unlawful.

Issues of discrimination in the provision of accommodation are dealt with under anti-discrimination laws. However, it is also possible to reduce discrimination against tenants by regulating the information that landlords/agents can ask as part of a tenancy application and can share through references given to other landlords/agents.

⁴⁰ See for example <https://www.abc.net.au/news/2023-04-24/rental-blacklists-tenancy-databases-should-you-be-worried/102249222>

⁴¹ Section 71AB(3) *Residential Tenancies Act 1987* (WA)

⁴² Section 308I *Residential Tenancies and Rooming Accommodation Act 2008* (Qld)

⁴³ Section 85D(4) and (5) *Residential Tenancies Act 1995* (SA)

⁴⁴ Section 46J *Residential Tenancies Act 1997* (ACT)

⁴⁵ Section 71AB(4) *Residential Tenancies Act 1987* (WA)

⁴⁶ Section 85D(3) *Residential Tenancies Act 1995* (SA)

The NSW Government is currently undertaking work to implement the Government's election commitment to protect tenants' data and personal information. Part of this work is considering the questions that landlords/agents should be able to ask tenants who apply for a tenancy, and what other information they should be able to collect and consider as part of the tenancy application process. The review recommends that this work consider the prevention of the collection of information, whether from a tenancy applicant directly or third parties, about the applicant's experience with domestic violence in their previous tenancy.

Recommendation

20. Increase the penalty for breach of section 105C(3) of the *Residential Tenancies Act 2010*, with the amount to be set following consultation with relevant stakeholders.
21. Add a penalty for breach of section 105C(4) of the *Residential Tenancies Act 2010*, with the amount to be set following consultation with relevant stakeholders.
22. As part of work on regulating the information that can be collected during the tenancy application process, the Government consider ways to limit information collected about a tenancy applicant's experience with domestic violence and whether their previous tenancy was terminated due to domestic violence.

3.6 Security and privacy

3.6.1 Locks and other security devices

3.6.1.1 Current provisions

The RT Act requires a landlord to provide and maintain locks or other security devices necessary to ensure the property is reasonably secure. Neither 'lock' nor 'security device' is defined in the RT Act.

Section 71 of the RT Act also provides that a landlord or a tenant may alter, remove or add a lock or other security device if the other party agrees, or with a reasonable excuse. Without limiting what is a 'reasonable excuse', the RT Act specifies certain matters that are a reasonable excuse, including that a tenant or occupant of residential premises is prohibited from having access to the premises by an apprehended violence order⁴⁷.

Changing a lock or other security device without the other party's agreement or a reasonable excuse is an offence with a current maximum penalty of \$2,200. There is a presumption in section 71(3) that if a lock or security device was changed without the other party's consent, it was done without reasonable excuse, in the absence of evidence to the contrary.

If a lock or other security device is changed, a copy of the key or other opening device or information must be given to the other party within 7 days, unless the other party agrees or the Tribunal otherwise orders (section 72). However, this does not require a key or other opening device or information to be given to a person who is prohibited from having access to the premises by an apprehended violence order.

A landlord or tenant may apply to the Tribunal, which has power under the RT Act to make any of the following orders:

- an order authorising the landlord or tenant to alter, remove or add, or cause or permit the alteration, removal or addition of, a lock or other security device,

⁴⁷ 'Apprehended violence order' is defined in the RT Act to have the same meaning that it has in the CDPV Act and includes a range of provisional, interim and final apprehended violence orders for domestic violence and personal violence that may be made under the CDPV Act.

- an order authorising the landlord or tenant to refuse to give to the other party a copy of a key or any other opening device or information, or
- an order requiring a copy of a key or any other opening device or information to be given to the landlord or tenant.

Also, section 166 of the RT Act lists certain matters a landlord is entitled to claim from a rental bond – these include the reasonable cost of replacing locks or other security devices changed by the tenant without the landlord’s consent.

Relevant provisions in other Australian jurisdictions’ tenancy laws include the following:

- **Queensland** – allows a tenant to change a lock without the landlord’s consent where the tenant believes the change is necessary to protect the tenant or another occupant from domestic violence and the tenant engages a qualified tradesperson to change the lock⁴⁸.
- **Western Australia** – allows a tenant to change a lock without the landlord’s consent where it is necessary to prevent the commission of family violence that the tenant suspects, on reasonable grounds, is likely to be committed against the tenant or their dependant⁴⁹.
- **Victoria** – is similar to the RT Act in that it allows a tenant to change the locks without the landlord’s consent when a renter is excluded from the premises due to a domestic or family violence order protecting the tenant⁵⁰. Victoria’s law also appears to allow a non-tenant who is protected by such an order and has been living in the premises as their principal place of residence to change the locks in these circumstances.
- **Australian Capital Territory and Tasmania** – allow a tenant or occupant who is a protected person under a family or personal violence order to change a lock without the landlord’s consent. Unlike the NSW law, the laws in the Australian Capital Territory⁵¹ and Tasmania⁵² do not specify that the order must have been made against a tenant or occupant of the premises, nor does the order have to prohibit a tenant or occupant of the premises from having access to the premises.
- **South Australia** – allows a protected person under certain orders relating to domestic abuse or personal safety that exclude a tenant from the premises to change a lock without the landlord’s consent – the protected person may be a tenant or a non-tenant who has been residing in the premises⁵³.
- **Northern Territory** – does not provide any specific domestic violence-related basis to change a lock without the landlord’s consent but does allow a tenant to change a lock without consent if they have a reasonable excuse for not seeking the landlord’s prior consent⁵⁴. A tenant can also ask a landlord not to give a key for the premises to a person if the tenant or another occupant is under reasonable apprehension of experiencing domestic violence from that person⁵⁵. If a tenant changes the locks, they do not need to give the landlord a key if the landlord has committed, or the tenant or another occupant believes on reasonable grounds the landlord may commit, domestic violence against the tenant or another occupant⁵⁶.

The review also notes that one of the proposals agreed at the National Cabinet meeting on 16 August 2023 in relation to ‘A Better Deal for Renters’ was to allow tenants experiencing domestic or family violence to change the locks and make security improvements without their landlord’s permission.

⁴⁸ Section 211(2) *Residential Tenancies and Rooming Accommodation Act 2008* (Qld)

⁴⁹ Section 45(2)(a) *Residential Tenancies Act 1987* (WA)

⁵⁰ Section 70A *Residential Tenancies Act 1997* (Vic)

⁵¹ Clause 54(5) in Schedule 1 Standard residential tenancy terms in *Residential Tenancies Act 1997* (ACT)

⁵² Section 57(2B) *Residential Tenancy Act 1997* (Tas)

⁵³ Section 66A *Residential Tenancies Act 1995* (SA)

⁵⁴ Section 52(2) *Residential Tenancies Act 1999* (NT)

⁵⁵ Section 49(6) *Residential Tenancies Act 1999* (NT)

⁵⁶ Section 52(5) *Residential Tenancies Act 1999* (NT)

3.6.1.2 Consideration of issues and recommendations

The review survey feedback was generally supportive of the current provision – out of 177 responses, 61% said they had no concerns about it, 28% said they did have concerns and 11% were not sure.

The review survey responses included a range of comments, including tenants' safety being paramount and being able to change locks quickly, preference for landlords/agents changing locks or at least being notified before locks are changed, landlords/agents being provided with copies of keys, concerns about damage, and difficulties/delay in obtaining permission from landlords/agents.

The key areas raised in stakeholder submissions are discussed below.

Expansion of the domestic violence-related 'reasonable excuse' to change locks

Some stakeholder feedback to the review (Legal Aid, RLC) suggested expanding the list of specific 'reasonable excuses' to change locks or other security devices without consent in section 71 to include when a tenant is, or has been, in 'circumstances of domestic violence' as defined in section 105B(2) of the RT Act. RLC noted the residential tenancy laws in Western Australia and Queensland expressly allow a tenant to change locks without the landlord's consent in broader circumstances of domestic violence than presently specified in section 71 of the RT Act.

RLC provided the following case study⁵⁷ to illustrate the difficulty victim-survivors can sometimes face in facilitating timely protection from a perpetrator.

Case study: Christina*

Our client, Christina, was a tenant in a private rental who was the victim of family violence. Her partner refused to be a tenant on the lease, and all of the bills were placed in her name only. She worked with a domestic violence caseworker to come up with a safety plan, the intention of which was for her to remain in the home as she was the only tenant named on the lease. The domestic violence caseworker asked if changing the locks was something that she might be able to do, to reduce the risk of him re-entering the property with the copy of the keys that he held. Christina called her real estate agent, who told her she'd need to get her landlord's permission. Christina's landlord did not respond for over two weeks, and then told her that changing the locks was unnecessary and he would not permit the works. Christina then had to work with her caseworker to completely change the safety plan and obtain assistance in finding alternative accommodation.

