LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Legislation Scrutiny Committee

Inquiry into the Residential Tenancies Legislation Amendment Bill 2019

December 2019

Contents

Chair's Preface

This report details the Committee's findings regarding its examination of the Residential Tenancies Legislation Amendment Bill 2019. The Bill represents the first tranche of a series of reforms to modernise the *Residential Tenancies Act 1999* and ensure it reflects contemporary concerns and values.

The inquiry generated a moderate amount of interest with 10 submissions received. Although all submitters supported elements of the Bill the majority were disappointed with the limited scope of the amendments and the staggered approach to the reform program. A number of matters raised in submissions were outside the scope of this Bill and have not been addressed in this report except in particular instances such as concerns relating to the impact of domestic violence on tenancies. Significant issues of concern primarily related to the new provisions for the keeping of pets; entry of landlords to premises under an order from the Tribunal; and a number of the provisions relating to new Part 15, Termination for purposes under the Housing Act.

The new provisions on pets were supported by all but one submitter. The provisions provide a presumption that a tenant may keep a pet by providing written notice to the landlord. If the landlord objects to pets they can apply to the Tribunal to determine whether the objection is unreasonable. After considering the evidence, the Committee is of the view that these amendments pose an unreasonable burden on the landlord and will only benefit a small proportion of tenants in private rental housing. The Committee does not support this amendment.

The Committee has made three recommendations to Government, with these relating to notice periods, the current requirement for tenants to be present at initial inspections, and provisions relating to domestic violence. Recommendation 2 proposes that the provisions on pets be removed while Recommendation 3 is a technical amendment to ensure that clause 7 is unambiguous and drafted in a sufficiently clear and precise manner.

On behalf of the Committee I would like to thank all those who made submissions, or appeared before the Committee, for their advice and clarification of complex issues. The Committee also acknowledges the Department of the Attorney-General and Justice and the Department of Local Government, Housing and Community Development for their assistance and advice. I also thank my fellow Committee members for their bipartisan commitment to the legislative review process.

Ms Ngaree Ah Kit MLA
Chair

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	Sessional:	Legislation Scrutiny
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The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at public hearings.

Terms of Reference

Sessional Order 13

Establishment of Legislation Scrutiny Committee

(1) Standing Order 178 is suspended.

(2) The Assembly appoints a Legislation Scrutiny Committee.

(3) The ordinary membership of the scrutiny committee will comprise three Government Members, one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.

The Committee's membership will be supplemented by alternate members who may be nominated to participate at meetings and undertake a role on the committee in the place of ordinary committee members. The nomination of alternate committee members will be in writing by the ordinary member to the committee chair.

Alternate Committee members must be from the same category of Members of the Assembly as the ordinary member nominating them such as the same political party or a non-party aligned Member.

(4) The functions of the scrutiny committee shall be to inquire and report on:

(a) any matter referred to it:

(i) by the Assembly;

(ii) by a Minister; or

(iii) on its own motion.

(b) any bill referred to it by the Assembly;

(c) in relation to any bill referred by the Assembly:

(i) whether the Assembly should pass the bill;

(ii) whether the Assembly should amend the bill;

(iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:

(A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and

(B) is consistent with principles of natural justice; and

(C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and

(D) does not reverse the onus of proof in criminal proceedings without adequate justification; and

(E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and

(F) provides appropriate protection against self-incrimination; and

(G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

(H) does not confer immunity from proceeding or prosecution without adequate justification; and

(I) provides for the compulsory acquisition of property only with fair compensation; and

(J) has sufficient regard to Aboriginal tradition; and

(K) is unambiguous and drafted in a sufficiently clear and precise way.

(iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:

(A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and

(B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and

(C) authorises the amendment of an Act only by another Act.

(5) The Committee will elect a Government Member as Chair.

(6) The Committee will provide an annual report on its activities to the Assembly.

Adopted 27 November 2019

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Residential Tenancies Legislation Amendment Bill 2019 with the proposed amendments set out in recommendations 2, 3, 5 and 6.

Recommendation 2

The Committee recommends that the Bill be amended to remove proposed sections 65A and 65B.

Recommendation 3

The Committee recommends that the Bill be amended to clarify that subsections 77(4) to (6) only relate to orders by the Tribunal under subsection 77(1).

Recommendation 4

The Committee recommends that the Government review existing notice periods for fixed and periodic tenancies with a view to extending them in the next tranche of reforms.

Recommendation 5

The Committee recommends that the Bill be amended to extend the notice periods in proposed sections 146(b) and (c) from 7 days to 14 days.

Recommendation 6

The Committee recommends that proposed section 147(1) be amended to remove the 7-day timeframe for making a submission and replace it with a 14-day timeframe.

Recommendation 7

The Committee recommends that the Government review section 25(3) of the Act in the next tranche of reforms and consider whether it would be appropriate to remove this subsection from the Act.

Recommendation 8

The Committee recommends that in the next tranche of reforms to the *Residential Tenancies Act 1999 (NT)* the Government give further consideration to the inclusion of amendments to address the impact of domestic violence on tenants, taking into account issues raised by stakeholders during this inquiry and examples of best practice in this area, such as New South Wales *Residential Tenancies Act 2010*.

1 Introduction

Introduction of the Bill

1.1 The Residential Tenancies Legislation Amendment Bill 2019 (the Bill) was introduced into the Legislative Assembly by the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, on 16 October 2019. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by 11 February 2019.[1]

1.2 On Wednesday 27 November 2019 the Assembly dissolved the Economic Policy and Social Policy Scrutiny Committees and established the Legislation Scrutiny Committee and referred outstanding Bill inquiries to the new Committee.[2]

Conduct of the Inquiry

1.3 On 18 October 2019 the Committee called for submissions by 13 November 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

1.4 The Bill was also forwarded to Professor Ned Aughterson for review of fundamental legislative principles under Sessional Order 13(4)(c) in relation to clause 9.

1.5 As noted in Appendix 2, the Committee received 10 submissions to its inquiry. The Committee held a public briefing with the Department of the Attorney-General and Justice and the Department of Local Government, Housing and Community Development on 29 October 2019 and public hearings with 10 witnesses in Darwin on 9 December 2019.

Outcome of Committee's Consideration

1.6 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:

(i) whether the Assembly should pass the bill;

(ii) whether the Assembly should amend the bill;

(iii) whether the bill has sufficient regard to the rights and liberties of individuals; and

(iv) whether the bill has sufficient regard to the institution of Parliament.

[1] 1 Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, Draft - Daily Hansard – Day 2 – 16 October 2019, p.8, https://www.territorystories.nt.gov.au/jspui/handle/10070/754880.
[2] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft – Daily Hansard - Day 2 – 27 November 2019*, p. 94, https://www.territorystories.nt.gov.au/jspui/handle/10070/755087.

1.7 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with proposed amendments as set out in recommendations 2, 3, 5 and 6.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Residential Tenancies Legislation Amendment Bill 2019 with the proposed amendments set out in recommendations 2, 3, 5 and 6.

Report Structure

1.8 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.

1.9 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

2.1 The Bill is the first tranche of a reform program aimed at modernising the *Residential Tenancies Act 1999*.[3] The main impetus for the reform program is to modernise the Act to ensure that 'it remains fit for purpose for the contemporary environment'.[4] As noted in the discussion paper released by the Government in July 2019, research suggests that there have been marked changes in attitudes to housing:

> There has been a shift in rental patterns away from the traditional view of renting as a short-term pathway towards home ownership, to one where tenants are renting for longer periods.[5]

2.2 Ensuring that the legislative framework adequately meets the needs of both tenants and landlords is perhaps even more imperative in the Northern Territory which has a higher proportion of renters than elsewhere in Australia and higher average weekly rents.[6]

2.3 An additional impetus for the reform program arose from a recommendation made by the Economic Policy Scrutiny Committee in its report on the *Inquiry into the Residential Tenancies Amendment Bill 2018 (Serial 43)*. During the inquiry, a range of issues relating to the *Residential Tenancies Act 1999* were brought to the Committee's attention. Although the majority of these issues were not within the scope of the Bill the Committee considered further investigation to be warranted and recommended that the Government undertake a comprehensive review of the *Residential Tenancies Act 1999* in order to identify the reforms required to modernise the Act and ensure an appropriate balance between the rights of both tenants and landlords.[7]

2.4 In July 2019, the Government released a discussion paper, *Review of the Residential Tenancies Act 1999,* to facilitate engagement with stakeholders and to inform the reform process. The discussion paper incorporates concerns raised in an issues paper released in 2010 by the then Department of Justice as well as issues identified more recently.

