Circle Green Community Legal

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Consumer Protection Division
Department of Energy, Mines, Industry Regulation, and Safety

By email: amanda.blackwell@dmirs.wa.gov.au

Dear Amanda

Residential Tenancies Act – Consultation on regulations

Thank you for the opportunity to provide feedback on the proposed changes in relation to matters that may be prescribed regarding minor modifications and pets.

We have considered the summary document outlining the proposed provisions and outline our response to the consultation questions in this letter. This feedback is endorsed by members of the Tenancy Network as set out below.

If you have any questions or wish to discuss in more detail, please feel free to contact me by email alice.pennycott@circlegreen.org.au or by phone (08) 6148 3641.

Kind regards

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This feedback is provided with endorsement and contributions from the following organisations:

Minor modifications to premises

Question 1: Is the list of potential minor modifications appropriate? Should any items be added or removed?

In general, the list of potential modifications is appropriate. We make the following comments in relation to specific items listed.

Shower heads and tap fittings

The proposed list includes the following:

- *Water efficient shower head,*
- *Hand-held shower head or lever style taps (for elderly or disabled occupants).*

Under the amendments to the RTA in the RT Bill, it is unclear how particular modifications would apply to only certain classes of tenants (e.g. elderly, disability) and to what extent the tenant would then need to provide evidence of this as part of the request. It does not appear to be materially different to allow all tenants to make these specific types of changes, given the requirements around returning to the original condition at the end of the tenancy.

To avoid any confusion or uncertainty, we propose the above two points be removed and replaced with:

- *Shower heads and tap fittings.*

Window coverings

The proposed list includes the following:

- *Window coverings (such as curtains or blinds).*

While the amendments refer to 'modifications' generally, which can be read to imply any changes to the premises, most items in the proposed list relate to the addition of something to the premises, where the premises do not already have that item.

We note that where properties already have window coverings provided, there are some instances where tenants wish to change the type or style of window covering. For example, tenants wishing to use a bedroom for a baby or young child, or tenants who do shift work, may wish to replace the original window coverings with 'blockout' curtains. We also propose including a clear reference to both indoor and outdoor window coverings to avoid any confusion or uncertainty.

We propose the above point be amended to:

- *Adding or changing internal and/or external window coverings (such as curtains or blinds).*

Draught-proofing

The proposed list includes the following:

- *Draughtproofing where no open-flued gas heating.*

We assume that draughtproofing is intended to refer to the practice of covering or sealing gaps in doors and windows. We understand there are risks associated with draughtproofing properties with gas heaters. However, we are unclear why there is specific reference to open-flued gas heating in

the above provision. Both open-flued and non-open-flued (or flueless) gas heating carries risk in terms of air pollution if the room is well-sealed[1].

While there are Standards requiring safety shutdown features on the sale of heaters[2], we presume there are still many old appliances that do not comply, as well as the fact that many tenants bring their own gas heaters to rental properties. As a result, it would be challenging to regulate draughtproofing in this way through the RTA, and it would be more beneficial to continue to ensure that people are informed of the risks with using gas heaters through broader education and awareness-raising.

We propose that the above point be amended to:

- *Draughtproofing, in line with ventilation guidelines where property has gas heating.*

This issue is better addressed and resolved through the implementation of minimum standards as part of tranche 2 of the RTA review process. Tenants should be able to easily inform themselves of the energy efficiency of their homes and options available to increase efficiency – without putting their tenancy, their finances, or their health at risk.

Question 2: Should any additional grounds for refusing consent to a modification (without Commissioner approval) be prescribed?

The grounds set out in section 50Q are sufficient and it is not necessary to prescribe any further grounds for these purposes.

We note that section 50O(4)(d) requires the lessor to provide the grounds for the refusal and the reasons they believe the grounds apply. While not within the specific scope of this consultation or question, we propose that there be a requirement to provide some evidence as to why the particular grounds apply, rather than just the lessor's belief – both in the interests of clarity, and to prevent unnecessary applications to the Commissioner by tenants where there is not any basis for the lessor to allege that grounds in section 50Q apply in the first place.

