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27 March 2018

Mr Russell Keith
First Clerk Assistant
GPO Box 3721
DARWIN NT 0801
email: EPSC@nt.gov.au

Attn: Mr Tony Sievers MLA (Chair)

Dear Sir,

RESIDENTIAL TENANCY DATABASES, REFORM OF RESIDENTIAL TENANCIES ACT (NT)

We are writing in relation to Economic Policy Scrutiny Committee review of the *Residential Tenancies Act Amendment Bill 2018*. We attended the Public Briefing on 21 March 2018 and found the process both constructive and beneficial to observe.

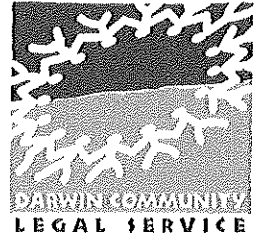
We would like to provide the following as further submissions in response to some of the components of the Bill discussed at the briefing.

Co-tenancy

In our experience, the issues around the liability of co-tenancy are significant and difficult to resolve under the current legislation. It is not a simple matter for the tenant to negotiate the removal of their name from the lease, as all parties to the contract need to consent to alter the agreement. It is foreseeable that a tenant would refuse to remove a departing co-tenant from the tenancy agreement because it would increase their liability, and, in many cases, tenants are unaware that this is necessary in order to absolve them from ongoing liability. Further landlords will often refuse this as they may not be satisfied the remaining tenant or tenants can meet the obligations under the tenancy agreement themselves.

At the public briefing it was suggested that the proposed section 128 of the Bill provides adequate protections to co-tenants before they will be listed. However, it is foreseeable that landlords and operators would not distinguish between co-tenants who are signatories to a tenancy agreement and instead list all persons involved in the tenancy. Then the co-tenant would have to go through the entire NTCAT process just to challenge the listing and under the proposed Bill, as it stands, they may not be successful as liability between tenants is joint and severable, regardless of fault.

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It is for this reason that we propose that the Bill provide better protections for co-tenants where that tenant's involvement in the tenancy has ceased, particularly given the rise in share house type arrangements within the Top End.

We would also like to see the domestic violence provision we proposed in our submissions dated 9 March 2018 discussed as a matter of importance. This is another significant area where co-tenancy has the effect of creating enduring binds in domestic violence situations. We refer to our submissions for proposals as to how the Bill could be improved to better address these situations.

'Unjust Clause'

In our submissions we proposed the Tribunal have powers to take into account whether a listing would be 'unjust'. It was raised at the briefing that such a provision would be unnecessary given the Tribunal's discretion in relation to making decisions. On the contrary, given that New South Wales, Queensland, Western Australian and the Australian Capital Territory all empower their Tribunal to consider whether a listing is 'unjust' it would be reasonable to benchmark the proposed legislation against these standards.

Limit Timeframes for Listings

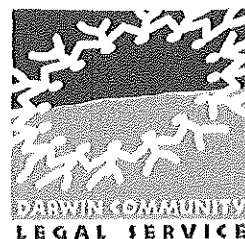
Placing a limit on when a landlord could list a tenant should not inhibit a landlord pursuing a claim arising out of the tenancy agreement through NTCAT.

We submit that it is counter-intuitive to not have a time limit imposed on when a tenant can be listed, and that 30 days from the date on which the Tribunal makes an order is sufficient time for a landlord to apply for a listing.

Landlord Databases

The issue of landlord databases was raised, and it would seem fair that, similar to other essential service provisions, tenants have relevant information to make choices about housing. This would also improve the reputation of the Northern Territory private rental market. We will be advocating for a landlord database mechanism as part of the upcoming broader reforms to the *Residential Tenancies Act*.

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Excessive Fees

We submit that the current charging of fees may be contrary to the *Australian Privacy Principles* (APP). Under the APP paragraph 12.77, 'an organisation cannot impose upon an individual a charge for the making of the request to access personal information.' Currently, database operators charge tenants in the Northern Territory for requests to access personal information and will not divulge whether a person is listed without the payment of a fee. We therefore propose that a fee should not be charged where a person is simply lodging a request for information. This is consistent with section 99J of the South Australian *Residential Tenancies Act*.

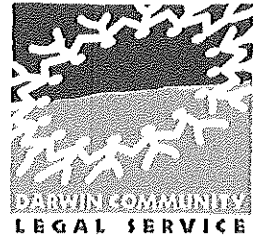
Under APP paragraph 12.78 'an organisation may, however, impose a charge for giving access to requested personal information, provided the charge is not excessive' (APP 12.8). We submit that the current charges for access to personal information are excessive.¹ It is our view that it is contrary to the APP that a person should not be entitled to freely access personal information where that information is used to inform a decision about whether they are eligible for housing and support the addition of provisions in the Bill to prevent charging for accessing personal information.

Providing Notification to Tenants

A person should be able to obtain, review and make submissions on any listing against them, regardless of whether that information is publicly available from court or Tribunal records.

¹ Our experience is that the predominant database operator in the Northern Territory, TICA, will not provide information without charging a fee and refuse email requests that would provide the tenant their personal information for free. Therefore, to quickly obtain information a tenant would need to telephone the operator (TICA charges \$5.45 per minute and higher from mobile phone and pay phones), or fax costing \$33. The only other options are via post which is a longer process (\$19.80 plus the cost of a self-addressed envelope) and \$55 for 12 months access to the persons 'tenancy file'. Often these costs are enough to stop many low-income tenants from accessing their personal information which can lead to inaccurate listings preventing rental applications.

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Further Amendments

If the Act is to be amended, we submit that the amendment should not be minimalist but should future proof the legislation or at the very least meet the standards achieved in other states and territories.

Thank you for the opportunity to provide further submissions.

A handwritten signature in black ink, appearing to read "Linda Weatherhead". The signature is fluid and cursive, with a large initial "L" and "W".

Linda Weatherhead
Executive Director