**Not her real name.*

The review has considered whether the current domestic violence-related reasonable excuse in section 71 should be expanded or otherwise changed. Changing a lock or other security device on rented premises without the consent of the landlord can have serious consequences, particularly if it results in a current co-tenant being locked out of the premises and possibly made homeless. On the other hand, the law should reasonably allow a tenant living in rented premises to improve their security quickly when they or their dependent child are at risk of domestic violence.

Section 71 currently allows tenants who are domestic violence victim-survivors to change the locks or other security devices without permission if they have a 'reasonable excuse'. Section 71 makes clear that a 'reasonable excuse' includes an emergency, after the tenancy of a co-tenant is terminated, or after a tenant or occupant of the premises is prohibited from having access to the premises by an apprehended violence order. The RT Act also makes clear that the specific 'reasonable excuses' listed in section 71(2) do not limit 'a reasonable excuse' in section 71(1).

Section 71 currently expressly provides that it is a reasonable excuse to change locks in circumstances of domestic violence if an apprehended violence order excludes the perpetrator from

⁵⁷ RLC's submission

the premises, and the perpetrator is a tenant or occupant of the premises. This specific reasonable excuse therefore does not cover the situation where the perpetrator did not live in the premises. Further, due to the definition of an apprehended violence order, it does not include an interstate or foreign domestic violence order.

Some stakeholders (Legal Aid, RLC) have suggested that being, or having been, in ‘circumstances of domestic violence’, as defined in section 105B(2) of the RT Act, should be made a specific reasonable excuse under section 71. This would allow a tenant to change the locks without permission if they or their dependent child:

- were a victim of a ‘domestic violence offence’ during the tenancy and a ‘relevant domestic violence offender’⁵⁸ has been found guilty of that offence, or
- are the person for whose protection a DVO has been made against a relevant domestic violence offender and the DVO is in force, or
- are the person for whose protection an injunction under section 68B or 114 of the Commonwealth *Family Law Act 1975* 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
- have been declared by a competent person to be a victim of domestic violence perpetrated by the relevant domestic violence offender during the current tenancy.

Although the above circumstances can be used by a tenant to end their own tenancy early and without penalty, which has financial consequences for landlords and co-tenants, there are potentially different, more serious, consequences from being locked out of rented premises, particularly for co-tenants who may be made homeless. Co-tenants and landlords could apply to the Tribunal for orders to obtain access to the premises or a copy of the key to the changed lock. However, this would take time, expense and could potentially create considerable inconvenience.

Further, if a tenant changes locks to exclude a co-tenant but that co-tenant remains on the lease, unless they are subject to an exclusion order they may retain a right to access the premises and to obtain a copy of the key. In those circumstances the changing of the locks may therefore not be an effective longer-term solution to keeping the victim-survivor safe. The recent High Court decision of *BA v The King* [2023] HCA 14 demonstrated the uncertain legal situation that can arise where a co-tenant is locked out of premises but remains on the lease and so has a right to access the premises.

Under section 79 of the RT Act, the making of a final apprehended violence order that prohibits a co-tenant or tenant from having access to the premises terminates the tenancy or co-tenancy of the excluded tenant. In circumstances where there is an apprehended violence order that excludes the perpetrator from the premises but is not a final order, the perpetrator is not legally entitled to access the premises despite being a tenant or co-tenant.

The review considers that a specific reasonable excuse to change locks without permission due to domestic violence should be based on something with an appropriate level of certainty and robustness, such as a domestic or personal violence order. In addition, the order should prohibit the perpetrator from accessing the premises, otherwise a tenant could be locked out of premises they are legally entitled to occupy. The appropriate place to consider whether a perpetrator tenant should permanently lose the right to live in their home is a court that can consider all the circumstances of a case.

The review acknowledges that a DVO and family law injunction has been issued by a NSW police officer, registrar or a court, and provides powerful evidence of domestic violence and the danger facing a victim-survivor. The review therefore proposes that the existence of a DVO as described in section 105B(2)(b) of the RT Act (which includes an interim or final local DVO or an interstate or foreign DVO) and family law injunction as described in section 105B(2)(c) of the RT Act that prohibit a tenant or occupant from having access to the premises be accepted as a reasonable excuse to

⁵⁸ A relevant domestic violence offender is defined for the purposes of Part 5 Division 3A of the RT Act to mean a current or former co-tenant or occupant of the premises, or a person with whom the tenant has or had a domestic relationship within the meaning of the CDPV Act.

change the locks. This can provide a victim-survivor with time to seek a final AVO that excludes the perpetrator from the premises and terminates their tenancy under section 79 of the RT Act.

The RT Act should also be amended to make it clear that a copy of the key to the changed lock is not required to be given to the excluded tenant or occupant in these circumstances, similar to the exception currently provided in section 72(2) of the RT Act.

Where the perpetrator is not a tenant (i.e. is an occupant or does not live on the premises), the review also recommends that another specific reasonable excuse be provided to change the locks without the landlord's permission in that situation if changing the locks is necessary to prevent the commission of domestic violence that a tenant believes on reasonable grounds is likely to be committed against the tenant or their dependant, and the tenant ensures any co-tenants are not excluded from the premises and are provided with a key.

The additional specific reasonable excuses for a tenant to change locks without the landlord's permission recommended by the review should also apply to other security devices as per the current specific excuses listed in section 71(2) of the RT Act and are not intended to change any of the existing excuses in section 71(2) or limit 'reasonable excuse' under section 71(1)(b).

Other key feedback relating to changing locks

SVdP suggested prescribing a reasonable timeframe in the RT Act within which landlords and agents must approve changes to locks or other security devices under section 71. The review considers that such a change would make this provision much more prescriptive and complicated. It would likely have to provide for how consent must be sought, how consent must be provided (at present it just says if the other party agrees), a timeframe for response and what happens if there is no response within the timeframe. The review notes that other provisions in the RT Act requiring a tenant to obtain the landlord's consent to do something do not currently provide for timeframes.

On balance, the review considers that ensuring the reasonable excuse provision is adequate for tenants who are victim-survivors of domestic violence to change locks without consent is preferable to amending the RT Act to require a response from the landlord to a request for consent within a certain time.

In addition, the review has considered whether the tenant should be required to use a locksmith or qualified tradesperson, as provided by Queensland's law. The review considers that this would be a reasonable requirement to ensure the changed lock is installed properly and securely for the tenant's safety and could also help minimise damage to the premises from the lock change for the landlord. The review recommends that the RT Act require tenants to use a locksmith or qualified tradesperson to change locks or other security devices if they are relying on a reasonable excuse to do this without the landlord's consent.

REINSW's submission raised concerns about tenants not providing landlords with a copy of the key or other opening device for changed locks as required by section 72 of the RT Act. The review considers that this could be addressed in guidance provided by NSW Fair Trading to landlords, agents and tenants about sections 71 and 72 of the RT Act.

Recommendation

23. Amend the Residential Tenancies Act 2010 as follows:

- Without limiting 'reasonable excuse' in section 71(1) or changing the current reasonable excuses listed in section 71(2) of the *Residential Tenancies Act 2010*, add a further specific 'reasonable excuse' to section 71(2) that a tenant or their dependent child is in circumstances of domestic violence as defined in section 105B(2)(b) or (c) of the *Residential Tenancies Act 2010* and the DVO or injunction (as relevant) prohibits a tenant or occupant from having access to the premises.
- Amend section 72(2) of the *Residential Tenancies Act 2010* to also provide that section 72 does not require a copy of a key or other opening device or

information to be given to a person who is prohibited from having access to the residential premises by such a DVO or injunction.

24. Without limiting 'reasonable excuse' in section 71(1) or changing the current reasonable excuses listed in section 71(2) of the *Residential Tenancies Act 2010*, add a further specific 'reasonable excuse' to section 71(2) that:

- the perpetrator is not a tenant of the premises,
- the changing of the lock or other security device is necessary to prevent a domestic violence offence that a tenant believes on reasonable grounds is likely to be committed against them or their dependant, and
- the tenant ensure co-tenants are not excluded from the premises and are provided with a key or other opening device or information.