Purpose of the Bill

2.5 As noted in the Explanatory Statement, the purpose of the Bill is to:

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[3] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft - Daily Hansard – Day 2 – 16 October 2019*, p. 5, https://www.territorystories.nt.gov.au/jspui/handle/10070/754880.
[4] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft - Daily Hansard – Day 2 – 16 October 2019*, p. 5, https://www.territorystories.nt.gov.au/jspui/handle/10070/754880.
[5] Department of the Attorney-General and Justice (NT), *Discussion Paper: Review of the Residential Tenancies Act 1999,* July 2019, p. 16, https://justice.nt.gov.au/__data/assets/pdf_file/0004/713470/2019-residential-tenancies-act-review-discussion-paper.pdf
[6] Department of the Attorney-General and Justice (NT), *Discussion Paper: Review of the Residential Tenancies Act 1999,* July 2019, p. 16, https://justice.nt.gov.au/__data/assets/pdf_file/0004/713470/2019-residential-tenancies-act-review-discussion-paper.pdf
[7] Economic Policy Scrutiny Committee, *Inquiry into the Residential Tenancies Amendment Bill 2018 (Serial 43),* Recommendation 4, p. 33, https://parliament.nt.gov.au/__data/assets/pdf_file/0017/500453/43-2018-Report-Residential-Tenancies-Amendment-Bill-2018.pdf.

> make a number of amendments to the *Residential Tenancies Act 1999* and the Residential Tenancies Regulations 2000 to address issues identified with the administration and operation of the Act and Regulations, and consequently, affecting residential tenancies in the Northern Territory subject to the requirements of the Act and Regulations.[8]

2.6 As noted by the Minister when presenting the Bill, this is the first tranche of a series of reforms, with the aim of this Bill being 'to address a number of operational issues'.[9]

[8] Explanatory Statement, *Residential Tenancies Legislation Amendment Bill 2019,* (Serial 112), p. 1, https://parliament.nt.gov.au/committees/EPSC/112-2019.

[9] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft – Daily Hansard - Day 2 – 27 November 2019*, p. 5, https://www.territorystories.nt.gov.au/jspui/handle/10070/755087.

3 Examination of the Bill

Introduction

3.1 All submitters supported elements of the Bill, however, the majority of submitters were disappointed with the limited scope of the amendments and what was considered to be a "piecemeal" approach to the reform and modernisation of the Act. Most of these submitters were particularly concerned at the absence of amendments in relation to protections for domestic violence victims,[10] notice periods for termination[11] and "no cause" evictions.[12] The submission provided by the Darwin Community Legal Service (DCLS) was endorsed by the Central Australian Women's Legal Service, NT Legal Aid Commission, United Workers Union, the Northern Territory Council of Social Services (NTCOSS), and NT Shelter.

Clause 6 – Sections 65A and 65B inserted – Keeping pets

3.2 At present, the Act is silent on whether a tenant may or may not have a pet, with this determined by agreement between the parties. Although some landlords permit pets there is a perception by many stakeholders that most landlords exclude pets through a 'standard' clause in the lease.[13] Proposed sections 65A and 65B provide a presumption that a tenant may keep a pet by providing written notice to a landlord describing the proposed pet (the rebuttable presumption model). The landlord has 14 days after receipt of the notice to object to a pet by advising the tenant in writing and making application to the Northern Territory Civil and Administrative Tribunal (NTCAT) to determine if the refusal is reasonable. This does not apply where a body corporate prohibits the keeping of pets (proposed s 65A(8)).

3.3 The "rebuttable presumption" model proposed in this Bill is similar to that recently introduced by the Australian Capital Territory (ACT) and Victoria and currently under consultation in Queensland. In Western Australia (WA), the *Residential Tenancies Act 1987* does not include specific provisions covering pets in rental premises, however, s 29(1)(b) of the WA Act provides for a pet bond, capped at $260, in order to cover the cost of any fumigation required on termination of a tenancy which has included pets.

3.4 Amending the Bill to require landlords to agree to tenants keeping pets has been partly justified on the basis that pets contribute to human wellbeing, particularly for

[10] Submission 2 – Northern Territory Council of Social Services (NTCOSS), p. 2; Submission 3 – Law Society, p. 1; Submission 4, United Workers Union, p. 13; Submission 5 – Top End Women's Legal Service (TEWLS), p. 7; Submission 6 – NT Legal Aid Commission, p. 2; Submission 7 – NT Shelter, p. 9 (submission to Government review); Submission 8 – Darwin Community Legal Service (DCLS), p. 8; Submission 10 – North Australian Aboriginal Justice Agency (NAAJA), p. 4.

[11] Submission 2 – NTCOSS, p. 2; Submission 4 – United Workers Union, p. 12; Submission 5 – TEWLS, pp. 3-4; Submission 6 – NT Legal Aid Commission, p. 2; Submission 7 – NT Shelter, p. 3; Submission 8 – DCLS, pp. 1, 3.

[12] Submission 2 – NTCOSS, p. 2; Submission 4 – United Workers Union, p. 13; Submission 8 – DCLS, p. 4; Submission 10 – NAAJA, p. 3.

[13] Department of the Attorney-General and Justice (NT), Discussion Paper: *Review of the Residential Tenancies Act 1999*, July 2019, p. 65, https://justice.nt.gov.au/__data/assets/pdf_file/0004/713470/2019-residential-tenancies-act-review-discussion-paper.pdf.

children, with the Department noting that 'Numerous studies are now finding that especially children in houses that have pets are far more benefitted by the presence of that pet than families who do not'.[14] The Department further commented that there has been a change in the construct of landlords over time, with this altering expectations about what the landlord should provide and what the tenant should reasonably be able to expect, with the Department noting that:

> From the accidental landlord who has inherited a house to those who are now professionally investing in properties for commercial gain, either as part of their superannuation arrangements or just actually to make an income on a current day-to-day basis.
>
> That change brings about, and should bring about, a shift in mindset between the relationships. As opposed to a personal "this is mine and I am allowing with a grace to stay in my premises" to somebody who is actually operating a business and that detached nature, which is where changes like this come about.[15]

3.5 All submissions other than that provided by the Real Estate Institute of the Northern Territory (REINT) supported the rebuttable presumption model, however, several submitters expressed concerns regarding aspects of the amendments. The key concerns raised by submitters are discussed under the sub-headings below.

Consequences to tenant of having a pet temporarily on rental premises

3.6 DCLS, TEWLs, and NT Shelter commented that proposed s 65A could be interpreted to mean that a tenant could be breached for having a pet on their property temporarily, for example, in situations where 'a visitor brings a pet to premises for a restricted period of time with no intention of the pet remaining at the premises on a living basis'.[16]

3.7 The Committee sought clarification from the Department regarding whether proposed s 65A would result in a breach where a pet was on the property for a short time and was advised that:

> The general interpretation of the word 'keep', in relation to a pet, is one of retention of the pet at the premises on an ongoing basis, rather than a temporary one.[17]

Potential for "no cause" terminations to deter tenants from exercising rights under proposed s 65A

3.8 NT Shelter, DCLS and the NT Legal Aid Commission noted that while a landlord may not unreasonably object to a tenant keeping a pet, landlords who do not want a pet on the property can terminate the tenancy without cause in accordance with sections 89 or 90, with this potentially deterring tenants from exercising their rights under proposed s 65A.[18]

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[14] Committee Transcript, Public Hearing, 9 December 2019, p. 44.
[15] Committee Transcript, Public Hearing, 9 December 2019, p. 44.
[16] Submission 5 – TEWLS, p. 3.
[17] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, p. 3, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.
[18] Submission 8 – DCLS, p. 4; Submission 7 – NT Shelter, p. 2; Submission 6 – NT Legal Aid Commission, p. 3.

