



Legislative Assembly of the Northern Territory

Legislative Scrutiny Committee

Inquiry into the Attorney- General Legislation Amendment Bill 2025

April 2025



Inquiry into the Attorney- General Legislation Amendment Bill 2025



Legislative Assembly of the Northern Territory

© 2023 Department of the Legislative Assembly

Parliament House
State Square
Darwin NT 0800

Web: www.parliament.nt.gov.au

Contents

Chair's Preface	4
Committee Members	5
Committee Secretariat	5
Terms of Reference.....	6
Recommendations.....	8
1 Introduction.....	9
Introduction of the Bill.....	9
Conduct of the Inquiry.....	9
Outcome of Committee's Consideration	9
Report Structure.....	9
2 Overview of the Bill.....	10
Purpose of the Bill.....	10
3 Examination of the Bill.....	11
Introduction.....	11
<i>Northern Territory Civil and Administrative Tribunal Act 2014</i>	11
<i>Residential Tenancies Act 1999</i>	12
Appendix 1: Submissions Received	14
Bibliography.....	15

Chair's Preface

This report details the Committee's findings regarding its examination of the Attorney-General Legislation Amendment Bill 2025. The Bill amends various pieces of legislation within the Attorney-General's Department portfolio. As noted in the Explanatory Statement, while the amendments are not extensive enough to warrant their own amendment Bills, they are nevertheless required to ensure the legislation is up-to-date and correct.

The Committee received one submission to its inquiry from the North Australian Aboriginal Justice Agency (NAAJA) that raised concerns with proposed amendments to the *Northern Territory Civil and Administrative Tribunal Act 2014* and the *Residential Tenancies Act 1999*.

With regards to the *Northern Territory Civil and Administrative Tribunal Act 2014*, NAAJA opposed the proposed amendments to section 132 relating to costs orders and suggested that clause 17 be amended to align provisions with other jurisdictions. However, the Committee notes that the amendments envisaged by NAAJA go beyond the scope of the current Bill.

NAAJA also sought clarification regarding the proposed amendments to section 7 (Exemptions) of the *Residential Tenancies Act 1999* as set out in clause 23.

Following consideration of the evidence received, the Committee is of the view that the Assembly should pass the Bill with no amendments.

On behalf of the Committee, I would like to thank the North Australian Aboriginal Justice Agency for their submission to the Committee's inquiry. I also thank my fellow Committee members for their bipartisan commitment to the legislative review process.



Mrs Oly Carlson MLA

Chair

Committee Members

Chair:	Mrs Oly Carlson, MLA Member for Wanguri
Deputy Chair:	Mr Andrew Mackay, MLA Member for Goyder
Members:	Justine Davis, MLA Member for Johnston Mr Clinton Howe, MLA Member for Drysdale Mr Chanston Paech, MLA Member for Gwoja

Committee Secretariat

Committee Secretary:	Ms Julia Knight
Senior Research Officer:	Ms Georgia Eagleton
Administration/Research Officer:	Mr Caelan Ikin
Administration Assistant:	Ms Kim Cowcher
Contact Details:	GPO Box 3721 DARWIN NT 0801 Tel: +61 08 8946 1485 Email: LA.Committees@nt.gov.au Website: https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee

Terms of Reference

Sessional Order 14

Establishment of Legislative Scrutiny Committee

- (1) The Assembly appoints a Legislative Scrutiny Committee
- (2) The membership of the scrutiny committee will comprise three Government Members, one Opposition Member and one crossbench Member.
- (3) The functions of the scrutiny committee shall be to inquire into and report on:
 - (a) any bill referred to it by the Assembly;
 - (b) 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 power 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 and Torres Strait Islander 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 a 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.
- (4) The committee will provide an annual report of its activities to the Assembly.

Adopted 15 October 2024

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Attorney-General Legislation Amendment Bill 2025.

1 Introduction

Introduction of the Bill

1.1 The Attorney-General Legislation Amendment Bill 2025 (the Bill) was introduced into the Legislative Assembly by the Attorney-General, the Hon Marie-Claire Boothby, MLA, on 19 March 2025. The Assembly subsequently referred the Bill to the Legislative Scrutiny Committee for inquiry and report by 30 April 2025.¹

Conduct of the Inquiry

1.2 On 20 March 2025 the Committee called for submissions by 28 March 2025. The call for submissions was advertised via the Legislative Assembly website, Facebook, and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations. The Committee received one submission to its inquiry (see Appendix 1).

Outcome of Committee's Consideration

1.3 Sessional Order 14 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.

1.4 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.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Attorney-General Legislation Amendment Bill 2025.