Question 3: Should any additional grounds for refusing consent to a modification (with Commissioner approval) be prescribed?

The grounds set out in section 50S are sufficient and it is not necessary to prescribe any further grounds for these purposes.

As identified in previous recommendations on these provisions, the scope of the grounds set out in this section are already broad enough to cover a range of reasons to refuse consent to the modifications. In addition, section 50S(3)(h) provides for the Commissioner to make an order if the modification is "otherwise unreasonable in the circumstances" which provides a clear and open discretion for the Commissioner to make an order for reasons outside of the grounds in 50S(3)(a)-(f).

For these reasons, it will also be important for the Commissioner to provide written reasons for decisions allowing lessors to refuse consent to modifications. These decisions may then inform whether it is appropriate to prescribe any additional grounds for refusing consent in the future.

[1] Energy Safe Victoria, *Heating your Home with Gas*, https://www.esv.vic.gov.au/community-safety/energy-safety-guides/home-safety/heating-your-home-gas; Commerce WA, *Flue-less gas space heaters – safe use guidelines*, https://www.commerce.wa.gov.au/building-and-energy/flue-less-gas-space-heaters-safe-use-guidelines.
[2] Commerce WA, *Sale of unsafe open flued gas space heaters prohibited*, https://www.commerce.wa.gov.au/building-and-energy/sale-unsafe-open-flued-gas-space-heaters-prohibited#:~:text=3%3A2021%20or%20AS%2FNZS,can%20leak%20into%20living%20areas.

Question 4: Should any types of modifications be prescribed so that they may be subject to a condition that the work be carried out by an appropriately qualified person?

The only modifications that should be prescribed for these purposes should be those where the work is required by law to be conducted by a qualified tradesperson. Renters should not be held to a higher level of responsibility simply because they are renters – they should be subject to the same rules of installation that apply to everyone.

Most of the minor modifications on the proposed list do not meet this threshold and so should not be subject to this condition. Modifications relating to the installation of any hard-wired security lights, alarm systems, or security cameras, and installation of phone or internet connections may meet this threshold, if these types of modification would likely involve electrical wiring/connections.

In general, requiring work to be carried out by an appropriately qualified person will result in what could otherwise be an inexpensive and simple modification being far more costly and time consuming for tenants to undertake.

Under the new provisions, tenants are already responsible for the costs of removing the modification at the end of the tenancy, and any costs in maintaining the modification, so requiring the work itself to be undertaken by an appropriately qualified person creates such additional burden that it may not even be worthwhile for tenants to seek approval for the modifications in the first place. This is especially relevant when combined with the ability for lessors to terminate a tenancy agreement without any grounds.

Question 5: Should any additional classes of condition that may be imposed by the lessor be prescribed?

There should not be any other classes of condition prescribed for these purposes. The lessor has the ability under section 50T to seek Commissioner approval to impose other conditions, which effectively provides discretion for the Commissioner to make an order for any additional conditions.

For these reasons, it will also be important for the Commissioner to provide written reasons for decisions allowing lessors to impose conditions. These decisions may then inform whether it is appropriate to prescribe any additional classes of condition in the future.

Keeping pets at premises

Question 6: Should any additional grounds for refusing consent to keep a pet (without Commissioner approval) be prescribed?

The grounds set out in section 50D are sufficient and it is not necessary to prescribe any further grounds for these purposes.

We note that section 50B(4)(d) requires the lessor to provide the grounds for the refusal and the reasons they believe the grounds apply. While not within the specific scope of this consultation or question, we propose that there be a requirement to provide some evidence as to why the particular grounds apply, rather than just the lessor's belief – both in the interests of clarity, and to prevent unnecessary Commissioner applications by the tenant where there is not any basis for the lessor to allege that grounds in section 50D apply in the first place.