3.9 The Committee sought clarification from the Department regarding how this potential outcome could be addressed and was advised that:

> In respect of tenancy agreements entered into after commencement, there is scope for a landlord to seek to terminate the agreement without reason where a tenant seeks to keep a pet under section 65A. However, the landlord is constrained by the notice periods for termination, and those periods well exceed the period in which the landlord is required to either consent to the pet, or apply to the NTCAT. The practical effect is that if an application is approved the tenant will be permitted to keep the pet until the tenancy runs its course, and the landlord will be faced with the process of seeking new tenants at the conclusion of the terminated tenancy. From a business continuity perspective, it would be in the landlord's long-term interest to seek to retain the tenant in the tenancy.[19]

Keeping pets when renting body corporate accommodation

3.10 Both NT Shelter and the RSPCA Darwin recommended that the amendment be extended to include body corporates. NT Shelter commented that while some pets would not be suitable in certain types of apartments this should not result in a bar to all pets and suggested that one approach for dealing with this would be 'the issuance of guidelines as to what would generally be considered fair and reasonable requests for pets in units and apartments'.[20]

3.11 The Committee notes that proposed s 65A(8) makes the keeping of pets subject to any prohibition on animals or birds under Part V, Division 6 of the *Unit Titles Act 1975* (NT) and *Part 3.5, Division 2 of the Unit Title Schemes Act 2009* (NT). This does not constitute a blanket prohibition across all body corporate accommodation, as body corporates can choose to amend their articles of corporation to allow pets.

3.12 The situation is similar in the ACT where tenants in this type of accommodation have scope to keep a pet through provisions in the *Unit Titles (Management) Act 2011* (ACT), provided the owners' corporation has given consent to the owner keeping an animal or allowing an animal to be kept (s 32). However, under s 32(3) of *Unit Titles (Management) Act 2011* (ACT), a tenant who wishes to keep a pet but who is living in accommodation where the body corporate does not provide consent for the pet has the option of applying to the Tribunal if they consider consent has been unreasonably withheld. This would appear to be an effective way of providing renters in this type of accommodation with the same rights as those renting accommodation that is not governed by a body corporate.

Types of pets captured under proposed section 65A

3.13 TEWLs commented that the Bill is unnecessarily 'restrictive and burdensome in capturing all pets'. They considered it would be unusual for the example provided in subsection (7) of s 65A (multiples species of tropical fish) to require approval of a landlord and suggested that seeking approval for a dog or cat would be more probable. TEWLS recommended that the types of pets to which the provisions apply

[19] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, p. 2, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP

[20] Submission 7 – NT Shelter, pp. 2-3; Submission 9 – RSPCA Darwin, p.4.

should be clarified through provision of a non-exhaustive list which notes 'that pets in a tank/bowl, or similar, are not captured by the provisions'.[21]

3.14 Provisions on pets in residential tenancies legislation in Victoria and the ACT do not clarify the types of pets covered nor do they specify that a tenant may provide notice in respect of more than one pet. However, in the ACT, the types of animals are specified in s 32(4) of the *Unit Titles (Management) Act 2011* (ACT), with these including: amphibians, birds, fish, mammals and reptiles.

3.15 The Committee sought advice from the Department regarding whether the intent of the Bill is to include all types of pets notwithstanding whether these are in a bowl or tank and was informed that:

> The purpose of proposed section 65B(2) is to assist the NTCAT in determining whether or not consent is reasonably withheld. Under proposed section 65B, considerations include the type of pet, nature of the premises, and whether there are any legal restrictions. The consideration relates to the specific premises, so a premises may be suitable for 1 medium size dog, but not 3 large dogs, a goat and an elephant. The section also factors in circumstances where during the tenancy a tenant might have a gold fish that the landlord agreed to, and later wishes to have a cat.
>
> The general definition of pet is that of a domesticated or tamed animal kept for companionship or pleasure. It is unlikely that insects would meet this definition. The provision does intend to capture aquatic animals (as the example for proposed section 65A(7) provides). As noted above, the reasonableness is premises specific so it is appropriate that the provision enables NTCAT to consider all types of pets in the context of the premises in which they are proposed to be kept.
>
> The intention is to enable consideration of all types of pets in the context of the premises in which they are proposed to be kept. In this setting, specifying specific types of pets may result in an unnecessarily restrictive list.[22]

Pet provisions not applicable to tenancy agreements entered into prior to commencement

3.16 Under proposed s 175 of the Bill, the new provisions relating to pets will only apply to tenancy agreements entered into after commencement of this section. DCLS expressed the view that there was no reason for this restriction and recommended that proposed s 175 be removed.

3.17 The Committee sought clarification from the Department as to why the pet provisions would not apply retrospectively and was advised that:

> The purpose of proposed section 175 is to maintain the status quo for existing tenancies as the purpose of proposed sections 65A and 658 is to provide a presumption in favour of keeping pets, unless unreasonable. As noted in response to question 2a, there is nothing preventing negotiations between a tenant and landlord under existing agreements in relation to keeping a pet.[23]

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[21] Submission 5 – TEWLS, p. 3.
[22] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, pp. 3-4, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.
[23] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, p. 4, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP

Impact on Northern Territory Civil and Administrative Tribunal and cost impost on landlords

3.18 The REINT drew attention to the need to recognise the rights of landlords as well as tenants and commented that:

> there is a lot of discussion about the right of the tenant to have a pet. Doing so ignores the right of the landlord who has invested hundreds of thousands, possibly even $1m into a property which is their future for their retirement. You are literally taking away their right over their investment property.[24]

3.19 They further noted that landlords who are reluctant to have pets have often been adversely affected in the past:

> Often that has been because they have had a very bad experience from tenants who have not been responsible pet owners—destroyed irrigation is a major one, torn flyscreens with them scratching it back.
>
> If there is reluctance on landlords to allow pets, it is usually because they have a very good reason. They have been badly burned in the past. … It is something that the landlord needs to have a say in, because most of them are pet friendly. But if it is a small house with a small yard, no to a Great Dane. Do you know what I am saying? There has to be some control over the type of animal or the number of animals as well.[25]

3.20 The REINT drew attention to the response of members of the Real Estate Institute of Victoria (REIV) when Victoria introduced similar legislation, with up to 25% of members surveyed stating they would consider leaving the property market. REINT commented that:

> The result of that would be a decrease in the available rental stock and a substantial increase in the cost of rents, to the point that the REIV have predicted a 100 percent increase in rents over less than a three year period.[26]

3.21 The REINT also considered that these amendments would result in an excessive workload for NTCAT and be a cost impost on landlords. They disputed the Minister's assertion that the reluctance of landlords to agree to pets 'is based on the misplaced notion that a pet will damage or cause other problems with the premises', noting that its members have 'ample evidence of damage and problems, both major and minor in nature, due entirely to pets kept on a rental premises'.[27]

3.22 The Committee sought clarification from the Department regarding the impact on NTCAT's workload and the cost impost to landlords and was advised that:

> The Northern Territory Civil and Administrative Tribunal (NTCAT) was consulted during development of proposed sections 65A and 65B, which included possible impact on workload.
>
> It was considered that there may be an initial uptake in applications to refuse, however with the test being based on reasonableness, and with non-exhaustive criteria set out in proposed section 65B(2), it was determined that the workload of the NTCAT will not be adversely impacted.[28]

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[24] Committee Transcript, Public Hearing, 9 December 2019, p. 34.
[25] Committee Transcript, Public Hearing, 9 December 2019, p. 34.
[26] Submission 1 – Real Estate Institute of the Northern Territory (REINT), p. 3.
[27] Submission 1 – REINT, p. 3.
[28] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, p. 1, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.