Report Structure

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

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

¹ Hon Marie-Claire Boothby MLA, Attorney-General, *Draft Daily Hansard - Day 2 - 19 March 2025*, <https://hdl.handle.net/10070/990874>, p. 2

2 Overview of the Bill

Purpose of the Bill

2.1 Amending various pieces of legislation within the Attorney-General's Department portfolio, the Explanatory Statement notes that the purpose of this Bill is to:

Provide a streamlined and efficient vehicle to address operational issues within a range of different pieces of legislation in a timely manner, for amendments that are not extensive enough to warrant their own amendment Bill, but are nevertheless required to ensure the legislation is up-to-date and correct.²

2.2 As set out in the Explanatory Statement, the Bill amends the following pieces of legislation:

- *Health Care Decisions Making Act 2023*
- *Justices of the Peace Act 1991*
- *Land Title Act 2000*
- *Legal Professional Act 2006*
- *Misuse of Drugs Act 1990*
- *Northern Territory Civil and Administrative Tribunal Act 2014* and associated regulations
- *Oaths, Affidavits and Declarations Act 2010*
- *Residential Tenancies Act 1999*
- *Sentencing Act 1995*³

2.3 The Explanatory Statement further notes that the Schedule also makes minor amendments to the following:

- *Bail Regulations 1983*
- *Criminal Code Act 1983*
- *Evidence (National Uniform Legislation) Act 2011*
- *Information Act 2002*
- *Local Court Surrogacy Rules 2022*⁴

² Explanatory Statement, *Attorney-General Legislation Amendment Bill 2025 (Serial 19)*, <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/19-2025>, p. 1

³ Explanatory Statement, *Attorney-General Legislation Amendment Bill 2025 (Serial 19)*, <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/19-2025>, pp. 1 -5

⁴ Explanatory Statement, *Attorney-General Legislation Amendment Bill 2025 (Serial 19)*, <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/19-2025>, p. 5

3 Examination of the Bill

Introduction

3.1 As noted previously, the Committee received one submission to its inquiry from the North Australian Aboriginal Justice Agency (NAAJA) that raised concerns with proposed amendments to the *Northern Territory Civil and Administrative Tribunal Act 2014* and the *Residential Tenancies Act 1999*. The following discussion considers the issues raised and seeks to clarify the intended operation of the proposed amendments.

Northern Territory Civil and Administrative Tribunal Act 2014

3.2 Clause 16 of the Bill amends section 131 (Parties to bear own costs) of the *Northern Territory Civil and Administrative Tribunal Act 2014* (the Act) to clarify that subject to the provisions in Division 6 – Costs, ‘the general position is that each party is to bear their own costs associated with proceedings in the NTCAT.’⁵

3.3 Clause 17 amends section 132 (Tribunal may make costs orders) by rewording this section to:

Make it clear that NTCAT may make cost orders in favour of a party who has been substantially successful for the recovery of its costs associated with filing and serving documents as required under the Act, and other costs associated with those processes.⁶

3.4 Importantly, the Committee notes that the proposed amendments to sections 131 and 132 do not alter the existing provisions of the Act, which have been in place since its inception, in relation to the start position that the NTCAT is a no, or low cost jurisdiction, or the powers of the NTCAT to make cost orders as set out above. Rather, the primary purpose of these amendments is to clarify the existing provisions.

3.5 While noting that ‘administrative tribunals across Australia are each predicated on the default position that parties bear their own costs’⁷, NAAJA pointed out that the Northern Territory is out of step with other jurisdictions when it comes to NTCAT’s powers to make cost orders. For example:

- The New South Wales Civil and Administrative Tribunal will depart from its default position in respect of costs, only in “special circumstances”. Factors to consider include:
 - “whether a party has conducted proceedings in a way that unnecessarily disadvantaged another party”
 - the “relative strengths of claims...including whether a party has made a claim that has no tenable basis in fact or law”

⁵ Explanatory Statement, *Attorney-General Legislation Amendment Bill 2025 (Serial 19)*, <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/19-2025>, p. 3

⁶ Explanatory Statement, *Attorney-General Legislation Amendment Bill 2025 (Serial 19)*, <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/19-2025>, p. 3

⁷ North Australian Aboriginal Justice Agency, Submission No. 1, p.2

- whether proceedings were “frivolous or vexatious”
- The Victorian Civil and Administrative Tribunal is only empowered to make a costs order where one party causes “unnecessary disadvantage” to another party. Examples in the enabling legislation closely mirror the wording of the NSW legislation. They include:
 - “the relative strengths of the claims”
 - “failing to comply with an order or direction of the Tribunal”
 - “vexatiously conducting the proceeding”.
- The Queensland Civil and Administrative Tribunal may order costs “in the interests of justice” with consideration of, among other factors:
 - “the relative strengths of the claims”
 - “the financial circumstances of the parties to the proceeding”.⁸