25. Amend the *Residential Tenancies Act 2010* to require tenants to use a locksmith or qualified tradesperson to change locks or other security devices if they are relying on a 'reasonable excuse' to do this without the landlord's consent.

26. NSW Fair Trading should review and update guidance to landlords, agents and tenants on sections 71 and 72 of the *Residential Tenancies Act 2010*, including the requirements for providing a copy of a key or other opening device to the landlord if a lock has been changed or added by the tenant.

3.6.2 Security cameras

The installation of security cameras is covered by the provisions relating to a tenant installing a fixture or making alterations or additions to rented premises in sections 66 to 69 of the RT Act and clause 22(1)(l) of the RT Regulation (as well as the *Surveillance Devices Act 2007* (Surveillance Devices Act)).

In relation to security cameras, Legal Aid observed in its submission that it can be difficult for domestic violence victim-survivors to obtain a landlord's consent to install wireless security cameras outside their rented premises, with landlords raising privacy concerns. They noted clause 22(1)(l) of the RT Regulation currently provides that installation of such a camera by a tenant is a change to the premises for which it would be unreasonable for a landlord to withhold consent. However, clause 22(1)(l) also notes that the Surveillance Devices Act regulates the installation, use and maintenance of surveillance devices. Legal Aid suggested offering training to landlords and agents to enable them to better understand the intersection between the RT Regulation and the Surveillance Devices Act.

REINSW's submission also noted that installation of security cameras can become problematic, especially when they cover common areas in strata schemes or cause privacy concerns for neighbouring properties. They suggested the RT Act should consider respect for privacy of neighbouring properties and common areas.

The review agrees that guidance to landlords, agents and tenants on the installation of security cameras could be helpful, including on the interaction between clause 22(1)(l) of the RT Regulation and the Surveillance Devices Act, and potential considerations for tenants in strata schemes, such as relevant by-laws. Security cameras may be considered a useful protective measure by some tenants who have experienced domestic violence, but they might also be viewed as potentially intrusive and give rise to privacy concerns in others.

Recommendation

27. NSW Fair Trading to provide guidance to landlords, agents and tenants on the installation of security cameras, including on the interaction between requirements under the *Residential Tenancies Act 2010* and Residential Tenancies Regulation 2019 and the *Surveillance Devices Act 2007*.

3.6.3 Publishing photos and visual recordings

3.6.3.1 Current provisions

Under section 55A of the RT Act, landlords and their agents are prohibited from publishing photographs and visual recordings of the interior of a rented premises that show a tenant's possessions without the tenant's written consent, which must not be unreasonably withheld.

The RT Act expressly provides that it is not unreasonable for a tenant to withhold consent for publication if the tenant is in 'circumstances of domestic violence', within the meaning of section 105B of the RT Act. A tenant who does not fall within that exception but wishes to withhold consent on some other basis, possibly related to domestic violence, would bear the onus of demonstrating that it is not unreasonable to do so if this is disputed by the landlord.

'Publishing' photos and visual recordings has a specific meaning in this section of the RT Act⁵⁹, which also expressly states that dissemination solely between the landlord and the landlord's agent for purposes relating to carrying out an inspection of the residential premises, maintenance or repairs, is not publishing.

3.6.3.2 Consideration of issues and recommendations

Stakeholder feedback to the review (TUNSW, Law Society) has suggested that the current protection in section 55A may not be operating as intended as some landlords or agents obtain the tenant's consent for publication once, usually at the start of the lease, and do not seek their consent again. As a tenant's circumstances can change after the start of the lease, some stakeholders (WLSNSW, TUNSW, Law Society, Legal Aid, DCJ) have suggested that the RT Act should be amended to make it clear that the tenant's consent needs to be obtained each time before publication occurs.

Stakeholders (WLSNSW, TUNSW) have also suggested that landlords and agents should have to provide tenants with copies of the photographs or visual recordings showing their possessions that a landlord or agent proposes to publish when seeking the tenant's consent.

TUNSW also suggested that a tenant's consent should have to be sought before a landlord or agent takes photographs or visual recordings inside the premises that show the tenant's possessions – that is, not only before they propose to publish them but also before they take them.

The review survey results were generally supportive of the current provision – out of 178 responses, 54% said they had no concerns about it, 24% said they did have concerns and 22% were not sure. The survey responses included a range of comments, including concerns about the need to respect a tenant's privacy and ensure their safety, and about landlords/agents being able to advertise a property.

On balance, the review considers it would be appropriate to amend the RT Act to provide for consent to be sought each time before publication is proposed, that is, each time before a publicity campaign to sell or lease the property is commenced. A tenant's circumstances can change during the term of the tenancy and only obtaining a tenant's consent at the start of the lease is not sufficient. Such an

⁵⁹ Under section 55A, a photograph or visual recording is published if it is: publicly exhibited in, on, over or under any building, vehicle or place (whether or not a public place and whether on land or water), or in the air in view of persons being in any street or public place; or disseminated by means of a website, email or other electronic communication; or in the case of a photograph – inserted in any newspaper, periodical publication or other publication, or contained in any flyer or other document sent or delivered to any person or thrown or left on premises occupied by any person.

amendment would place the onus on the landlord or agent to ensure that the tenant is aware of the proposed publication for the publicity campaign and has an opportunity to consent or withhold consent to publication before the publicity campaign takes place.

The review also agrees that copies of any photos and visual recordings proposed to be published that show the tenant's possessions, should be provided to the tenant by the landlord or agent when their consent to publish them is being sought. The RT Act does not currently make it clear that this should be done, and the review recommends amending it to expressly provide for this to be a requirement. The RT Act should make it clear that it should be done without any additional cost being imposed on the tenant. Enshrining this requirement in the RT Act would help ensure the tenant is able to provide informed consent to publication of the photos or visual recordings. The requirement would not apply to photos or visual recordings in which none of the tenant's possessions are visible.

Further, the review considers that, if consent to publication of particular photos or visual recordings is reasonably withheld under section 55A, those photos and visual recordings should have to be destroyed or otherwise disposed of securely by the landlord or agent within a specific time. There should also be restrictions on using or disclosing them. These requirements would align with the confidentiality obligations under section 105C(3). The review considers that, with current technologies, requirements for the landlord or agent to provide the tenant with copies of the photos or visual recordings they propose to publish in seeking the tenant's consent would not impose an unduly onerous administrative burden on landlords or agents. Nor would a requirement to ensure they are disposed of securely if consent is not given in accordance with section 55A.

The review has considered whether a tenant's consent to the taking of photos or visual recordings should have to be obtained as suggested by TUNSW and whether tenants should be given a reasonable opportunity to move or cover their possessions before photos or visual recordings are taken. The review notes that under section 55(2)(d1) of the RT Act, a landlord or their agent can enter premises without the consent of the tenant, to take photos or to make a visual recording of the interior of the premises for the purposes of advertising the premises for sale or lease once in the 28-day period before the commencement of marketing of the premises or the termination of the tenancy agreement, if the tenant is given reasonable notice and a reasonable opportunity to move any of the tenant's possessions.

The review considers that the RT Act should be amended to make it clear that, even when a tenant consents to the landlord or agent entering the premises to take photos or visual recordings for the purposes of advertising the premises for sale or lease, it should be informed consent (that is, they should have been told that the landlord or agent proposes to enter the premises for that purpose) and they should be given reasonable notice and opportunity to move their possessions.

The review considers this preferable to requiring the tenant's consent to the taking of photos or visual recordings of the premises. However, the approach recommended by the review will ensure the RT Act makes it clear that the tenant must be informed that the landlord or agent is entering the premises for the purpose of taking photos or visual recordings for a publicity campaign and the tenant has been given reasonable notice and opportunity to move their possessions, whether or not they consent to the landlord's or agent's entry for that purpose.

This amendment would not change the current ability of a tenant to reasonably withhold consent to publication of photos or visual recordings that show their possessions under section 55A. This is still a necessary safeguard. For example, even when a tenant has been given reasonable notice of an intention to take photos or a visual recording of the premises for advertising and a reasonable opportunity to move their possessions, it may not be possible for a tenant to move all possessions out of the scope of photos or recordings, or a tenant's circumstances may change between the taking of the photos or recordings and when they are proposed to be published.

The review acknowledges that this may mean a landlord/agent who takes photos or recordings for advertising after giving the tenant reasonable notice and opportunity to move their possessions, cannot publish them because they show the tenant's possessions and the tenant reasonably withholds consent to publication under section 55A. This may create some uncertainty for landlords/agents, but there is a need for flexibility in the provisions to take account of the range of circumstances that may occur. The safety of domestic violence victim-survivors is critical and the publication of photographs or recordings that show their possessions can pose a real and significant

risk to their safety. The constraints under the current legislation and recommended by the review on photos and recordings are important for reducing this risk.