3.23 The Department advised that the main cost to landlords of putting in an application to NTCAT would be a filing fee of $68 for individuals and $85.00 for a body corporate. Hearing fees rise progressively from $141 per day from day 2 onwards, however, the first day of the hearing is free and 'NTCAT's experience in residential tenancy matters is that hearings generally do not run for more than a day'.[29]

3.24 Although the cost of the filing fee is only $68 the Committee considers that the effect of the proposed amendment will be to expose landlords to a range of costs on an ongoing basis. The amendment applies to both periodic and fixed term leases, with this having the potential to result in continuous applications to NTCAT for landlord's who do not wish to expose their investment properties to potential damage from pets. In addition, the NTCAT fees only represent a direct cost and do not take account of the time spent by landlords or their agents in filing the application, attending NTCAT conferences or hearings and remedying any damage the pet has caused.

Committee's Comments

3.25 The Committee queries the necessity for these amendments as the evidence received suggests that the proportion of rental properties they are likely to make available to tenants who wish to keep pets will be quite small. The DLGHCD advised the Committee that almost 50 percent of rental properties in the NT comprise public housing in which pets are already allowed except where prohibited by Council by-laws.[30] The REINT commented that 65 to 70 percent of rental stock in the NT is unit stock, with the majority of these unlikely to be affected by the amendments due to the prohibition under the *Unit Titles Act 1975* and the *Unit Title Schemes Act 2009* (proposed s 65A(8).[31] Consequently, it is likely that the impact of the amendments on renters would be quite small.

3.26 The Committee considers that while keeping a pet does not automatically mean that damage will be caused to a property it has the effect of increasing the potential for damage or nuisance such as flea and tick infestation, damage to irrigation systems, flyscreens, carpets, floors and furniture. Pets, particularly dogs, may also cause a nuisance to neighbours thereby adding to the landlord's burden due to the need to resolve these issues. The costs associated with damage from pets can be considerable and, in many instances, are likely to devolve to the landlord. The Committee also notes that the amendments place additional administrative and legal costs on the landlord to put in place a reasonable prohibition.

3.27 The Committee does not support requiring the landlord to obtain an order from NTCAT to impose a reasonable prohibition of a pet as proposed in the Bill.

[29] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, p. 2, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.
[30] Committee Transcript, Public Hearing, 9 December 2019, p. 44.
[31] Committee Transcript, Public Hearing, 9 December 2019, p. 34.

Recommendation 2

The Committee recommends that the Bill be amended to remove proposed sections 65A and 65B.

Clause 7 – Section 77 amended (Tribunal may order tenant to let landlord enter premises)

3.28 This clause amends s 77 to remove gender specific language and to provide greater clarity about what NTCAT allows in relation to a landlord's entry to a premises. Under subsection (1), if a tenant unreasonably impedes or fails to permit the lawful entry of the landlord or agent NTCAT may authorise use of reasonable means to enter the property and can specify what those means are (subsection 3). The clause further provides that when entering the premises under this section: a landlord or agent must not make physical contact with the tenant or others on the premises (subsection 4); when entering under an NTCAT order must replace or provide compensation for any property damaged by the entry unless the damaged property was used to prevent entry (subsection 5); and, subject to subsections (4) and (5), the landlord is not criminally or civilly liable for acts or omissions in entering the premises if these are done in good faith and in accordance with the order.

Technical issues regarding section 77

3.29 The Committee identified the following technical issues with this amendment:

- It is not clear whether subsection (2) only relates to entry under an order under subsection (1) or whether 'entered … in accordance with this Act' includes entry without an order, for example, a landlord entering to carry out repairs under s 71.
- It is not clear whether subsection (4), which applies to a landlord entering premises 'under this section', relates only to entry under an order under subsection (1) or whether it also applies to landlords who have entered premises under the Act without an order, such as entering with consent to carry out repairs (s 71).

3.30 The Committee sought clarification from the Department regarding the exact meaning of these sections and was advised that:

> Section 77(2) provides a prohibition on the tenant from unreasonably impeding the landlord or authorised person after they have gained lawful access. It is a general prohibition which applies to access gained under section 77(1) or as otherwise authorised under the Act. Proposed new section 77(4) only relates to the entering of the premises under an order issued under section 77(1).
>
> Section 77(2) is a prohibition on the tenant that applies once a premises has been lawfully entered, whether the lawful access is under an order made under section 77(1) or otherwise in accordance with the Act. Section 77(4) relates to contact with the tenant or other person during the entry to the premises under an order issued under section 77(1).[32]

[32] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, 6 December 2019, p. 5, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.

3.31 The Department further advised that:

> If further clarity is deemed necessary, a consideration in detail stage amendment to sections 77(4) to (6) to clarify that the order referred to in those subsections is the order made under section 77(1) could be considered.[33]

Committee's Comments

3.32 The Committee considers that clause 7 should be amended to remove the existing ambiguity.

Recommendation 3

The Committee recommends that the Bill be amended to clarify that subsections 77(4) to (6) only relate to orders by the Tribunal under subsection 77(1).

Issues raised in submissions in relation to section 77

3.33 This amendment was supported by REINT but was not supported by DCLS, NT Legal Aid Commission, NT Shelter and NTCOSS.[34] The provision was considered to be a disproportionate response, with DCLS commenting that if a tenant has been impeding entry then it is likely that the relationship between the tenant and the landlord is already hostile, consequently, allowing entry under proposed s 77 would be dangerous for both parties despite the proposed safeguards in subsections (4) and (5). DCLS further stated that the Act already provides for landlords to deal with emergencies through s 72 and that collection of rent is an outdated notion that could constitute provocation.[35] NAAJA commented that rather than the landlord forcing entry under s 77, it would be more appropriate for the landlord to 'register the order of the Tribunal with the Local Court thereby enabling the bailiff of the Local Court to enforce the order'.[36]

3.34 The Committee notes that there are a range of reasons why a landlord may need to gain entry such as showing the property to a prospective purchaser or tenant, inspecting the premises and making repairs. It is unlikely that s 77 would be used to gain entry to collect rent, as where rent is in arrears s 96A enables landlords to apply to NTCAT for an order to terminate a tenancy and gain possession of the property (s 100A).

3.35 Submitters also expressed concern regarding proposed subsection 77(6) which states that the landlord is not civilly or criminally liable for acts done in good faith, with NT Legal Aid Commission, NT Shelter and DCLS considering this to be unprecedented, unnecessary and potentially dangerous, with no other jurisdiction within Australia containing such a provision.[37]

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[33] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions*, 6 December 2019, p. 6, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.
[34] Submission 8 – DCLS, p. 5; Submission 6 – NT Legal Aid Commission, p. 3; Submission 7 – NT Shelter, p. 3; Submission 2 – NTCOSS, p. 1.
[35] Submission 8 – DCLS, p. 5.
[36] Submission 10 – NAAJA, p. 4.
[37] Submission 8 – DCLS, p. 5; Submission 6 – NT Legal Aid Commission, p. 3; Submission 7 – NT Shelter, p. 3

3.36 The Committee sought comment from the Department regarding the concerns identified above, and clarification regarding how the proposed amendments would operate, and was advised that:

> The purpose of the amendment is to make it clear to a landlord and tenant how the landlord may gain entry to their premises when the tenant has denied them entry.
>
> For an order under section 77, a landlord must have first tried to exercise a legal right to enter the premises, and the tenant must have denied that right.
>
> An application to NTCAT under section 77 for an order to permit that entry, requires the landlord to outline the legal right they wished to exercise, along with the actions taken by the tenant to prevent the landlord from exercising their legal right, and any efforts the landlord undertook to ameliorate the situation.
>
> The NTCAT is obliged to consider all the relevant matters, including the tenant's view, before deciding whether or not to issue an order. To make an order permitting the landlord entry, the NTCAT must be satisfied that the landlord had a legal right to enter the premises, and that the tenant unreasonably impeded or failed to permit that entry.
>
> 'Reasonable means' to enter the premises requires consideration of the circumstances, based on the nature of the impediment or failure by the tenant preventing access, to determine the most reasonable response to address that impediment or failure. For example, a tenant may be directed to remove a lock on the front door that the tenant has installed, within a certain period of time, with a further order that if the tenant fails to comply within that timeframe, the landlord is authorised to engage a locksmith to open, and remove, the lock to gain entry.
>
> The provision providing an exclusion from civil or criminal liability, confirms the general position under the Criminal Code and the common law, that an action authorised by, and undertaken in accordance with, an order of a competent authority is lawful to the extent the order is lawful and the actions accord with that order. Using the example in the paragraph above, if the tenant does not comply with the order to remove the lock and permit entry, and the landlord subsequently engages a locksmith to open and remove the tenant's lock, the landlord is not civilly or criminally liable for wilful interference or damage of the tenant's property (i.e. the lock).

