



## SUBMISSION ON RESIDENTIAL TENANCIES AMENDMENT BILL 2018

### 1. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

The Northern Territory Legal Aid Commission ('NT Legal Aid') is an independent statutory body established under the *Legal Aid Act NT* (1990) and is governed by a Board of Commissioners appointed by the NT Attorney-General. NT Legal Aid provides information, community legal education, legal advice, representation and assistance to persons in a range of matters, including:

- Civil law;
- Domestic violence, via the Domestic Violence Legal Service ('DVLS');
- Family law, including Family Dispute Resolution;
- Child Protection Matters; and
- Criminal law

NT Legal Aid aims to ensure that the protection or assertion of the legal rights and interests of people in the Northern Territory (NT) are not prejudiced by reason of their inability to:

- Obtain access to independent legal advice;
- Afford the financial cost of appropriate legal representation;
- Obtain access to the Federal and Territory legal systems; and
- Obtain adequate information about access to the law and legal system

NT Legal Aid provides early intervention and prevention services pursuant to the *National Partnership Agreement on Legal Assistance Services* the ('NPA') between the Australian and NT Governments. These services include legal information, education, referral, advice, advocacy and minor assistance.

NT Legal Aid also provides Non-Legal Support Services under the NPA, including social and clinical support services to:

- Victims of domestic and family violence in the DVLS;
- Vulnerable clients in the Darwin Family Law Practice;
- Youth clients in the Darwin Criminal Law Practice;
- Respondents to domestic violence proceedings; and
- Vulnerable clients of the Commission in Alice Springs.

In addition, we have a community legal education and outreach function, which includes the development and delivery of information, resources and projects. We have offices in Darwin, Palmerston, Katherine, Tennant Creek and Alice Springs.

Unfortunately NT Legal Aid is not funded to have a dedicated policy officer, and draws contributions for submissions from different sections and regional offices of NT Legal Aid, rather than developing comprehensive submissions.

We thank Economic Policy Scrutiny Committee for the opportunity to comment the Residential Tenancies Amendment Bill 2018.

### **Introduction and summary of recommendations**

There is a growing body of research that links the use of Residential Tenancies Databases (RTDs) to homelessness.<sup>1</sup> The Australian Government's *National Response to Reducing Homelessness* notes:

Being listed on a database can exclude a person from the private rental market and make them homeless. This is especially the case in regional Australia where the number of homes for rent are limited and there may be little or no competition between real estate agents.<sup>2</sup>

In its submission on the regulation of RTDs in Tasmania, Anglicare writes:

[I]n practice, the tenants most affected by [RTDs] will be those tenants at the residualised end of the private rental market, those with insecure tenancies and those with personal issues, such as mental illness, that complicate their ability to comply with the conditions of a residential tenancy agreement. It is these tenants who are most likely to be listed on a residential tenancy database and the most likely to be refused accommodation as the result of a listing.<sup>3</sup>

Through our experience providing tenancy and housing advice across the Northern Territory, NT Legal Aid considers that the use of RTDs can have adverse consequences for vulnerable people, including:

- Impeding access to safe and affordable housing;
- Entrenching homelessness and reliance on substandard accommodation; and
- Compounding the effects of domestic violence.

#### Case study

John was a 27 year old man on the public housing waiting list, who approached NT Legal Aid for assistance. John's applications for private rental homes were consistently rejected and as a result, he was sleeping rough. It emerged that John was listed on a RTD as a result of a dispute that he had with a landlord when he was 21. John was not aware of the listing and he thought that his old rental problem was resolved after he agreed to pay the landlord money from his bond.

<sup>1</sup> Special Government Backbench Committee, Parliament of Queensland, *Report of Special Government Backbench Committee to Inquire into the Operation of Tenancy Database* (2002), citing Tenancy Database Action Group, *Survey Analysis of the Impact of Tenant Databases in Homeless Services* (2002).

<sup>2</sup> Australian Government (2008) *The Road Home: A National Approach to Addressing Homelessness* <<http://www.abc.net.au/cm/lb/4895838/data/the-road-home---a-national-approach-to-reducing-homelessness-data.pdf>>

<sup>3</sup> Anglicare Tasmania (2009) *Submission on Residential Tenancy Databases – Model Provisions* <<https://www.socialactionresearchcentre.org.au/wp-content/uploads/Anglicare-Tasmania-submission-on-Residential-tenancy-database-regulation.pdf>>

## *Proportionality and the need for a just framework*

One of the major problems with RTDs is that their use disproportionately affects tenants. For a landlord assessing their ‘business risk’, an adverse listing typically results in the rejection of an otherwise suitable tenant. For a person reliant on the rental market for housing, an adverse listing can increase their risk of homelessness and force individuals into insecure housing. For a woman experiencing domestic violence, an adverse listing can prevent her from accessing safe accommodation.