Requiring tenants to be given reasonable notice and opportunity to move possessions before photos or recordings for advertising are taken may help reduce the chance of possessions being visible in them and therefore the need to obtain consent to publish them. If consent to publish photos or recordings is reasonably withheld, one option could be for the landlord/agent to use technology to remove or redact the tenant's possessions from the photos or recordings. Landlords and agents may also be able to discuss with tenants before the photos or recordings are taken whether possessions may be able to be moved so they will not be visible, or tenants may be able to alert landlords/agents at that stage about possible concerns regarding the taking of the photos or recordings, although this may depend on the circumstances.

A landlord who believes a tenant's withholding of consent to the publication of photos or recordings under section 55A is unreasonable, may apply to the Tribunal to resolve the dispute.

The review notes that the restriction on publishing photos and visual recordings under section 55A currently only applies where they are of the interior of rented premises and show the tenant's possessions. The rationale for not having the same restriction for photos and visual recordings of the exterior of rented premises is not entirely clear. It may be that the exterior of the premises is generally considered to be in the public domain and it would be unreasonable for such a further restriction to be imposed on landlords or agents. It is also not clear whether the interior of rented premises would include a backyard that is not visible from the street or whether interior is understood as only being inside the house or other buildings at the rented premises.

The review has consulted with stakeholders on whether the RT Act should be amended to include a requirement to seek consent to publish photos or visual recordings of the exterior of a rented premises, including any outdoor area or backyard, if a tenant's possessions are able to be discerned. This could include, but is not limited to, through a window, or in the form of outdoor furniture, equipment, toys or motor vehicles. Generally, stakeholders were supportive of such a requirement. The restriction would reduce the risk of the location of a victim-survivor being ascertained from possessions shown in published photos or visual recordings of the exterior of the rented premises. Real estate industry feedback noted there can be playground equipment or other items in backyards that agents would not necessarily suggest be moved, whereas agents might suggest removing pictures of tenants inside a house. The feedback raised some concerns that extending the consent requirements to the publication of photos or visual recordings of the exterior of rented premises could restrict sales of premises.

The review considers that imposing the same requirements for consent on publication of photos or visual recordings of the exterior of premises should not unduly restrict landlords/agents in leasing or selling premises as it will only apply to images that show the tenant's possessions, and there will be opportunity for these to be removed, either by the tenant before the images are taken or by the landlord/agent using technology to remove or redact them from the images after they have been taken. Like images of the interior of the premises, the RT Act will provide that consent cannot be unreasonably withheld to images of the exterior.

Section 55A(3) of the RT Act currently confirms it is not unreasonable for a tenant to withhold consent to the publication of photos or visual recordings showing their possessions if the tenant is in circumstances of domestic violence within the meaning of section 105B of the RT Act.

The review has considered whether the reference to a tenant being in circumstances of domestic violence within the meaning of section 105B is clear and adequate, noting it does not limit the basis on which a tenant can reasonably withhold consent under section 55A. In particular, the review has considered whether section 55A adequately addresses a situation where a tenant has given a DVTN or otherwise escaped domestic violence and moved to new rental premises.

The review recommends that this section be amended to make it clear that consent can reasonably be withheld to photos or visual recordings of the interior or exterior of rented premises, that show the tenant's possessions, if the tenant, or the tenant's dependent child, are in circumstances of domestic violence within the meaning of section 105B. This would align with the domestic violence termination notice requirements in Part 5 Division 3A of the RT Act.

The review has considered whether it is clear that a tenant who has previously been in circumstances of domestic violence could also rely on section 55A(3) to withhold consent to publication of images of subsequent rented premises. This can be relevant to reducing the risk of victim-survivors being identified and located from their possessions in published images.

The circumstances of domestic violence described in sections 105B(2)(b) and (c) could still apply to a tenant who has left a tenancy due to domestic violence, as the tenant could still be protected by a DVO or an injunction under the Family Law Act. However, the circumstances in sections 105B(a) and (d) are connected to the tenancy where the domestic violence occurred. Section 105B(2)(a) requires that the tenant or their dependent child has been a victim of a domestic violence offence while they were a tenant, or the dependent child of a tenant, of the premises – this may not apply to the situation where they were the victim of a domestic violence offence at a previous rented premises. Likewise, section 105B(2)(d) refers to being declared to be a victim of domestic violence during the currency of the residential tenancy agreement and may not be able to be relied upon where this occurred in relation to a previous tenancy.

The review considers that section 55A(3) should also be amended to make it clear that a tenant can reasonably withhold consent to photos or visual recordings of the interior or exterior of rented premises, that show their possessions, if they, or their dependent child, were in the circumstances described in section 105B(2)(a) or (d) during a previous tenancy. The review considers that this clarification is not required in relation to the circumstances set out in sections 105B(2)(b) and (c) as their wording does not limit them to a particular tenancy.

Recommendation

28. The *Residential Tenancies Act 2010* be amended to include a requirement to seek consent to publish photos or visual recordings of the exterior of a rented premises, including any outdoor area or backyard, if a tenant's possessions are able to be discerned. This could include, but is not limited to, through a window, or in the form of outdoor furniture, equipment, toys or motor vehicles.

29. Amend the *Residential Tenancies Act 2010* to make it clear that a tenant's consent to publish photographs or visual recordings of the interior or exterior of the premises in which the tenant's possessions are visible needs to be obtained in writing each time before a publicity campaign to sell or lease the property is commenced, to allow for any change in the tenant's circumstances.

Also provide a requirement that copies of proposed photographs and recordings need to be provided to the tenant, at the landlord's cost, with the request for consent.

30. Amend the *Residential Tenancies Act 2010* to provide for a tenant to be given reasonable notice of a landlord's/agent's intention to take photographs or visual recordings of the interior or exterior of the premises for the purposes of advertising the premises for sale or lease and a reasonable opportunity to move their possessions, whether or not they have consented to the landlord's/agent's entry.

A landlord or agent should also be required to store and dispose of any such photos or recordings securely, except for those published with the tenant's consent or with authorisation from a relevant Tribunal order (for example, in the context of the Tribunal finding consent has been unreasonably withheld).

31. Amend section 55A(3) of the *Residential Tenancies Act 2010* to make it clear that a tenant can reasonably withhold consent to the publication of photos or visual recordings of either the interior or exterior of the premises that show their possessions under section 55A if they or their dependent child are in circumstances of domestic violence as set out in section 105B(2) of the *Residential Tenancies Act 2010*, or were in the circumstances described in sections 105B(2)(a) or (d) of the *Residential Tenancies Act 2010* during a previous tenancy.

3.7 Recovery of bond share

3.7.1 Current provisions

Rental bonds serve as a form of security deposit in a rental agreement. The purpose of the bond is to protect the landlord from potential damages, unpaid rent by tenants or any other failure to comply with the tenancy agreement⁶⁰.

In NSW, when a tenant or tenants pay a rental bond, it is held in trust in the Rental Bond Account, in accordance with section 185 of the RT Act.

Section 163 of the RT Act specifies that a claim must not be made on a bond before the end of a residential tenancy agreement, unless it is made jointly by the landlord and tenants, by the landlord to be paid to all tenants, or by all tenants to be paid to the landlord.

Under section 174 of the RT Act, when a tenant's co-tenancy is terminated but the tenancy agreement remains in force for one or more co-tenants who continue to rent the property, the

⁶⁰ See section 157 of the RT Act.

remaining co-tenant/s must, if requested by the former co-tenant, pay to the former tenant an amount equal to the rental bond (if any) paid by the co-tenant for the residential tenancy agreement. This payment must occur within 14 days of the request.

Those tenant/s remaining in the property may deduct from this payment any amount owed to them by the former co-tenant for rent or other reasonable costs associated with the rental property. Once this payment is made, the former co-tenant is not entitled to any other payment relating to the rental bond.

The exception to these circumstances is if the former co-tenant is the subject of a final apprehended violence order that prohibits them from accessing the property. In this situation, the remaining tenant/s are not required to repay the amount specified within the 14 days.

If the former co-tenant does not receive payment within 14 days, the former co-tenant may apply to the Tribunal to make an order about the repayment of the rental bond (section 175 of the RT Act). Remaining tenant/s and the landlord may also apply to the Tribunal for an order about payment of the rental bond.