Committee's Comments

3.37 The Committee notes that the ability to obtain an order from NTCAT to enter the premises is not new and the main purpose of the proposed provisions is simply to clarify the limits and qualifications relating to entry under the order. The Committee considers the provisions achieve this purpose and is satisfied with the Department's advice.

Clause 9 – Section 90 replaced – Fixed term tenancy

3.38 This clause inserts a new provision which clarifies that a landlord may terminate a fixed term tenancy by giving notice of intention to terminate at least 14 days before the day the tenancy is due to terminate. The wording has been changed to reflect the new definition in clause 4 – from "notice of termination" "to notice of intention to terminate".

3.39 Although the change to terminology was supported by DCLS, TEWLS, NT Legal Aid Commission and NT Shelter, these submitters also highlighted the importance of

amending the notice period to bring it into line with national standards. The Northern Territory has the shortest notice period in Australia, followed by South Australia which has a notice period of 28 days. The longest notice period is in the ACT which requires landlords to give 26 weeks' notice.[38]

3.40 The Committee sought clarification from the Department regarding whether consideration is being given to increasing the notice times through future reforms to the *Residential Tenancies Act 1999* and was advised that:

> Amendment to grounds and notice periods in sections 89 and 90 did not form part of the proposed amendments for this Bill. It is acknowledged that this is an area requiring consideration, however due to a lack of consensus amongst stakeholders, this topic requires further consultation and consideration as part of ongoing reform work, which is beyond the scope of this Bill.[39]

Committee's Comments

3.41 The Committee is satisfied with the Department's advice, however, it agrees with submitters that the length of notice periods needs to be addressed and recommends that Government give this matter consideration in the next tranche of reforms to the *Residential Tenancies Act 1999* (NT).

Recommendation 4

The Committee recommends that the Government review existing notice periods for fixed and periodic tenancies with a view to extending them in the next tranche of reforms.

Clause 20 – Part 15 inserted – Termination for purposes under the Housing Act

3.42 This clause inserts new Part 15 to provide the Chief Executive Officer (Housing) with powers to terminate a public housing tenancy under specific circumstances. A key purpose of Part 15 is to facilitate arrangements for the transitional accommodation required by tenants in association with the rollout of refurbishment works to public housing or replacement housing (Division 2). The amendments in Part 15 will also provide a mechanism which allows 'the CEO (Housing) to transfer a tenant to alternative public housing premises that are better suited to the tenant without terminating the actual relationship', thereby taking into account the long term nature of much public housing and the changes that occur to housing needs over time (Division 3).[40] The aim of these provisions is to assist in sustaining tenancies, as the increased flexibility they provide means that in circumstances where termination of a tenancy would once have been the only option there are now other options, such as relocating the tenant to more suitable housing.[41] This encompasses a range of issues

[38] Department of the Attorney-General and Justice (NT), Discussion Paper: *Review of the Residential Tenancies Act 1999*, July 2019, p. 54, https://justice.nt.gov.au/__data/assets/pdf_file/0004/713470/2019-residential-tenancies-act-review-discussion-paper.pdf.
[39] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, p. 2, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.
[40] Committee Transcript, Public Briefing, 29 October 2019, p. 2.
[41] Committee Transcript, Public Briefing, 29 October 2019, p. 3.

that may affect whether housing is suitable, such as changes to the size of the family, impact of unacceptable or anti-social behaviour, unsafe environment, and social medical or physical needs.

3.43 NAAJA objected to the inclusion of Part 15. They objected to the inclusion of Division 2 on the basis that:

> a. There is nothing in this Part, the Bill, Explanatory Statement or other documentation to suggest that this Part is limited to facilitating the Room to Breathe program;
>
> b. Other mechanisms could be used, such as entering into a deed with a tenant to effect the needs of the program, that would avoid the need to terminate a tenancy and thereby also avoiding the risk that a tenant would become homeless.[42]

3.44 They objected to Division 3 on the basis that:

> The provisions in Part 15, Division 3 appear to give a legislative basis for the kinds of transfers that already occur through Territory Housing's internal policies.
>
> In our view, those policies are reasonable and work reasonably effectively to ensure that tenants can transfer for the same reasons as outlined in proposed section 144.
>
> We therefore submit that there is no need to include these provisions, and it is concerning these provisions would allow Territory Housing to terminate tenancies and, for the reasons outlined 9,[43] this creates an unnecessary risk to the security of a tenancy.[44]

3.45 Although the provisions in clause 20 were generally welcomed by most other submitters, a number of concerns were raised, particularly in relation to: the enforceability of the undertaking the Department of Local Government, Housing and Community Development (DLGHCD) must make to tenants to enter into a new tenancy agreement; consultation with, and support for, tenants; tenant/landlord agreements not being covered by the Act; time frames for vacating premises; and timeframes for tenants to make a submission regarding proposed changes to their accommodation.

Enforceability of undertaking the DLGHCD makes to tenants re new tenancy agreement

3.46 Proposed sections 139(1)(c), 139(4), 145(1)(b) and 145(3) of the Bill refer to a written undertaking the DLGHCD must make to a tenant to enter into a new tenancy agreement when renovating, replacing or demolishing their current rental premises under Division 2, or relocating them under Division 3.

3.47 TEWLS raised concerns regarding whether the DLGHCD would be able to withdraw or renege on the undertaking made to the tenant, noting that 'in typical civil

[42] Submission 10 – NAAJA, p. 5.
[43] Submission 10 – NAAJA, p. 5: In point no. 9 of their submission NAAJA commented that much of its case work involves disputes with NTG departments and that 'seemingly benign and contained provisions of Northern Territory legislation have been relied upon beyond what was the initial intention of those provisions to the disadvantage of our clients'.
[44] Submission 10 – NAAJA, p. 6.

proceedings, breach of an undertaking equates to contempt of court'.[45] NAAJA expressed similar concerns and commented that:

> subsection 139(4) should be amended so that instead of giving a written undertaking for a new tenancy, the CEO should just enter into a new tenancy agreement with the tenant. There is no reason why this could not occur, and it would ensure that a tenant would always have the legal right to a tenancy. It is unclear what the legal effect would be if Territory Housing gave an undertaking to enter into a new tenancy, but ultimately did not enter into a new tenancy agreement. It is also unclear if this breach would be justiciable, given that section 8 of the *Crown Proceedings Act 1993* prohibits a mandatory injunction against the Crown, suggesting that there may be limited remedies for such a breach. In our submission, it is much more simple, and protecting of rights, if the CEO were required to actually enter into a new tenancy agreement with the tenant.[46]

3.48 The Committee sought clarification from the Department regarding the enforceability of the DLGHCD's undertaking to the tenant and was advised that:

> The Department of Local Government, Housing and Community Development (DLGHCD) has advised that the object of Part 15 is not to permanently end the landlord/tenant relationship. Rather, the object is to provide a mechanism to facilitate the provision of newly renovated premises or alternative premises to existing tenants in an as effective and efficient manner as possible, given the legal challenges the Act raises when managing the complex logistics associated with the rollout of remote public housing programs.
>
> The CEO (Housing) has no intention of, or interest in, withdrawing or reneging on an undertaking to enter a new tenancy agreement under proposed Part 15, Divisions 2 and 3. To put this beyond doubt, DLGHCD intends for the written undertaking to be a binding obligation on the CEO (Housing) as a model social landlord for public housing premises.
>
> Aside from any adverse implications on the CEO (Housing) (and Government more generally) for failing to meet the social landlord's obligations of contributing to social welfare, tenant wellbeing and community vitality, an aggrieved tenant may seek enforcement of a binding written undertaking through NTCAT or the Local Court, which also have jurisdiction to award compensation where appropriate.[47]

Committee's Comments

3.49 The Committee is satisfied with the Department's advice.

Consultation with, and support for, tenants

3.50 DCLS emphasised the importance of adequately consulting with tenants prior to terminating a housing agreement whether this be as a result of renovation, replacement or demolition of premises, or a relocation to alternative public housing for other reasons. DCLS commented that interpreters should be made available where appropriate and several submitters commented that greater clarity should be provided regarding what constitutes "reasonable steps" and "consultation". [48]

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[45] Submission 5 – TEWLS, p. 4.
[46] Submission 10 – NAAJA, p. 6; Submission 5 – TEWLS, p. 4.
[47] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, p. 8, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.
[48] Submission 8 – DCLS, p. 6; Submission 6 - NT Legal Aid Commission, p. 3; Submission 7 – NT Shelter, p. 3; Submission 10 – NAAJA, p. 6.