Question 7: Should any additional grounds for refusing consent to keep a pet (with Commissioner approval) be prescribed?

The grounds set out in section 50E are sufficient and it is not necessary to prescribe any further grounds for these purposes.

It will be important for the Commissioner to provide written reasons for decisions allowing lessors to refuse consent. These decisions may then inform whether it is appropriate to prescribe any additional grounds for refusing consent in the future.

Public Housing and Pets

We note that the current Housing Authority Rental Policy Manual provides restrictions around tenants keeping a "dangerous dog (restricted breed)" at their property. Further, in more recent tenancy agreements sighted by members of the Tenancy Network, there are additional terms within Part A of the standard Form 1AB that further limit the keeping of pets, including the ability for the lessor to withdraw consent for keeping a pet at any time, and the keeping of a "dangerous dog" beyond the restriction in the policy outlined above.

Under the new provisions, it does not appear that a lessor is able to restrict or exclude the keeping of pets pre-emptively by including such terms in a tenancy agreement, and we submit that the refusal of keeping a pet on the basis that it is dangerous falls within the grounds that a lessor can seek Commissioner approval for (whether on the basis of section 50E(3)(d) or (e)).

It is our view that the relevant sections of the Rental Policy Manual and the terms currently included in Housing Authority tenancy agreements will be void for inconsistency with the new provisions, and that the inclusion of these terms in any new agreements entered into after the amendments come into effect may amount to intent to evade the operation of the Act in contravention of section 82.

We wish to raise these concerns with Consumer Protection in advance of the amendments coming into effect, and we would be happy to discuss in more detail or provide redacted copies of agreements containing these terms if that would be helpful.

Question 8: Should any additional classes of condition that may be imposed by the lessor be prescribed?

There should not be any other classes of condition prescribed for these purposes. The lessor has the ability under section 50F to seek Commissioner approval to impose other conditions, which effectively provides discretion for the Commissioner to make an order for any additional conditions.

For these reasons, it will also be important for the Commissioner to provide written reasons for decisions allowing lessors to impose conditions. These decisions may then inform whether it is appropriate to prescribe any additional classes of condition in the future.

Question 9: Is the current amount of the pet bond appropriate?

The current amount of the pet bond is appropriate and should not be increased.

Current bonds data indicates that rental bonds are typically adequate to cover the cost of damage caused by tenants and their pets. There is no evidence to suggest that significant damage costs are more likely to be incurred by lessors of tenants with pets than lessors of tenants without pets.

A lessor is not prevented from seeking compensation for any pet-related damage from the ordinary security bond, if the costs of rectifying this damage are more than the pet bond. Based on the current median rent for the Perth metro area[3], the standard security bond would be in excess of $2500 which is more than sufficient to cover reasonable costs of any damage to the property. Further, lessors are not capped at the total bond amount – if there is substantial damage caused to the property (whether pet-related or not) it is open to them to seek compensation in addition to the bond through the Magistrates Court.

Tenants are already usually required to pay the ordinary security bond and two weeks' rent in advance at commencement of a tenancy agreement. While the Act provides for a security bond to be received in instalments, in practice this is almost never permitted, and tenants will not be provided access to the property or even an executed tenancy agreement if they have not paid these amounts by a specified date. In addition to this, tenants incur significant costs when moving house, including expenses associated with removalists and vacating a previous rental, and often a period where they are paying rent for two properties while they move. Further, if there is a bond dispute with their previous lessor, it can take some weeks or even months to have their previous security bond refunded.

Increasing the quantum of the pet bond would simply be a superficial change to further cater to lessor interests, it does not provide any material benefit to lessors in addition to the extensive safeguards already available in the proposed reforms. Increasing the pet bond would only serve to further disadvantage tenants and may even prevent them from being able to afford to keep their pet when moving home.

[3] REIWA, *Perth Market Insights*, https://reiwa.com.au/the-wa-market/perth-metro/.