The provisions in place in section 174 are for all co-tenancy situations. They are not specific to former tenants in circumstances of domestic violence, apart from the exception noted above.

Section 166 of the RT Act outlines some matters for which a landlord may make a rental bond claim, including claims for any rent or other charges owing, reasonable cost of repairs, cleaning, replacing locks or other security devices altered, removed or added without the consent of the landlord and any other matter prescribed by the regulations.

3.7.2 Consideration of issues and recommendations

The public consultation sought feedback on the effectiveness of the provisions on rental bond recovery and any issues regarding the repayment of the rental bond when a tenant has given a DVTN and a co-tenant has continued renting a property.

Almost all stakeholders in their submissions noted that the provisions relating to the repayment/recovery of rental bond money are not operating effectively for victim-survivors and need amendment.

The majority of stakeholders raised concerns about the barriers faced by victim-survivors in recovering their share of the bond. This may deter victim-survivors from fleeing violence or from trying to recoup their share of the bond. It may also restrict their financial capacity to find new accommodation. Barriers identified by stakeholders for victim-survivors trying to recoup their bond include:

- fear of requesting a share of the bond from the perpetrator who is a remaining co-tenant or tenant on the lease,
- fear of escalating violence by the perpetrator/safety concerns,
- difficulties in claiming their bond from a landlord/agent and a lack of awareness about the limits on liability for property damage caused during a domestic violence offence,
- the time lag for repayment of the bond if funds are urgently needed,
- the need for the victim-survivor to make an application to the Tribunal to recover their share of the bond if the remaining co-tenant/s refuse a repayment,
- not being able to prove the victim-survivor had paid some or all of the bond,
- rent owing, particularly if the DVTN was given after the victim-survivor had fled, and
- no entitlement to make a claim on the bond due to property damage, despite the damage being caused through domestic violence.

The review notes that it can often be difficult to obtain robust data about the barriers faced by victim-survivors in recovering their bond and the impact this has, due to the nature of the trauma experienced by victim-survivors and the multitude of issues they are often faced with after fleeing violence, meaning they are unlikely to respond to surveys. Information collected often relies on

support agencies or advocacy groups relaying the experiences of victim-survivors or landlords/real estate agents.

Results from the review survey found that only 15% of the respondents who answered the question about rental bond repayments felt the repayment process for rental bonds is working well, and 23% of respondents felt it was not working well. The remainder had no experience with the issue.

Feedback to the review survey on how the bond repayment system could work better identified a range of issues and different perspectives. Issues raised included, for example, that there is a lack of clarity about bond repayments in circumstances of domestic violence, the Rental Bond Board should be able to split bonds, the process is traumatic for victim-survivors and they should be able to get their bond back quickly without having to interact with the perpetrator, the financial impact on remaining co-tenants in being asked to repay some or all of the bond to the victim-survivor at short notice, the difficulty for landlords in recovering any damage costs if the bond is insufficient, parties not abiding by provisions, loss to landlords when the property is left in bad condition, and the inability of the Tribunal to enforce the bond payment.

The survey conducted by DVNSW, TUNSW and WLSNSW⁶¹ showed a high percentage (79%) of victim-survivors had contributed to the rental bond, but only 30% had tried to recover their portion of the bond, and 50% of respondents (n=30 responses) indicated they did not try to recover the bond at all.

A survey REINSW carried out in May 2022⁶² did not specifically canvass this issue.

3.7.2.1 Bond recovery from co-tenant/s

There is strong support from stakeholders for improving the current provisions related to recovery of rental bond share by tenants in circumstances of domestic violence, so that they operate more effectively to support victim-survivors.

The review notes feedback from stakeholders (DVNSW, SVdP, TUNSW, WLSNSW, Legal Aid, MLC) that the barriers identified above often mean in practice that a tenant escaping circumstances of domestic violence will not even attempt to recover the bond.

Many stakeholders (DVNSW, SVdP, TUNSW, WLSNSW, Legal Aid, MLC, Law Society) argued that when a co-tenant ends their tenancy in circumstances of domestic violence, they should be able to apply for a refund for their portion of the bond directly to the Rental Bond Board or Fair Trading when their co-tenancy ends.

Other stakeholder suggestions include:

- minimising opportunities for a perpetrator to use the rental bond as another form of financial abuse (ANROWS, REINSW, Law Society),
- introducing a process where, at the start of a co-tenancy, the proportion of the bond paid by each co-tenant should be recorded in the bond lodgement (MLC), and
- introducing provisions to enable a former co-tenant victim-survivor of domestic violence to complete a form, such as a “bond refund form for persons experiencing family or domestic violence” and provide it directly to the landlord to claim their bond from the landlord (RLC).

Applying to NSW Rental Bond Board or Fair Trading for repayment of a co-tenant's bond share

Under the RT Act, the bond is for the whole tenancy and is not divided into shares. This aligns with the general position that co-tenants are jointly and severally liable to the landlord for all money owing under the tenancy agreement.

⁶¹ Also see discussion of this survey in sections 3.1.2.1, 3.2.2 and 3.4.2 of this report.

⁶² REINSW's submission notes that, in May 2022, REINSW surveyed member property managers and collected evidence from those who had sought professional guidance through the REINSW Helpline service. REINSW refers to results from this survey, which it calls 'the Property Manager Response to Domestic and Family Violence Re-Homing Survey 2022 (DV Re-Homing Survey)', in its submission.

Agreements about entitlement to shares of a bond exist between co-tenants as part of an implied intra-tenant 'contract'. This is separate from the tenancy agreement, and the landlord is not bound by it nor would they usually be aware of it.

Reflecting this indivisibility of the bond, the NSW Rental Bonds Online (RBO) system manages multi-tenant households via a 'principal tenant' model, where only one tenant can act on behalf of all the co-tenants.

The details of any co-tenants also on the residential tenancy agreement are recorded with the bond in the RBO system. Co-tenants may view details and receive copies of notifications sent to the 'principal tenant', but they cannot log on to RBO or action bond transactions. Only the 'principal tenant' is authorised to act for and on behalf of all tenants and is the authorised person for the bond. The principal tenant is responsible for:

- registering, lodging the bond, including providing their contact details and bank details for any bond repayment,
- providing all co-tenants' contact details, to keep them informed of any changes to the bond,
- responding to or submitting a claim for refund of bond money on behalf of all the tenants at the termination of the tenancy agreement, and
- distributing any bond refund to other tenants.

Even for paper bonds, which comprise 10-20% of all rental bonds, the bond is still for the whole tenancy and cannot be paid out in separate shares.

The only exception to joint and several liability in the RT Act are the provisions that exempt victim-survivors and non-perpetrator co-tenants from liability for property damage that is caused during a domestic violence offence.

Providing that the bond, as it is held by the rental bond system, is divided into shares that accord with each co-tenant's contribution and can be paid out separately would:

- Replace the role of the Tribunal in deciding bond disputes with giving this role to the Rental Bond Board or Fair Trading. Any disputes over how much each co-tenant paid or any remaining liabilities (given that even if a victim-survivor is not liable for damages there may be other liabilities such as for arrears) would still need to be dealt with. Acting as the arbiter of these disputes is not appropriate for the Rental Bond Board or Fair Trading as they are not set up as a quasi-tribunal but rather as the independent custodian of bonds.
- Involve significant expenditure to reconfigure the existing rental bond system, with a disproportionate cost impact for a relatively small number of customers, albeit those who are very vulnerable. While the Government's commitment to a portable bond scheme is expected to result in some RBO system changes, these are likely to operate within the parameters of the existing system.

Another alternative considered by the review would be for the whole bond to be refunded each time a co-tenant's tenancy is terminated, and for disputes over bond share to be dealt with between co-tenants. However, this would be very similar to the current situation for victim-survivors, as they would still need to contact the perpetrator co-tenant for their share of the bond and apply to the Tribunal in the event of a dispute. Paying out the entire bond each time a co-tenancy ends would also involve considerable inconvenience for the landlord and for those tenants who wished to continue the tenancy.

Another option could be for the landlord to act as intermediary between the co-tenants and to request the remaining co-tenants to pay the appropriate share of the bond to the victim-survivor. However, this would involve the landlord in the agreement between co-tenants. The landlord has no right or power under the tenancy agreement to require co-tenants to pay out a share of the bond to a departing tenant, as the landlord is not a party to the intra-tenant contract about shares in the bond.