To address the inherent imbalance associated with RTDs, NT Legal Aid supports the introduction of a regulatory framework that is fair, transparent and has appropriate regard to the right of Territorians to safe and affordable housing.

### **Summary of recommendations**

Broadly speaking, NT Legal Aid supports the Residential Tenancies Bill 2018. We make the following suggestions to strengthen protections for our clients:

- Ensuring that prospective tenants are notified of the use of RTDs in a manner that is clear and easy to understand;
- Providing an opportunity for prospective tenants to identify a listing on an RTD and provide an explanation of the listing;
- Ensuring that notice of an adverse listing and a person’s right to dispute the listing is provided in writing;
- Increasing the time limit by which a person may respond to a notice of adverse listing to 28 days;
- Providing a clear mechanism by which victims of domestic violence can remove an adverse listing;
- Ensuring that people listed on a RTD are provided information about their appeal rights including their ability to access the Northern Territory Civil and Administrative Tribunal (NTCAT);
- Removing fees for access to personal information listed on a RTD.

### **Notification requirements**

NT Legal Aid supports the insertion of the new section 126 in the *Residential Tenancies Act*, which requires prospective tenants to be given notice of a landlord’s use of one or more tenancy databases. When obtaining consent to use personal information for the purposes of an RTD search, NT Legal Aid believes that it is crucial that the person is informed of how their personal information will be used, and the details of any RTD that will be accessed.

Typically, consent clauses are contained within the text of standard tenancy application forms, which must be submitted in order for a person to be assessed for a rental property. Many clients are not sufficiently aware that they are providing consent to use their personal information for the purposes of an RTD search, or the implications of doing so. For this reason, notices should be brought to the attention of prospective tenants, and landlords and real estate agents should be required to draft notices in a manner that is clear and easy to understand.

Additionally, notices should allow for pre-emptive identification of an adverse RTD listing and the provision of an explanation for the listing. This would afford at least some degree of procedural fairness for individuals who are aware that they are listed on a database but have an explanation for this listing, including their status as a victim of domestic violence or other extenuating circumstances.

### **Restrictions on listing**

NT Legal Aid supports restrictions on the information that can be included on a RTD. Given the significant implications of an adverse listing, it is important that information is accurate and unambiguous, and that allegations are substantiated. In circumstances where a breach is alleged, there should be an onus on the landlord or agent to provide evidence for the breach. This should include a statutory declaration where appropriate. It is important that information contained on a database relates only to established breaches of a tenancy agreement.

#### *Notice of listing*

NT Legal Aid strongly supports the requirement to provide notice of an adverse listing as proposed by section 129. To strengthen this provision, we suggest:

- Requiring the notice to be provided in writing in a manner that clearly articulates the alleged breach and notifies the person of their right to:
  - Dispute the adverse listing with the landlord or real estate agent; and
  - Apply to NTCAT under section 134 for an order prohibiting the listing or removing or amending it.
- Increasing the time to dispute a listing to 28 days to allow vulnerable individuals to seek assistance from domestic violence support services and legal services.

#### *Protection for victims of domestic violence*

NT Legal Aid also supports the inclusion of specific provisions that require a landlord, agent or database operator to consider whether the adverse listing is made in the context of domestic violence, and a clear mechanism for the removal of an adverse listing where it has occurred as a result of, or in connection to, being a victim of domestic violence. In making this recommendation, NT Legal Aid urges the Committee to engage in consultation with domestic violence services.

#### *Time limits for listing*

NT Legal Aid supports the introduction of restrictions on the keeping of personal information on a RTD, but proposes a period of 2 years. Given current shortages in public housing availability, this would provide appropriate protection for individuals who may have breached tenancy obligations as a result of job loss, or other circumstances that have been mitigated by time. Exceptions could be made for individuals with repeat listings on a database, to allow landlords and real estate agents to adequately assess risk.

### **Access to information**

NT Legal Aid supports the inclusion of section 132, which allows individuals to access personal information held about them on a RTD.

Given the likely consequences of an RTD listing, and the privacy principles in operation, we do not support the imposition of a fee for the release of a person's personal information. This can act as an impediment to transparency and restrict an individuals ability to correct inaccurate information held about them on an RTD.