3.51 Both DCLS and TEWLS emphasised the importance of either facilitating or mandating referrals to legal and other support services and of ensuring appropriate communication with tenants by developing fact sheets to assist tenants to understand processes and involving stakeholders in the development of key documents.[49]

3.52 DCLS recommended that the notice of intention to terminate referred to in subsection 139(3) 'should be developed in conjunction with stakeholders and form part of the standard documents to be included in the regulations' and commented that 'Further guidance is required about how a notice is delivered to ensure that the tenant is reasonably aware of the notice and its importance'.[50]

3.53 Notices of intention to terminate will be delivered in accordance with s 154 of the Act, either personally or by post. In addition, proposed s 139 requires that the CEO (Housing) must not terminate a tenancy agreement under Division 2 without consulting with the tenant or occupiers. The Committee understands that, where appropriate, this consultation will involve other service providers, including interpreters and/or legal advocates.

Committee's Comments

3.54 The Committee does not consider it necessary to be prescriptive in defining "reasonable steps to consult" and is of the view that the overall intent of the provisions is clearly to take into account the views and concerns of affected stakeholders.

3.55 The Committee acknowledges the importance of ensuring that stakeholders adequately understand the processes and procedures associated with re-housing and understands that the DLGHCD have committed to work with legal advocate agencies across the NT on the policy framework supporting Part 15. While the Committee does not consider it appropriate for the legislation to include the level of detail recommended in some of the submissions, it encourages the DLGHCD to ensure they give consideration to the suggestions that submitters have made for improving communication with stakeholders.

Tenant/landlord agreements not being covered by the Act – Division 2, proposed section 140(3)

3.56 Proposed section 140(3) states that an agreement made between a tenant and the CEO (Housing) for transitional accommodation while premises are being renovated is not a tenancy agreement and is not subject to the Act. DCLS expressed concern that this would leave tenants without any legal protections and, conversely, the landlord would have no legal responsibilities in relation to that housing. They commented that some tenants may be in transitional accommodation for extended periods of time and that dealing 'with this issue under policy or operational guidelines is unsatisfactory as a tenant will not be able to enforce their rights'.[51] They suggested that the reason these agreements are not subject to the Act is that the tenant will not

[49] Submission 8 – DCLS, p. 6
[50] Submission 8 – DCLS, p. 6.
[51] Submission 8 – DCLS, p. 8.

be paying rent and that a simple way to solve the problem would be for the CEO to charge tenants a nominal rent.

3.57 The Committee sought clarification from the Department regarding why the Act does not cover agreements made between the tenant and the CEO (Housing) and was advised that:

> DLGHCD advises that its existing Transitional Accommodation Policy provides that the CEO (Housing) will not charge rent (or bond) to tenants who are living in transitional accommodation. This policy decision was made in favour of tenants, recognising that transitional accommodation is temporary.
>
> The policy acknowledges that the need for a tenant to take up temporary accommodation while the CEO (Housing) upgrades or replaces a premises, can inconvenience public housing tenants and create a financial burden for them. DLGHCD intends to amend the existing policy to align with the proposed amendments under this Bill, and strengthen the CEO (Housing's) commitment to reducing any financial burden tenants face by moving into transitional accommodation. This commitment includes not requiring the tenant to pay rent or a bond for the transitional accommodation, and covering the tenant's costs associated with moving and connection of utilities.
>
> If the CEO (Housing) does not charge rent for the transitional accommodation, the Act will not apply to that agreement as section 6(1)(b) provides that the Act does not apply to an agreement that grants a right to occupy premises for the purpose of residence under which no rent is payable.[52]

3.58 The Committee queried what legal recourse tenants might have if the CEO (Housing) does not fulfil obligations normally covered by the Act and was advised that:

> DLGHCD advises that tenants entering into transitional accommodation are required to sign a Transitional Accommodation Agreement. This agreement reflects many of the rights and obligations that exist under a residential tenancy agreement.
>
> Under the Transitional Accommodation Agreement, the CEO (Housing) is contractually bound to follow many of the same obligations that a landlord has under the Act, including ensuring that the premises are:
>
> - safe, secure and habitable;
> - reasonably clean when the tenant enters; and
> - maintained and repaired
>
> The Transitional Accommodation Agreement also includes other rights and responsibilities a tenant would have under the Act, including:
>
> - the right to vacant possession and quiet enjoyment;
> - the requirement to not engage in illegal conduct or create nuisance; and
> - the obligation to notify the CEO (Housing) if the property has been damaged or requires repairs and maintenance.
>
> If there were any dispute in relation to complying with the agreement, the tenant has recourse through DLGHCD's internal complaints and appeals mechanism, where the CEO (Housing) has committed to addressing disputes in a fair and equitable manner. The tenant will also have the ability to seek enforcement of a

[52] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, p. 9, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.

> breach of the agreement by the CEO (Housing) through NTCAT or the Local Court.[53]

Committee's Comments

3.59 The Committee is satisfied with the Department's response.

Notice times for vacating premises - Division 2, proposed s 141 - Right to possession

3.60 Proposed s 141 states that vacant possession is the date agreed by the CEO (Housing) and the tenant or, if there is no agreement, the date the transitional accommodation becomes available. DCLS commented that this could potentially result in the tenant being asked to move out immediately.[54] TEWLS considered that timeframes for the tenant to move needed to be more flexible for both the DLGHCD and the tenant, while both DCLS and TEWLS recommended that proposed s 141(b) be amended to increase the amount of time that the tenant can remain in the premises, with TEWLS recommending seven days from the date the transitional accommodation becomes available and DCLS recommending at least 14 days.[55]

3.61 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of re-drafting proposed subsection 141(b) so that in circumstances where no agreement is made for the date for vacant possession, the tenant has up to seven days after the transitional accommodation becomes available to move, and was advised that:

> DLGHCD advises that under proposed Part 15, Division 2, the CEO (Housing) is to consult with the tenant on the entirety of the program, and the processes associated with it, well before the requirement to move out of the premises into the temporary accommodation occurs. In addition to this, the CEO (Housing) will also be required to advise the tenant of the expected date the tenant can move into the transitional accommodation (proposed section 139(3)(f)) after that consultation.
>
> … there are complex and challenging logistical issues associated with the rollout of the largest remote public housing program undertaken by the Territory, including coordination of the many contractors required to undertake the works, and factoring contingencies such as material availability. Consideration also needs to be given to seasonal factors that influence building activity, such as wet season flooding not just near the location of the weather event, but also further afield (for example, closure of the Stuart Highway at Katherine will significantly impact on the ability to deliver materials to areas outside of that zone that have not been directly impacted by the weather).
>
> Given the nature of the program and the remoteness of communities, there are a limited number of transitional accommodation properties in each community where works are occurring. As a result, the CEO (Housing) needs to carefully manage transitional accommodation premises to ensure that construction works can continue smoothly, efficiently and cost effectively, while addressing tenant needs.

[53] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, p. 9, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.
[54] Submission 8 – DCLS, p. 7.
[55] Submission 8 – DCLS, p. 7; Submission 5 – TEWLS, p. 4.