The suggestion raised in feedback that a former co-tenant victim-survivor should be able to claim their bond directly from the landlord misunderstands the nature of the bond process. The bond is not held by the landlord and the landlord has no right to access the bond unless the tenancy

agreement has ended and the process in the RT Act for claiming the bond and resolving who is entitled to the bond has been followed.

The review acknowledges the feedback about difficulties faced by victim-survivors in recovering their share of the bond if the perpetrator is a remaining co-tenant. If there is a dispute over the bond share there is a need for the Tribunal to act as an independent arbiter. However, it may be possible in future, if there is a Tribunal order for payment to a departing co-tenant of their part of the bond, for this to be recovered directly from Fair Trading rather than the remaining co-tenants. This would, however, require a complete rebuild of the existing rental bond system.

3.7.2.2 Liability for damage and Tribunal powers relating to repayment of a co-tenant's bond share

Currently, a victim-survivor tenant is not liable for property damage that occurred during the commission of a domestic violence offence. This review has recommended changes to make this exclusion from liability easier to establish.

Several stakeholders have provided case studies of victim-survivors losing their bond in order to pay for damage to the premises, despite the damage being caused during a domestic violence offence. There was only one case where the Tribunal found that the bond was divided into shares and the victim-survivor's share could not be used to pay for damage caused during domestic violence. This interpretation does not appear to have been followed in other cases.

TUNSW, DVNSW, REINSW, and MLC suggested there is insufficient guidance on what the Tribunal might consider when making a decision about a victim-survivor's claim on a bond.

RLC argued that the RT Act should specifically state that:

- the Tribunal must consider any circumstances of domestic violence when determining any payment of some or all of the bond, and
- an order regarding the repayment of a rental bond must not have the effect of deducting an amount from the tenant's bond for damage due to a domestic violence incident.

The review notes that, despite the current protection under the RT Act from liability for the victim-survivor for damage that occurred during the commission of a domestic violence offence, when there is a co-tenancy the situation is more complicated. Under the RT Act the bond is not divided into shares and the whole of the bond is available to the landlord to pay for damage. Currently, when a victim-survivor co-tenant ends their tenancy and there are remaining co-tenants under the tenancy agreement, the victim-survivor must request their share of the bond from the remaining co-tenants (section 174 of the RT Act).

One option the review has considered to improve the current processes for a victim-survivor to recover their share of the bond is to amend the RT Act to provide for the victim-survivor to be entitled to the share of the bond that they had contributed, and for this portion of the bond to be quarantined from any claim by the landlord if the victim-survivor is entitled to rely on the exclusion from liability for damage.

There is also some uncertainty about the extent of the Tribunal's powers in section 175 of the RT Act relating to orders about repayment of bond share to co-tenants. Another option could be to amend the RT Act to ensure the Tribunal has explicit powers to deal with bond disputes between co-tenants.

Victoria's residential tenancy laws allow their tribunal to make an order that apportions liability between co-tenants, including making a perpetrator tenant liable for all of the landlord's loss and damage, including unpaid rent⁶³. Similarly in Western Australia's laws, in the case of damage to the premises or unpaid rent because of domestic violence, the magistrate can make an order assigning liability to a perpetrator tenant⁶⁴.

⁶³ Section 91X *Residential Tenancies Act 1997* (Vic)

⁶⁴ Section 17B *Residential Tenancies Act 1987* (WA)

To ensure that a victim-survivor's protection from certain liability under the RT Act has a practical effect on their recovery of their share of the bond, and to help facilitate a victim-survivor's recovery of their share of the bond after they have ended their co-tenancy, the review recommends that the RT Act be amended to ensure the Tribunal has explicit power to:

- make orders in bond disputes between co-tenants to require co-tenants to pay to a departing tenant an amount equal to their entitlement to the rental bond, consistent with section 174 of the Act,
- for the purposes of these orders, allow the Tribunal to determine co-tenants' shares of the bond based on the contribution of each co-tenant, or if there is no evidence of what that contribution was, on the basis of equal shares,
- order that where a victim-survivor is not liable for property damage, they be paid their share of the bond minus any other amounts owing, and
- with the consent of the victim-survivor, allow an authorised representative to act on their behalf under these provisions of the Act.

To simplify disputes over how much each co-tenant contributed to a bond, the review also recommends that the standard form residential tenancy agreement in the RT Regulation be amended to provide a mechanism for the amount of bond paid by each co-tenant to be recorded for a shared tenancy.

In order to improve the data available on the number of DVTNs that trigger a change in shared tenancy arrangements, the review also recommends that Fair Trading, on behalf of the Rental Bond Board, update the Change of Shared Tenancy Arrangement form to capture this data from former co-tenant/s. This will help to build the evidence base on the magnitude of changes to co-tenancy arrangements due to a DVTN, noting however that the data would not be validated, so is reliant on self-completion. Nonetheless, it may still provide valuable insight into the use of DVTNs.

3.7.2.3 Compensating victim-survivors for loss of bond share and assistance with establishing a new tenancy

There is no separate source of funds administered by Fair Trading that could be used to compensate victim-survivors who do not recoup their share of a bond.

However, the NSW Government has a range of existing support programs in place specifically targeted to help victim-survivors access support and accommodation services and find a safe home. These include:

- **Staying home, leaving violence (SHLV)**⁶⁵. This program aims to prevent domestic and family violence victim-survivors and their children becoming homeless or having to move away from their support system of family and friends, and the school and community where they live. The perpetrator leaves the family home so that the victim-survivor and their children can stay safely where they are. It provides a range of supports, such as safety planning, improving home security, help in managing finances, support for children, and helping them with the complicated legal process. On 6 May 2024, the NSW Government announced an expansion of SHLV with support for a state-wide program rollout⁶⁶.
- **Rent Choice start safely**⁶⁷, which provides short to medium-term financial support for people escaping domestic or family violence who are eligible for social housing. The subsidy helps people secure private rental accommodation, so they do not have to return to the violent situation.

⁶⁵ See <https://dcj.nsw.gov.au/service-providers/supporting-family-domestic-sexual-violence-services/dfv-programs-funding/staying-home-leaving-violence.html>.

⁶⁶ See <https://www.nsw.gov.au/media-releases/230-million-to-improve-nsw-domestic-violence-prevention-and-support>

⁶⁷ See <https://dcj.nsw.gov.au/service-providers/supporting-family-domestic-sexual-violence-services/dfv-programs-funding/rent-choice-start-safely.html>.

- **Safer Pathway**⁶⁸, a State-wide program to assist victim-survivors of domestic and family violence access services and supports they need. This acts as a pathway to available services.
- **Integrated domestic and family violence services program**⁶⁹. This is a multi-agency response to prevent the escalation of domestic and family violence among high-risk target groups and in targeted communities. It is a collaboration between DCJ, NSW Police and non-government support agencies. The program provides women and children with support to escape and recover from violence and abuse and improve their outcomes. As part of its May 2024 announcement, the NSW Government is providing \$48 million to expand this service and to support the rollout of SHLV.
- **Immediate needs support package**⁷⁰, available to primary victims of domestic violence in NSW. Eligibility and the type of support available depend on individual circumstances and needs as a direct result of the violent crime. Packages have pre-set financial limits and can be combined up to a maximum of \$5,000.

There are also more general programs available to provide assistance. These include:

- **Rentstart assistance scheme**⁷¹ provides a range of financial assistance for eligible clients to help them set up or maintain a tenancy in the private rental market. There are five different types of Rentstart assistance, including temporary accommodation assistance; Rentstart Bond Loan⁷², which can assist a tenant with a bond loan of 100% of a rental bond to support a tenancy in the private rental market; and Rent Choice Youth⁷³, targeted at 16 to 24 year olds, which helps young people find a place to live and support them with paying the rent. Participants must be willing to link with a support worker who will help them engage in training, education and employment.
- **Bond Extra**⁷⁴, which encourages private sector landlords and agents to rent properties to people who may be experiencing difficulty entering the private rental market even though they have the income and skills to sustain a successful tenancy. It offers up to \$1,500 (including GST) to landlords/agents to cover rental arrears and/or property damage over and above the rental bond.

⁶⁸ See <https://dcj.nsw.gov.au/legal-and-justice/safer-pathway.html>.

⁶⁹ See <https://dcj.nsw.gov.au/service-providers/supporting-family-domestic-sexual-violence-services/dfv-programs-funding/integrated-domestic-and-family-violence-services-program.html>.

⁷⁰ See <https://victimsservices.justice.nsw.gov.au/victims-services/how-can-we-help-you/victims-support-scheme/financial-support/financial-assistance-for-immediate-needs/immediate-needs-support-package.html>.

