



## **Response to the REIWA ‘Synergies’ report**

**An independent analysis and critique on the findings and methodology used in the Real Estate Institute WA (REIWA) / Synergies Report ‘Economic Cost of Reforms to the WA Residential Tenancies Act’ submitted to government**

**Prepared for Shelter WA & Circle Green Community Legal**

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### **Contributors**

A number of independent academic and tenancy law experts contributed to this paper, including the Australian Housing and Urban Research Institute (AHURI) Curtin Research Centre and Dr Chris Martin (City Futures Research Centre, UNSW Sydney).

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## **Purpose of this Report**

This report outlines why reform of the WA Residential Tenancies Act is critical for renters and landlords, will strengthen renting in WA, and will bring overwhelming benefits to the community.

The tenancy reforms proposed will increase the security and wellbeing of Western Australia's 700,000 renters.

**This brief, independent response to the Synergies report discusses why reform is essential and highlights the impact on the rental market from tenancy act reform in other jurisdictions. It discusses and rebukes the five key findings from the Synergy report outlining flaws in methodology, costings and assumptions described for each.**

## **Summary of REIWA 'Synergies' study**

The Synergies report 'Economic Cost of Reforms to the WA Residential Tenancies Act' (the Synergies report) for REIWA focuses on two reform proposals that are of particular concern to the real estate lobby:

- the proposal to remove the right of a property owner to terminate a tenancy, unless it is done so on prescribed grounds (such as the owner wishing to sell or move back in); and
- the proposal to remove the requirement of a tenant to seek consent of the property owner to make minor modifications to the property (such as installing a picture hook). (p3)

The Synergies report argues these changes will increase the cost of managing rental properties, erode owners' rights over their asset, cause investors to exit the market, and decrease rental stock. The report ignores the most important issue relating to the proposed change: the positive impact for tenants.

## **The importance of security of tenure and a place to call home**

The Synergies report claims that the changes being proposed are "at odds" with independent findings from the Bankwest Curtin Economics Centre (BCEC) 2018 report on the private rental sector (Rowley & James, 2018) which, according to the Synergies report, "found WA tenants are the most satisfied with their rental arrangements of any Australian state or territory"<sup>1</sup>.

In fact, the BCEC report showed satisfaction with the private rental market in WA compared with other states was at best only marginally better and in some instances worse than other states.

More importantly, the BCEC report on the private rental sector highlighted how a lack of security is an issue for almost a third of private rental sector (PRS) tenants (Hodgson et al., 2018; Rowley & James, 2018).

It found

- Around a third of tenants were forced to leave their last property (31 per cent) with the primary reason being the owner selling the dwelling (Rowley & James, 2018);

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<sup>1</sup> Synergies Report page 3 citing Bankwest Curtin Economics Centre (2018) The Private Rental Sector in Australia. p.31

- 46 per cent of survey respondents indicated they would choose to sign a lease longer than one year demonstrating a strong appetite by tenants for longer leases, and thus greater security; and
- Only eleven per cent of tenants surveyed had a lease of two years or longer.

These findings contradict the Synergies report attempting to ‘Brightside’ tenants’ experiences in the WA rental market and in fact provide strong evidence for the need to **improve** security of tenure. The BCEC authors argue

“Security of tenure is often highlighted as the biggest issue within the PRS (Duncan et al., 2016). Short-term leases and uncertainty around how long a tenant can stay have a negative impact on the feeling of home. Other countries do not seem to have these issues (Martin et al., 2018.)” (Rowley & James 2018 p21).

The growing proportion of older renters in Australia and WA (Hodgson et al., 2018) and the evolving housing aspirations of younger households (see James et al., 2019; Parkinson et al., 2019) brings into sharp focus the vital role of the PRS and the need to make it a secure environment that households can call home. Older tenants mainly rent because they have no other choice (James et al., 2019). Indeed, the percentage of renters aged 45-64 years increased from 18 to 27 per cent in the 20 years to 2016 (Morris et al. 2021, p. 16). The BCEC survey found that not only were older tenants more likely to be in housing stress compared to their younger counterparts, but a greater proportion would be willing to sign a lease longer than 12 months because of the desire for security (Hodgson et al., 2018).