> Due to the shortage of housing generally, and transitional housing in particular, having transitional properties sitting empty to allow for notice periods to be served by each set of tenants participating in works programs is likely to have a detrimental impact on delivery timeframes for individual houses, which has a flow on effect to the rollout of the overall program. Such delays are difficult to justify where individual tenants have been consulted and advised of expected dates well before they are asked to actually vacate their house to enable the provision of improvements.[56]

3.62 Both TEWLS and DCLS also considered that the timeframes for relocating tenants to other accommodation under Division 3, proposed s 146(b) and (c), should be increased from 7 to 28 days unless otherwise agreed by the CEO (Housing) and the tenant.[57]

3.63 The Committee sought further clarification from the Department regarding the effect on the operation of the Bill of extending the notice period under proposed subsections 146(b) and (c) and was advised that:

> DLGHCD advises that increasing the timeframes under proposed sections 146(b) and (c) of the Bill would lengthen the process of relocation of a tenant and/or process for review where a tenant or occupier has made a submission to the CEO (Housing) on relocation.
>
> It is important to note, that the CEO (Housing's) notice of intention to terminate under Division 3 is not a termination with intent to end the landlord/tenant relationship permanently. The purpose is to facilitate the relocation of the tenant under a new tenancy agreement in an alternative public housing premises. The notice of intention to terminate will be pursued only after the CEO (Housing) has worked with the tenant and occupiers and encouraged them to seek advice from legal advocates, and interpreters have been used where required.
>
> DLGHCD however notes that the 7 day timeframe may give rise to practical logistics issues associated with the tenant's actual relocation following a decision by the CEO (Housing). DLGHCD is of the view that while this may be addressed through increasing the timeframes set out in proposed section 146(b) and (c), its preference is to apply flexibility on enforcement of the timeframe on a case by case basis as a model social landlord.[58]

Committee's Comments

3.64 The Committee is satisfied with the Department's response with regard to the requirement that tenants moving into transitional accommodation who have not agreed a date for vacant possession with the CEO (Housing) must move on the date the transitional accommodation becomes available (proposed s 141(b)). It considers that the extensive consultation that will be undertaken with tenants, and the requirement for the CEO to notify the tenant of the expected date for the move, will provide the tenant with adequate advance notice.

3.65 Regarding the relocation of public housing tenants (proposed s 146(b) and (c)), the Committee considers that seven days' notice is insufficient and is of the view that these notice times should be extended to 14 days. The seven day timeframe does

[56] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, p. 9, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.
[57] Submission 8 – DCLS, p. 7; Submission 5 – TEWLS, pp. 4-5.
[58] Hon Natasha Fyles MLA, *Responses to Written Questions,* 6 December 2019, p. 12, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.

not refer to business days and would, therefore, include weekends and public holidays.

3.66 The Committee notes that the logistical challenges and tight timeframes associated with the rollout of the refurbishment and renovation program are not present to the same extent for moves due to relocation, therefore the effect on the operations of DLGHCD of extending the notice period to 14 days is likely to be minimal. The Committee acknowledges the Department's willingness to be flexible with the enforcement of the proposed 7-day notice period but considers that in the interests of equity and certainty all tenants should be provided with a reasonable timeframe to complete their move to the new accommodation.

Recommendation 5

The Committee recommends that the Bill be amended to extend the notice periods in proposed sections 146(b) and (c) from 7 days to 14 days.

Timeframes for tenants to make a submission regarding proposed changes to their accommodation – Division 3, proposed sections 144 and 147.

3.67 DCLS commented that while Division 3 (Relocating tenant in public housing) includes provisions enabling tenants to make a submission regarding the termination of their agreement (proposed s 147), this is not the case for tenants going into transitional housing due to renovation, replacement or demolition of their housing (Division 2), noting that 'there should be some consistency in these provisions'.[59] However, they also consider the timeframes provided for making a submission under proposed s 147 to be too short and recommended that these be extended from 7 to 28 days in acknowledgement of the barriers faced by tenants in remote areas when seeking legal and other advice to assist with putting their case.[60] TEWLS also recommended that 'tenants be given 28 days within which to provide submissions on relocation to the Department', noting that this is in line with the usual timeframe for appeals.[61]

3.68 The Committee sought advice from the Department regarding the effect on the operation of the Bill of extending the timeframes as recommended by DCLS and TEWLS and was informed that:

> DLGHCD advises that it has noted stakeholder comments on timeframes, however is of the view that extending the 7 day timeframe would unnecessarily disadvantage the tenant by delaying the process.
>
> Proposed section 144 is intended to provide a tenant who is at risk with alternative accommodation to reduce that risk faced by the tenant. Prior to considering whether to activate the provisions in proposed Part 15, Division 3, the CEO (Housing) would have undertaken significant engagement and consultation with the tenant, and where appropriate, other service providers, including the tenant's legal advocates, in an effort to identify and address the risks faced by the tenant. This is necessarily so, as without that prior engagement, the CEO (Housing) would not be in a position to be able to determine whether the tenant is at risk,

[59] Submission 8 – DCLS, p. 6.
[60] Submission 8 – DCLS, p. 7.
[61] Submission 5 – TEWLS, p. 4.

> let alone whether the premises is a factor, and whether alternative accommodation is available to assist in addressing the issue.
>
> In this light, while consideration could be given to extending the period for submissions, it is DLGHCD's view that the detriment to the tenant may increase the further out that is extended.[62]

3.69 Proposed s 144 provides five grounds under which the tenancy agreement may be terminated and the tenant relocated to other accommodation. Four of these are related to risk, with this being either risks faced by the tenant or risks faced by others as a result of the tenant's behaviour. Only proposed subsection 144(1)(a) is unrelated to risk, with this referring to relocation due to the premises having more bedrooms than the tenant or occupier requires.

3.70 Although risks should be addressed promptly, tenants should have adequate time to make a case to the Department as to why a proposed relocation may not be in their best interests. Proposed s 147 is unlikely to provide adequate time, particularly as the 7-day timeframe does not refer to business days but would include weekends and public holidays. In addition, other means are available to the Department to promptly relocate a tenant where there is significant risk. Section 86 of the *Residential Tenancies Act 1999* provides for a landlord to terminate a tenancy by 2 days' notice in the event that premises are flooded, unsafe or uninhabitable.

Committee's Comments

3.71 The Committee considers that the 7-day timeframe for tenants to make a submission regarding their proposed relocation is inadequate and is of the view that 14 days is a more appropriate timeframe. The Committee notes that as risks of an urgent nature can be addressed promptly under s 86 this approach would effectively safeguard tenants from significant risk while allowing scope for a fairer timeframe to be provided to those who wish to challenge the proposed relocation.

Recommendation 6

The Committee recommends that proposed section 147(1) be amended to remove the 7-day timeframe for making a submission and replace it with a 14-day timeframe.

Issues raised that are not within the scope of the Bill

3.72 As noted previously, many submitters considered the scope of the Bill to be too limited, particularly in light of the extensive nature of the issues canvassed in the Government's review. Consequently, a number of submitters raised issues that are outside the scope of this Bill. Two of these are addressed below.

[62] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, p. 11, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP.

Section 25(3) – Condition report at start of tenancy

3.73 Section 25(3) of the Act requires that the condition report filled in by the landlord at the commencement of the tenancy be completed in the presence of the tenant. REINT requested that consideration be given to removing this subsection as they deem it unnecessary. REINT commented that:

> for a long time we have asked government to remove the requirement that a tenant be present at the ingoing inspection. We are the only jurisdiction which has that provision in there. All the other jurisdictions are quite happy—and this is what is happening in default in this jurisdiction—the day before you are due to sign a new tenant up, the agent will usually go to the property, prepare a condition report. It is a lengthy and time-consuming process. It can take anything from one to three hours.
>
> You then have that printed with photographic evidence. The tenant comes in the next day to sign up, they sign their lease, you give them a copy of the condition report, and you say 'look, we have signed it at this stage'—this is how the Act requires it—'you do not sign it at the minute because you have a five working day right of reply. I am happy to meet you out at the property to go through it. Have you got the time? Almost 100% of the time they just say 'no chance.' They do not have the time, do not want to know, give me it, yes I understand, it is straightforward. Have a flick through and yes, no problems.'
>
> Where it creates issues for us is when there is a squabble at the end. Because the Act is very prescriptive, if the tenant says, for instance—and this has happened a few times at NTCAT—I was not actually invited to come along for the ingoing condition report. Despite them having that five day right of reply and despite them actually making changes which were accepted, on occasion, the delegate has decided that no you did not afford them that right and therefore you do not have any recourse to your condition report. The landlord, in other words, is left high and dry.[63]

Committee's Comments

3.74 The Committee understands that this matter has been raised by NTCAT several times over the last 10 years but was not identified as an issue in the Government's review of the *Residential Tenancies Act 1999* (NT). The Committee considers that this matter should be addressed in the next tranche of reforms.