⁷¹ See <https://www.nsw.gov.au/departments-and-agencies/homes-nsw/social-housing-resources/rentstart-assistance-policy>.

⁷² See <https://www.nsw.gov.au/departments-and-agencies/homes-nsw/social-housing-resources/factsheets-for-tenants/rentstart-bond-loan-factsheet-for-clients> and <https://www.nsw.gov.au/departments-and-agencies/homes-nsw/social-housing-resources/rentstart-bond-loan-information-for-landlords-agents>.

⁷³ See <https://www.nsw.gov.au/departments-and-agencies/homes-nsw/social-housing-resources/rent-choice-youth>.

⁷⁴ See <https://www.nsw.gov.au/departments-and-agencies/homes-nsw/social-housing-resources/bond-extra-information-for-landlords-agents>.

Recommendation

32. Amend the *Residential Tenancies Act 2010* to ensure the Tribunal has explicit power to:

- make orders in bond disputes between co-tenants to require co-tenants to pay to a departing tenant an amount equal to their entitlement to the rental bond, consistent with section 174 of the Act,
- for the purposes of these orders, allow the Tribunal to determine co-tenants' shares of the bond based on the contribution of each co-tenant, or if there is no evidence of what that contribution was, on the basis of equal shares,
- order that where a victim-survivor is not liable for property damage, they be paid their share of the bond minus any amounts owing, and
- with the consent of the victim-survivor, allow an authorised representative to act on their behalf under these provisions of the Act.

33. Amend the standard form residential tenancy agreement in the Residential Tenancies Regulation 2019 to provide a mechanism for the amount of bond paid by each co-tenant to be recorded for a shared tenancy.

34. Amend the Change of Shared Tenancy Arrangement form to capture data on whether a change to co-tenancy arrangements is due to a domestic violence termination notice.

3.8 Victim-survivor staying at home and terminating a perpetrator's tenancy

3.8.1 Current provisions

When a final apprehended violence order (AVO) is issued prohibiting a tenant from accessing the premises, their tenancy is automatically terminated under section 79 of the RT Act. If the victim-survivor is not a signatory on the lease, they can apply to the Tribunal for an order that recognises them as a tenant under the original agreement.

The Tribunal also has a general power to order the termination of a co-tenant's tenancy on an application by a co-tenant under section 102 of the RT Act (this is not domestic violence specific).

The Issues Paper asked if the current processes enabling an occupant to become a tenant after a tenant is prohibited from accessing the premises by an apprehended violence order are working well and how they can be improved.

3.8.2 Consideration of issues and recommendations

The review notes that according to the Australian Institute of Health and Welfare (AIHW)⁷⁵, family and domestic violence is the main reason women and children leave their homes. According to the 2021–22 Australian Bureau of Statistics' Personal Safety Survey⁷⁶, an estimated 755,000 women (55%) who permanently left a violent previous partner reported that only they, not their partner, had moved out of their home. In 2023–24, 39% of all clients assisted by specialist homelessness services across Australia had experienced family and domestic violence⁷⁷.

⁷⁵ See <https://www.aihw.gov.au/family-domestic-and-sexual-violence/responses-and-outcomes/housing>.

⁷⁶ See <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>.

⁷⁷ See <https://www.aihw.gov.au/family-domestic-and-sexual-violence/responses-and-outcomes/housing>.

Feedback to the review raised concerns that it may be difficult in practice for a victim-survivor to remove the perpetrator from the residential tenancy agreement in order to remain in the home.

Some of the potential difficulties raised by stakeholders are the process of applying to the Tribunal to be recognised as a tenant can be daunting and traumatising (WLSNSW, FSA) and the victim-survivor may not want to involve law enforcement agencies to obtain an AVO (SVdP). The feedback also suggests obtaining a final AVO may take significant time and, where a final AVO is granted, it may not include an exclusion order (DVNSW, TUNSW). Stakeholders noted that many victim-survivors do not have the support of a case manager or other services and are navigating these complex systems and processes on their own whilst dealing with extreme trauma.

Feedback from SVdP, DVNSW, TUNSW and FSA suggested the review consider reforms to improve mechanisms to safely terminate a perpetrator's co-tenancy, that do not require application to the Tribunal or a final AVO with exclusion orders, to assist victim-survivors to remain in their home and minimise further contact with the perpetrator.

WLSNSW and TUNSW suggested where a tenant is excluded from premises by a final AVO, any remaining occupants should have the option of being recognised as a tenant without having to apply to the Tribunal.

While most of the feedback suggests removing the requirement for the victim-survivor to go through the Tribunal process to remain in the premises, Legal Aid recommended that in circumstances where a tenancy has been terminated under section 79 of the RT Act, the requirement for the victim-survivor/remaining occupant to seek an order from the Tribunal to be recognised as a tenant under the residential tenancy agreement should remain. The review notes that the process of seeking a Tribunal order may be less onerous than applying to the landlord to be accepted as a tenant, as the landlord may wish to carry out background checks and assess ability to pay the rent.

Of the responses to the review survey, 30% provided negative feedback about whether the current process under section 79 is working well. They identified a range of concerns from a landlord's perspective, including the remaining occupants' ability to pay the rent, and whether the landlord can do background checks or any vetting before accepting the remaining occupants as tenants.

The review has considered whether the existing section 79 should be expanded to apply to other orders, for example, interim AVOs or interstate and foreign final DVOs that exclude the perpetrator from access to the premises.

The review accepts that obtaining a final AVO with an exclusion order can take time. However, it is not appropriate to automatically end the tenancy of an alleged perpetrator on the basis of an interim AVO where all the circumstances have not been properly considered. The review's recommendations to capture some other orders that prohibit a perpetrator's access to the premises in the specific reasonable excuses to change locks without the landlord's permission in section 71(2) of the RT Act (see section 3.6.1 of this report) may help provide more certainty for victim-survivors on when they can change locks, which may in turn help improve their security in the short-term and give them time to apply for a final AVO that excludes the perpetrator.

The review also considers that the most appropriate forum to consider evidence and make orders regarding exclusion of a domestic violence perpetrator from premises is a court that is experienced in dealing with domestic violence matters.

The review also understands that, where a perpetrator's tenancy is automatically ended on the basis of a final AVO that excludes them from the premises, a victim-survivor who is not a tenant needs a simple way to be recognised as a tenant. However, the review considers that applying to the Tribunal is the most effective way to achieve this, rather than seeking to be considered by the landlord who may wish to carry out background checks and the same level of assessment that they do when screening a new tenant. The Tribunal is able to consider all the circumstances, and, as the perpetrator is no longer a tenant, they would have no part in the proceedings.

The existing provisions align with the residential tenancy laws in Queensland, Victoria, South Australia, Western Australia and the Australian Capital Territory where victim-survivors can apply to the relevant tribunal to be recognised as a tenant under the agreement and/or for an order to remove the perpetrator from the existing lease.

In this context the review also notes both the Staying Home Leaving Violence program and the Integrated Domestic and Family Violence Services program (IDFVS) detailed in the previous section of this report. On 6 May 2024, the NSW Government announced \$48 million to support the state-wide rollout of the SHLV program and expand the IDFVS⁷⁸.

SHLV is an existing long-term needs-based program which works in collaborative networks – health services, NSW Police, Women’s Domestic Violence Court Advocacy Services and other community support groups. The program provides a range of support services such as improving security and helping with the legal process. IDFVS provides ongoing support for victims living through domestic abuse and for victim-survivors who have escaped the abuse. The IDFVS program also works with the perpetrators, as long as it doesn’t compromise the safety and wellbeing of victim-survivors and other family members.

Both programs offer priority support to particularly vulnerable or high-risk groups of domestic violence victim-survivors, including Aboriginal and Torres Strait Islander persons, or persons having a culturally and linguistically diverse background, or who have a disability, or who are affected by social exclusion and/or socio-economic disadvantage, or who are caring for a child with a disability or who are aged 16-18 (for referrals to another service).

Other current programs that receive government funding and can provide support to victim-survivors include Financial Counselling and the Victims Support Scheme.

The review recommends that Fair Trading work with DCJ to improve awareness and education about existing programs established to support domestic violence victim-survivors, including, for example, SHLV, IDFVS, Financial Counselling and the Victims Support Scheme, among tenants, victim-survivors, landlords and agents.