Specific to this cohort is the need for modifications to enable older households to age safely in their dwellings. Combined with longer leases, and the removal of no grounds termination, modifications enable older Australian to age in place in the PRS, a factor which could prevent premature entry to aged care. While many respondents indicated that their property managers and landlords were supportive of modifications to support ageing in place, over 20 per cent reported that it was difficult to get modifications made or rents were increased as a result of these modifications (Hodgson et al., 2018).

While the experience of living as a private renter is highly dependent on the legal and administrative terms governing landlord and tenant behaviour (see Morris et al. 2021, 18), **regulations to protect tenants’ rights are comparably weak by the standards of many other advanced economies** (Yanotti and Wright 2021; Hulse et al. 2018).

Security of tenure is a factor which underpins many Australians’ housing aspirations and contributes to the housing aspiration gaps experienced by tenants in the private rental sector (Stone, Rowley, Parkinson, James, & Spinney, 2020 (forthcoming)). No grounds termination undermines any sense of security. Hodgson et al. (2018) argued that the availability of no grounds termination may compromise a tenants’ willingness to assert their rights for fear of receiving a retaliatory eviction notice. Therefore, replacing no grounds termination with prescribed grounds for termination would provide security to tenants while still ensuring that the landlord had the right to terminate a lease on prescribed grounds. With very small numbers of tenants actually evicted under no grounds termination, as highlighted in the Synergies report, such a change should not make a massive difference to landlords but it will make a very positive difference to tenants and their experience of renting.

## **The impact of residential tenancies act reform in other jurisdictions**

The Synergies report has not included any evidence of the impacts of similar reforms introduced in other states. Such evidence would be the most reliable indicator of the extent to which proposed changes would affect the current private rental market.

In yet-to-be published research by the University of NSW, analysis of bond data in NSW and Victoria found **no evidence** of any disinvestment effect in the two reform episodes studied. A recent media report suggested the Victorian rental reforms have not led to an increase in rents or sales by landlords (Carbines 2022).

In breaking news, the ACT has just announced a proposed on the removal of 'no cause evictions' and bidding on rental properties. Announcing the release of the bill for consultation, ACT Attorney-General Shane Rattenbury said:

"With growing pressure on rental affordability and availability, the ACT government is modernising tenancy laws to create more secure housing and a fairer rental system for all Canberrans. The bottom line is people deserve a home to live in and shouldn't be evicted without a legitimate reason. The ACT government has committed to end no-cause evictions to help address the power imbalance that currently exists between landlords and a tenant. We heard from tenants that removing no-cause evictions will give them better security of tenure and greater confidence to assert other tenancy rights without fearing eviction. The proposed reform strikes a careful balance of giving tenants better security of tenure, while also ensuring landlords can continue to manage their properties effectively."<sup>2</sup>

## **The REIWA Synergies report**

This section discusses the findings of the report and questions some of the major assumptions behind the analysis. Independent experts examined the report with specific regard to the modelling and assumptions underpinning its findings and found a number of areas of concern. Each of the five key findings of the report are summarised and reviewed below, with flaws in methodology, costings and assumptions described for each.

## **Overall flaws in the Synergies report**

The report argues the rationale for these proposed reforms and the existence and scale of the problems have not been adequately established by the Department of Mines, Industry Regulation and Safety (DMIRS). (p3). This is simply incorrect. There has been vast empirical evidence on the need for reforms

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<sup>2</sup> <https://www.abc.net.au/news/2022-07-27/act-rental-bill-propose-remove-no-cause-evictions-public-consult/101271884>

and the scale of the problems in the private rental market for decades (see the section above, for example).

The Synergies report concludes the proposed reforms would have a massive, negative impact on the private rental sector. As noted above, there is no evidence to support this from other jurisdictions in Australia, or around the world, that do not permit no grounds eviction and provide the limited freedom for tenants to make minor modifications to their dwelling.