Recommendation 7

The Committee recommends that the Government review section 25(3) of the Act in the next tranche of reforms and consider whether it would be appropriate to remove this subsection from the Act.

Reforms to the Act in relation to Domestic Violence

3.75 The majority of submitters expressed concern that the Bill did not include amendments relating to domestic violence, despite the Attorney-General indicating that this would be a central issue of the full review.[64] DCLS indicated that the NT was

[63] Committee Transcript, Public Hearing, 9 December 2019, p. 33.
[64] Submission 8 – DCLS, p. 8; Submission 2 – NTCOSS, p. 2; Submission 3 – Law Society NT, p. 1; Submission 5 – TEWLS, p. 7; Submission 6 – NT Legal Aid Commission, p. 2; Submission 10 – NAAJA, p. 4.

lagging behind with respect to addressing these circumstances and noted that effective provisions relating to tenancies and domestic violence have been included in residential tenancy Acts in NSW, South Australia and Western Australia and could easily be adopted into this Bill.[65]

3.76 DCLS commented that while they had been advised that amendments currently proposed in the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019 would address concerns relating to the victims of domestic violence in tenancies, they do not consider this to be the case, with Ms Spence, Managing Solicitor, Tenancy Advice Service and Specialist Services, noting that:

> The current legislation deals with domestic and family violence but the jurisdiction is the Local Court and only allows victims of domestic violence to make an application to terminate a tenancy within making an application for a domestic violence order.
>
> What is obvious to us, particularly with our client informed experience, is that a lot of victims of domestic violence do not want to take out domestic violence orders against their partners for all the obvious reasons, particularly in relation to ensuring the safety for their family, friends and their children.
>
> Often taking out a domestic violence order whether perceived or actual, in a lot of cases that we are seeing national publicity about, actually aggravates the situation. We would still like to see it as a very important recommendation from this committee that the government still sees that as a priority in terms of legislative change within the *Residential Tenancies Act* and that allowing NTCAT to have the jurisdiction to make those changes for those victims also takes away the stigma of the Local Court and domestic violence orders.[66]

3.77 Ms Weatherhead from DCLS further commented that:

> There are also some small preventative provisions that could be made in considering what amendments can facilitate support and secure housing for victims of domestic violence. Things like an application to change the locks, that it be given priority in these cases.
>
> Also, for a co-tenant being a victim of domestic violence, to actually notify the landlord about this issue happening. To be able to maybe get relief from the lease commitment or to understand there might be potential damage, auxiliary damage, associated with the domestic violence, to the property. It is not just a provision for the victims of domestic violence, but it can actually be a provision that is helpful to a landlord in terms of protecting their investment when these situations happen.[67]

3.78 The Committee notes that the purpose of the amendment proposed in clause 10 of the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019 is to make 'it clear that the Court has power to terminate a tenancy agreement without creating a replacement agreement'. The Bill does not address other tenancy related issues related to domestic violence.

Committee's Comments

3.79 The Committee notes that the *Residential Tenancies Act 2010* (NSW) contains comprehensive provisions relating to tenancies of victims of domestic violence, with

[65] Submission 8 – DCLS, p. 8.
[66] Committee Transcript, Public Hearing, 9 December 2019, p. 31.
[67] Committee Transcript, Public Hearing, 9 December 2019, p. 31.

these provisions going beyond that proposed in the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019 or currently included in the *Residential Tenancies Act 199* (NT).[68] The Committee is of the view that in the next tranche of reforms consideration should be given to amending the *Residential Tenancies Act 1999* (NT) to address the impact of domestic violence on tenants and to bring the legislation into line with best practice elsewhere in Australia.

Recommendation 8

The Committee recommends that in the next tranche of reforms to the *Residential Tenancies Act 1999 (NT)* the Government give further consideration to the inclusion of amendments to address the impact of domestic violence on tenants, taking into account issues raised by stakeholders during this inquiry and examples of best practice in this area, such as New South Wales *Residential Tenancies Act 2010*.

[68] See, for example, *Residential Tenancies Act 2010,* (NSW): s 54A; s 71; sections 105A to 105I; s 213A

Appendix 1: Submissions Received

Submissions Received

1. Real Estate Institute of the Northern Territory
2. Northern Territory Council of Social Services
3. Law Society NT
4. United Workers Union
5. Top End Women's Legal Service
6. NT Legal Aid Commission
7. NT Shelter
8. Darwin Community Legal Service
9. RSPCA Darwin
10. North Australian Aboriginal Justice Agency

Note

Copies of submissions are available at: https://parliament.nt.gov.au/committees/EPSC/112-2019#SUB

Appendix 2: Public Briefing and Public Hearings

Public Briefing – 29 October 2019

Department of the Attorney-General and Justice

- Doug Burns, Senior Policy Lawyer, Legal Policy,
- Hannah Clee, Senior Policy Lawyer, Legal Policy

Department of Local Government, Housing and Community Development

- Christine Fitzgerald, Executive Director, Strategy, Policy and Performance
- Tanya Hancock, Director, Strategy, Policy and Performance

Public Hearing – 9 December 2019

Darwin Community Legal Service

- Linda Weatherhead, Executive Director
- Tamara Spence, Managing Solicitor Tenancy Advice Service and Specialist Services
- Caroline Deane, Tenancy Advice Service Solicitor

Real Estate Institute of the Northern Territory

- Quentin Kilian, Chief Executive Officer
- Diane Davis, REINT President
- Allison O'Neill, REINT Director

Department of the Attorney-General and Justice

- Doug Burns, Senior Policy Lawyer, Legal Policy,
- Hannah Clee, Senior Policy Lawyer, Legal Policy

Department of Local Government, Housing and Community Development

- Christine Fitzgerald, Executive Director, Strategy, Policy and Performance
- Tanya Hancock, Director, Strategy, Policy and Performance

Note

Copies of hearing transcripts and tabled papers are available at: https://parliament.nt.gov.au/committees/EPSC/112-2019#PB

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Economic Policy Scrutiny Committee, *Inquiry into the Residential Tenancies Amendment Bill 2018 (Serial 43),* https://parliament.nt.gov.au/__data/assets/pdf_file/0017/500453/43-2018-Report-Residential-Tenancies-Amendment-Bill-2018.pdf.

Explanatory Statement, *Residential Tenancies Legislation Amendment Bill 2019,* (Serial 112), https://parliament.nt.gov.au/committees/EPSC/112-2019.

Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft - Daily Hansard – Day 2 – 16 October 2019*, https://www.territorystories.nt.gov.au/jspui/handle/10070/754880.

Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft – Daily Hansard - Day 2 – 27 November 2019*, https://www.territorystories.nt.gov.au/jspui/handle/10070/755087.

Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to Written Questions,* 6 December 2019, https://parliament.nt.gov.au/committees/EPSC/112-2019#TP

Owners Corporation Act 2006 (Vic)

Queensland Government, *A better renting future: Reform Roadmap, Creating fair and workable rental laws for Queensland,* no date.

Residential Tenancies Act 1997 (ACT)

Residential Tenancies Act 2010 (NSW)

Residential Tenancies Act 1999 (NT)

Residential Tenancies Act 1997 (VIC)

Residential Tenancies Act 1987 (WA)

Residential Tenancies Act 1995 (SA)

Unit Titles Act 1975 (NT)

Unit Titles (Management) Act 2011 (ACT)

Unit Titles Schemes Act 2009 (NT)