Recommendation

35. NSW Fair Trading to work with the NSW Department of Communities and Justice to improve awareness and education among tenants, victim-survivors, landlords and agents about existing programs established to support domestic violence victim-survivors, including, for example, Staying Home Leaving Violence, Integrated Domestic and Family Violence Services, Financial Counselling, and the Victims Support Scheme.

3.9 Tribunal processes

3.9.1.1 Current provisions

The NSW Civil and Administrative Tribunal was established in 2014 under the *Civil and Administrative Tribunal Act 2013*. It consolidated 23 separate Tribunals to reduce complexity and improve access to justice by providing a forum to resolve disputes and other civil matters more quickly and cheaply than in traditional court proceedings.

Under the RT Act, section 187 sets out various orders that the Tribunal may make on application by a landlord, tenant or other person under the RT Act or in any proceedings under the RT Act. These include orders relating to:

- breaches of residential tenancy agreements
- performance of residential tenancy agreements
- payment of money

⁷⁸ See <https://www.nsw.gov.au/media-releases/230-million-to-improve-nsw-domestic-violence-prevention-and-support>

- compensation
- payment of rent
- compliance with the RT Act
- termination orders
- possession of premises, and
- access to residential premises to remove a former tenant's goods or fixtures.

Clause 40 of the RT Regulation prescribes the maximum amount the Tribunal can order be paid under this section – it is currently \$30,000 for an order with respect to a rental bond or \$15,000 otherwise.

The Division of the Tribunal that considers tenancy matters is the Consumer and Commercial Division. In 2023-24, tenancy and social housing matters made up 78 per cent of applications to this Division, representing 57 per cent of all Tribunal applications. However, the Tribunal's records indicate that only around one or two matters each year relate to domestic violence termination notices. There does not appear to be reliable data available on whether other matters, such as those involving liability for property damage, involve domestic violence.

3.9.1.2 Consideration of issues and recommendations

The Tribunal plays a pivotal role in supporting regulation of the rental market. The review notes the importance of having an independent third party in the form of the Tribunal to make orders under the RT Act and to resolve tenancy disputes.

In 2019, the Tribunal developed a domestic violence protocol⁷⁹ to assist victim-survivors of domestic violence. Victim-survivors, or someone acting on their behalf, may request help from the Tribunal to support their participation in proceedings. The Tribunal also asks victim-survivors to contact the Tribunal before a hearing if they are concerned for their safety.

The protocol ensures an application to the Tribunal about a domestic violence termination notice or by a victim-survivor for a relevant order under the RT Act is:

- assessed for urgency, and
- listed for hearing in a way that safeguards participants and their privacy.

The protocol details additional supports available to victim-survivors of domestic violence who need to attend a hearing, and how they can apply for a confidentiality order. If a confidentiality order is made, the confidential information provided will not be placed on the Tribunal file or given to any other party.

Other supports available include the ability to request:

- the use of a remote witness room for in-person attendance
- to give evidence by audio-visual link
- for security from the NSW Sheriff
- for a waiting area away from the perpetrator
- to have a support person attend the hearing alongside the victim-survivor.

The review has received feedback touching on a range of concerns about the experience of victim-survivors in tenancy matters in the Tribunal and some suggestions for improvement. These relate to the application process, case management, as well as conciliations and hearings.

For example, there have been suggestions that the above procedural changes in the domestic violence protocol should be standard for cases involving domestic violence rather than having to be requested by the victim-survivor.

⁷⁹ To review the protocol, see https://ncat.nsw.gov.au/documents/policies/ncat_domestic_violence_protocol.pdf.

Some stakeholders (WLSNSW, DVNSW) suggested Tribunal Members be required to undergo mandatory training about domestic and family violence and abuse, and those sections of the RT Act relevant to responding to circumstances of domestic violence.

REINSW suggested establishing a specialist division of the Tribunal that is dedicated to hearing domestic violence cases. Other stakeholders (TUNSW, DVNSW) suggested the Tribunal consider Member specialisation in matters involving domestic violence.

The review notes that not all stakeholders may be aware of the ability to access the procedural protections outlined in the Tribunal's protocol. There may be opportunities to further promote this to relevant parties and support services as part of implementation of the recommendations in this review.

The operation of the Tribunal falls within the Attorney General's portfolio. The Department of Communities and Justice is currently leading a review of the role of the Tribunal in tenancy disputes, which was a commitment of the current Government when it took office.

NSW Fair Trading has provided input to DCJ's review of the Tribunal's role, including by sharing feedback received from stakeholders to this review.

It is appropriate that the feedback to this review relating to the role of the Tribunal in disputes involving domestic violence is considered in a wholistic manner as part of the broader review of the role of the Tribunal in all tenancy disputes. This will ensure that any changes are considered as part of any wider changes to the Tribunal's operations.

Recommendation

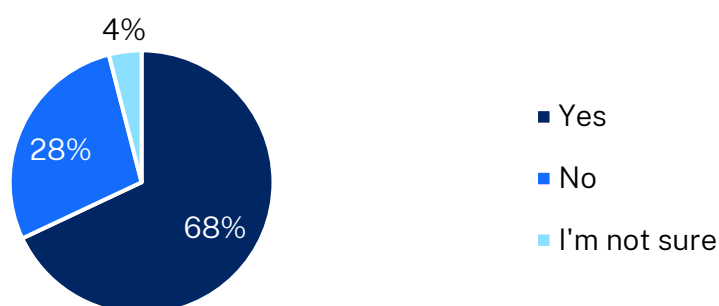
36. As part of the broader review of the role of the Tribunal in tenancy disputes being undertaken by the Department of Communities and Justice, that consideration be given to the feedback to and findings of this review and to opportunities to better support tenants in cases involving domestic violence.

3.10 Education, training and guidance

The review survey asked whether survey respondents were aware that tenants could end their tenancy because of domestic violence, to which 68% of survey participants responded yes (see Figure 3 below).

While the review recognises some participants may be aware of the ability of tenants to end a tenancy due to domestic violence, significant concerns have been raised by stakeholders and survey participants about the low levels of understanding of how the RT Act provisions relating to domestic violence work in practice.

Figure 3: Responses to survey question 'Were you aware tenants could end their tenancy because of domestic violence prior to taking this survey?'



The submissions and survey responses emphasise the need to improve awareness and understanding of the rights and obligations of tenants, landlords and agents by all parties involved in the DVTN process. Many stakeholders also raised better guidance and training as an area that may help improve the operation of the domestic violence provisions in the RT Act, for example, guidance for competent persons. This report identifies where these improved supports are needed.

Examples of improvements to education, training and guidance specifically highlighted through this review report include to:

- Improve guidance material available for competent persons,
- Develop a new continuing professional development topic for real estate agents,
- Review and update guidance and information for all parties on the domestic violence termination provisions, particularly following changes arising out of this review,
- Provide additional guidance on the protections in sections 54 and 54A, particularly as they relate to property damage liability,
- Review and update the information available to landlords, agents, database operators and the community about section 213A, including information on making a complaint about a breach to Fair Trading,
- Review and update guidance to landlords, agents and tenants on sections 71 and 72, including the requirements for providing a copy of a key or other opening device to the landlord if a lock has been changed or added by the tenant,
- Provide guidance to landlords, agents and tenants on the installation of security cameras, including on the interaction between requirements under the RT Act and RT Regulation and the Surveillance Devices Act.

The review recommends that a dedicated campaign be undertaken to raise awareness about the operation and impact of the RT Act provisions for tenants in circumstances of domestic violence. Fair Trading should develop this awareness and education campaign in consultation with key government partners and stakeholders, to identify the most effective ways of engaging with stakeholders such as victim-survivors, tenants, landlords, real estate agents, advocacy groups and domestic violence support services.

Careful consideration should be given to the type of resources that would be of most benefit to different stakeholder groups. For example, competent persons may benefit from further explanatory guidance or a short video to watch prior to completing a competent person declaration. By contrast, landlords and real estate agents may benefit from a toolkit or package of resources and information to build their knowledge on the dynamics of domestic violence and responding to concerns raised by tenants who are in circumstances of domestic violence.

Recommendation

37. NSW Fair Trading undertake a comprehensive campaign to raise awareness about the operation of the *Residential Tenancies Act 2010* provisions for tenants in circumstances of domestic violence, underpinned by education, training and updated guidance materials for relevant parties to the process. This campaign will:

- promote the protections available to tenants in circumstances of domestic violence,
- assist all parties involved in the process to better understand their rights, roles and obligations, and
- explain any changes to the legislation arising from the review, if these are implemented prior to the campaign.

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