The Synergies report uses the more recent Australian rental housing conditions (ARHC) dataset<sup>3</sup>, to support arguments around WA tenants wanting short term tenancies, undermining the need for increased security. Their discussion assumes tenants are making decisions by choice rather than being forced to move due to landlord decisions or affordability. The BCEC survey identified around 31 per cent of renters were forced to move (Rowley and James 2018). The ARHC data shows just 27.3 per cent of WA tenants have lived in their dwelling for 2-5 years, more than any other state.

The Synergies report also stated that *“only a [sic] 16per cent of WA tenants expected to be residing at their current same property in five years [sic] time”*, again assuming that is a tenant choice rather than tenants believing they will be forced to leave because of a lack of security. The reality is, as shown in the BCEC survey, some tenant decisions are made by choice, and some are forced. Reducing the number of forced moves, whether it is due to general market affordability or landlord decisions, increases household wellbeing. It also saves considerable financial costs and disruption to tenant’s lives. Tenancy reform should reduce the number of forced moves.

It is usual when reporting the results of a survey to discuss the population, sample, response rate, confidence level and margin of error to provide an indication of the robustness of the survey results. While the Synergies survey does note how around 3,000 responses were removed from analysis, it doesn’t discuss the issues above or contrast the characteristics of those responses removed with those retained. Synergies also note the survey selection bias given it covers only REIWA members and not other investors which typically account for around a third of all private rental dwellings (ABS Census 2016).

Additionally, they state *“it is possible that respondents who gave their time were more passionate about the issues raised in survey than non-participants”* (Synergies, p30). This is emphasised by 44per cent of the sample owning multiple investment properties compared to 29 per cent of all Australian property investors (Synergies p36). The results of the survey should therefore be treated with some caution.

**The five key findings or claims made in the Synergies report are discussed in turn below.**

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<sup>3</sup> The Australian Rental Housing Conditions Dataset, 2020 (<https://ada.edu.au/the-australian-rental-housingconditions-dataset/>)

## **Claim 1: Increased management costs**

The report relies heavily on claims the two proposed reforms would increase the cost to manage an investment property by \$550-\$699 per year. These are estimates based on outcomes that might, or might not occur so the figure is speculative. A more appropriate methodology would have been to consult with property managers in Victoria, for example, to identify the actual increases in costs resulting from similar reforms. This would have delivered much more robust evidence.

The purported cost increase included additional time and out of pocket expenses of \$250, and a 10-30 per cent increase in costs incurred by property managers equating to \$300-\$449 per property, of which 70 per cent is passed on to the owner. The study concludes this equates to an aggregate increased cost of \$142.5 million across the rental sector.

This finding is questionable for the following reasons:

### ***Costs relating to Modifications***

The estimation that an owner will incur additional expenses of \$250 due to allowing a tenant to make minor modifications is flawed for the following reasons:

- It is questionable that allowing minor modifications by a tenant adds additional management time and expenses to the owner: in fact, the opposite would be expected. Both owner and agent would save time and expense by no longer having to respond to requests by tenants who wish to make minor modifications such as hanging a picture.
- Further, the owner is protected against any additional costs that may be incurred by restoring or repairing modifications made to the property through the 'make good' provision proposed, in addition to the collection of bond from tenants at the time of lease. The landlord may, in fact, benefit from the tenant improvements through increase rents from a new tenant.

On a broader level, there is strong evidence that the issue of having landlords and real estate agents respond to a request for maintenance in a fair and timely manner is a much bigger issue that needs to be addressed. The BCEC 2018 report found 60 per cent of tenants renting via a real estate agent had to wait more than one week for a response to a maintenance request, with five per cent reporting they don't respond at all so they just live with the issue (Rowley & James, 2018).

### ***Costs relating to Evictions***

The Synergies report estimates that the removal of 'no grounds' termination would cause real estate agents' labour costs to increase by 10-30 per cent. Specifically, the study states:

*“Under the law change, Synergies found that the removal of ‘no grounds termination’ would lead to a significant increase in the number of breach notices issued to tenants, as this would become the only means of removing problematic tenants.” (p6)*

This is questionable and concerning for a number of reasons:

- ‘With fault’ notices already allow for termination with 14 days’ notice, while no grounds is 60 days. So realistically, if a tenant is in breach, then 14 days is much simpler and faster, and they are likely doing this.
- The researchers are therefore implying a situation wherein tenants are not actually violating their tenancy agreement, but the owner/agent wishes to rely on no grounds evictions to remove them.
- The researchers’ use of the term "problematic tenants" is loaded, alarmist, and is also incorrect. ‘Problematic’ tenants can be issued with breach notices and can be given 14 days to leave. That will not change under the proposed reforms (in fact, it is proposed that without grounds evictions remain for the first term of a tenants’ lease).
- It appears the researchers are admitting to a desire to use no grounds to remove tenants they don't like when they aren't in breach.
- The report does not discuss the positive impact on tenants and how being secure in a dwelling and having a sense of home would reduce the likelihood of tenancy breaches thereby reducing costs. The report consistently takes a worst-case scenario approach and does not factor in any change in tenant behaviour resulting from reform.

The conclusion made by the study that the reforms will impose an estimated \$142.5 million of increased costs each year across the rental sector from higher property management costs is therefore unsound. It is used, however, as the basis for many of the cost-based calculations in the report so such figures - and all subsequent findings in the Synergies report - should be regarded as similarly unsound.

## **Claim 2: Investors will leave the market**

The Synergies report found, when informed of the proposed reforms and a cost of \$500 per property, per year, 76 per cent of respondents indicated they would be ‘likely’ or ‘more likely’ to sell their property in the next two years (compared with 13 per cent absent reforms). Traditionally in a survey such as this, the survey design would ensure the policy being tested is not explicitly identified as this can lead to respondent bias with pre-conceived ideas leading to answer bias. We would therefore question the validity of such an outcome. The massive shift in attitudes based on a \$500 annual cost suggests there are issues with the way the survey is designed.

This finding that 76 per cent of investors are likely to sell their property because of the reform is also questionable because:

- Survey participants were informed of what the survey was about (the reforms proposed) and that proposed reforms would cost them \$500 or more. Respondents would have been motivated to press their self-interest and more likely to exaggerate an intention to sell, in retaliation or as a 'warning shot' not to change anything especially when posed as a hypothetical.
- Respondents' stated intention of retaliatory divestment in responses to an increased cost of \$500 appears to be greatly exaggerated, given the alleged increase in costs is extremely small compared to the huge growth in house prices and rents over the last two years, and where capital gains are in the order of \$50,000 per year. An investor is not likely to sell a \$500,000 asset because of a trivial increase in expenses.
- Further, the impact of the alleged increase in costs to manage the property are further reduced by the owner's ability to claim the full amount as a tax deduction and would actually provide a benefit to investors by reducing their taxable income suggesting responses were not fully thought through.
- It is also worthy of serious exploration why 76 per cent of investors would be 'likely or more likely' to sell their asset in response to very modest reforms. Are the large majority of mum-and-dad investors so vulnerable to minor imposts that an additional \$500 annual cost would drive them out of the sector? If so then interest rate rises presumably would mean even more investors are likely to sell in the near future.

### **Claim 3: Loss of rental housing**

The report found, based on the stated intention to divest described above, there would be an estimated loss of 93,000 rental properties, revised down by the researchers to a net reduction of 3,543-8,804 rental properties based on their housing market model, calibrated using the survey data.

Without a peer review of the modelling process and assumptions underpinning the model the outcomes are open to question. Timeframes are also unclear with around 90,000 of the sold rental properties seeming to instantly return to the rental market, despite relying on increased rents to stimulate new investment activity. It also fails to take into account how many of these properties would be purchased by households in the private rental market, given house prices will fall with the instant sale of 90,000 dwellings, therefore reducing demand and therefore rents. Housing markets are incredibly complex and human behaviour even more so, and while we understand the attempt to try and quantify the monetary impact of reforms as this has more impact on policy maker decision making, such outcomes must be robust. We would argue the assumptions underlying the modelling lack this robustness.

Another issue the report fails to take into account is the response of government to such disinvestment. There are many simple measures that could be implemented to ensure tenants do not lose their homes en-masse, including:



- Giving tenants the first option to purchase the property; and/or
- Giving Community Housing Providers the first option to purchase the property which would allow them to also take over the lease to the same tenant, and/or
- Giving the state government the first option to purchase the property as part of its 'spot purchasing' program to increase social housing stock

These are sensible and simple reforms that would counteract the significant loss of rental homes predicted by the Synergies report.