3.6 In comparison, NAAJA submitted that, as set out in section 132(a),

the sole factor that NTCAT must consider in this context which weighs *against* a costs order is “the main objectives of the tribunal that are relevant to simplifying proceedings...and to keeping costs to parties....to a minimum.” Conspicuously, there is no mention of matters like “unnecessary disadvantage”, the “relative strength of claims”, the “financial circumstances of parties to the proceedings”, or whether matters are “frivolous or vexatious”.⁹

NAAJA further noted that they have experienced cases where ‘NTCAT has ordered costs against clients who have little or no means of paying them, undermining its status as an accessible form of justice.’¹⁰

3.7 Given the above, NAAJA expressed the view that:

clause 17 as currently proposed be removed in its entirety. Instead, we encourage the committee to consider recommendations to amend clause 17 to constrain cost orders to exceptional circumstances or cases where the conduct of a party causes unnecessary disadvantage to another party, in line with provisions in other jurisdictions.¹¹

Committee’s Comments

3.8 While acknowledging the concerns raised regarding the factors NTCAT must take into account before making a costs order, the Committee notes that amendments to clause 17 as envisaged by NAAJA go beyond the scope of the current Bill.

Residential Tenancies Act 1999

3.9 Clause 23 of the Bill amends section 7 (Exemptions) of the *Residential Tenancies Act 1999* (the Act). Section 7(1) provides that the Minister may, by notice in the *Gazette*:

⁸ North Australian Aboriginal Justice Agency, Submission No. 1, p.2

⁹ North Australian Aboriginal Justice Agency, Submission No. 1, p.3

¹⁰ North Australian Aboriginal Justice Agency, Submission No. 1, p.3

¹¹ North Australian Aboriginal Justice Agency, Submission No. 1, p.3

- (a) exempt tenancy agreements of a specified class from all or any of the provisions of this Act or the Regulations; or
 - (b) modify specified provisions of this Act or Regulations in their application to a specified class of tenancy agreements or a specified class of premises.
- 3.10 Section 7(5) provides that a number of sections of the Act do not apply in relation to a tenancy or proposed tenancy under the *Housing Act 1982*. Clause 23 seeks to amend this subsection by also exempting a tenancy or proposed tenancy under the *Housing Act* from the operation of sections 18A and 18B of the Act.
- 3.11 Section 18A relates to the type of information that a landlord for a tenancy of residential premises may require a prospective tenant to provide in support of their application. Section 18B then provides that, among other things, landlords must take reasonable steps to ensure information or documents held in relation to a tenancy are protected from misuse, interference or loss, unauthorised access, modification or disclosure. This section also specifies that a landlord must remove or destroy any information or documents held in relation to a tenant 3 years after termination of the tenancy; unless it is required as evidence in a proceeding to the tenancy.
- 3.12 NAAJA raised concerns that by exempting tenancies or proposed tenancies under the *Housing Act* from the operation of sections 18A and 18B, the proposed amendment to section 7 of the *Residential Tenancies Act* appears to treat social or public housing tenants differently to private sector tenants:

In NAAJA's view, social housing tenants should not be treated differently to private tenants. The rights and duties should apply equally. We submit that more information is required before changing how social housing tenants are treated as compared to private tenants.

We note that the explanatory memorandum sheds very little light on the purpose or intent of this provision, or the mischief it is trying to remedy.¹²

Committee's Comments

- 3.13 By way of clarification, the Committee notes that the proposed amendment to section 7 of the *Residential Tenancies Act 1999* acknowledges that tenancies under the *Housing Act 1982* operate in a different environment to those in the private rental market. For example, tenancy applications for public housing are typically stored for extended periods on a social housing wait list, which is administered by the Agency responsible for social housing.
- 3.14 The Committee further notes that, unlike the private sector, the collection and handling of information held by the public sector is subject to the provisions of the *Information Act 2002* and associated records retention and disposal schedules. Given the above, the application of sections 18A and 18B in the government regulated social housing system are neither practical nor necessary.

¹² North Australian Aboriginal Justice Agency, Submission No. 1, p.4

Appendix 1: Submissions Received

Submissions Received

1. North Australian Aboriginal Justice Agency

Note: A copy of this submission is available at:

<https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/19-2025>

Bibliography

Explanatory Statement, *Attorney-General Legislation Amendment Bill 2025 (Serial 19)*, <https://parliament.nt.gov.au/committees/list/legislative-scrutiny-committee/19-2025>

Hon Marie-Clare Boothby MLA, Attorney-General, *Draft Daily Hansard – Day 2 – 19 March 2025*, <https://territorystories.nt.gov.au/10070/991597>