#### **Claim 4: The cost burden to social housing**

Perhaps one of the most dangerous and exaggerated findings in the Synergies report is the purported impact of the proposed reforms and sell offs to the social housing system. The report claims that, of the 3543 to 8804 properties they estimate to exit the rental market, about 815-2023 (or around 23 per cent) are expected to come from the low-tier rental segment. It states:

*“While some of these tenants may have alternative housing options, we expect the majority would be forced into social housing. The 2021-22 State Budget has allocated \$2.1 billion to fund 3,300 new social housing dwellings, which equates to an average cost of \$636,364 per dwelling. Applying this modelled loss of rental housing from the private rental market provides a measure of the additional budgetary cost to government, which is calculated to be between \$519 million and \$1.3 billion based on the modelled range of low-tier rental properties existing the market.” (p8).*

This finding is problematic for a number of significant reasons, and the figures used are based on a number of questionable methodologies:

- The researchers claim 'a majority' of tenants in low-tier rental housing would require social housing but their model assumes 100 per cent of tenants (some of which they earlier claim may go into owner-occupation). This is a deeply flawed assumption, and means the figure is inaccurate to begin with.
- The researchers use a figure of \$636,364 per social housing dwelling, which at face value is way too high. The state government has been purchasing new social housing properties through its spot purchasing program at an average settled contract value of \$356,789.<sup>4</sup> In addition, there are many ways to significantly reduce the purchase price of social housing: lower cost technologies coming on to the market (such as prefabricated and modular housing), building on government land, supporting the community housing sector to build and purchase more homes, and buying off the plan would significantly reduce or even halve the stated purchase price. In short, the researchers have exaggerated the cost to purchase new social housing by 80-100 per cent.

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<sup>4</sup>Question Without Notice No. 170 asked in the Legislative Council on 16 March 2022 by Hon Steve Martin MLC

- Again, even if the number of rental properties the study purports would be sold, there is no reason the same properties could not be kept as rental properties, if the government, community housing sector, or indeed the tenant purchased them instead, as outlined in the previous section.

The conclusion in the report that the reforms will impose between \$519 million and \$1.3 billion to the social housing sector to meet additional demand is therefore grossly exaggerated.

### **Claim 5: Increased rents**

The Synergies report found the reforms proposed will also cause rents to rise. They estimate median rental prices will rise by almost \$10 per week, which equates to a 2 per cent increase on the current median rent of \$431 per week. (p7) They conclude up to \$105 million in increased rents will be paid each year. It is uncertain why a rent increase of 10 per cent would be the case and we believe this figure to be arbitrary and contradictory.

It is also worth noting, in the absence of any reforms, rental prices in Perth have increased by 26.2 per cent over the last two years, and by 30 per cent since March 2020 when the pandemic first hit (SQM Research, July 2022).

### **Conclusion**

**The many areas of concern with the Synergies report described above, including false assumptions and exaggerated negative outcomes, as well as a lack of empirical data on the impacts similar reforms have had in other jurisdictions, lead us to conclude the findings of the Synergies report are not reliable.**

Further, we argue that housing is a human right and lessors must be encouraged to view themselves as services providers. As service providers it is fair that their product be well regulated for quality, safety, and satisfaction of the consumer, like any other industry.

**The proposed tenancy reforms will increase security for the 700,000 renters in WA<sup>5</sup>.**

Removing no grounds termination, even though it is used infrequently, improves security, and perhaps more importantly, the perception of security. This, added to the ability to make minor modifications, will improve the feeling of “home” considered so important for renters and may well lead to fewer lease breaches as a result.

The Synergy report is based on highly dubious survey outcomes and assumptions about costs to the market and government. We believe that the conclusion are not a good reflection of policy reform that is likely to improve conditions for tenants without fundamentally affecting the structure of ownership and investment in the rental sector.

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<sup>5</sup> ABS (2022) Housing occupancy and costs. <https://www.abs.gov.au/statistics/people/housing/housing-occupancy-and-costs/2019-20#data-download>

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