Serial 43
Residential Tenancies Amendment Bill 2018
Ms Fyles

A Bill for an Act to amend the *Residential Tenancies Act*, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

RESIDENTIAL TENANCIES AMENDMENT ACT 2018

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Act No. [   ] of 2018

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Table of provisions

Part 3 Amendment of Residential Tenancies Regulations

Part 4 Repeal of Act

NORTHERN TERRITORY OF AUSTRALIA

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Act No. [   ] of 2018

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An Act to amend the *Residential Tenancies Act*, and for related purposes

[*Assented to [   ] 2018*]
[*Second reading [   ] 2018*]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1   Preliminary matters

1   Short title

This Act may be cited as the *Residential Tenancies Amendment Act 2018*.

2   Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2   Amendment of Residential Tenancies Act

3   Act amended

This Part amends the *Residential Tenancies Act*.

4   Section 4 amended (Definitions)

(1)   Section 4

omit

, unless the contrary intention appears

(2)   Section 4

insert (in alphabetical order)

database, for Part 14, see section 123.

database operator, for Part 14, see section 123.

list, for Part 14, see section 123.

personal information, for Part 14, see section 123.

tenancy database, for Part 14, see section 123.

(3)   Section 4, at the end

insert

Note for section 4

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

5   Section 18 amended (Commissioner is enforcement agency for purposes of TINES)

Section 18, heading

omit

for purposes of TINES

6   Section 42 amended (Tribunal may declare rent excessive)

Section 42(6)

omit

7   Section 110 amended (Condition report at end of tenancy)

Section 110(7)

omit

request

insert

direct

8   Part 14 inserted

After section 122

insert

Part 14   Tenancy databases

123   Definitions

In this Part:

database means a system, device or other thing used for storing information, whether electronically or in some other form.

database operator means an entity that operates a tenancy database.

list, in relation to personal information:

(a)   means enter the personal information into a tenancy database or give the personal information to a database operator or someone else to enter into a tenancy database; and

(b)   includes amend personal information already in a tenancy database to include additional personal information about the person.

personal information:

(a)   means information or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; and

(b)   includes an individual's name.

tenancy database means a database:

(a)   that contains personal information:

(i)   relating to, or arising from, the occupation of premises under a tenancy agreement; or

(ii)   entered into the database for reasons relating to, or arising from, the occupation of premises under a tenancy agreement; and

(b)   that is intended to be used by landlords to check a person's tenancy history to decide whether to enter into a tenancy agreement with the person.

124   Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Part.

Note for section 124

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

125   Application of Part

This Part does not apply to a tenancy database kept by an entity (including a department of the government of a State or Territory) for use only by that entity or its officers, employees or agents.

126   Notice of usual use of database

(1)   This section applies if:

    (a)   a person (the **potential tenant**) applies to a landlord to enter into a tenancy agreement; and

    (b)   the landlord usually uses one or more tenancy databases to decide whether to enter into a tenancy agreement with a person.

(2)   When the application is made, the landlord must give the potential tenant written notice stating the following:

    (a)   the name of each tenancy database the landlord may use to decide whether to enter into a tenancy agreement with a person;

    (b)   that the landlord uses each database to check a potential tenant's tenancy history;

    (c)   how the potential tenant may contact and obtain information from the database operator for each database.

(3)   Subsection (2) applies in relation to a tenancy database whether or not the landlord intends to use the database to decide whether to enter into a tenancy agreement with the potential tenant.

(4)   However, the landlord need not give notice under subsection (2) if the landlord has given the potential tenant written notice stating the matters mentioned in the subsection not more than 7 days before the application was made.

(5)   A landlord commits an offence if the landlord fails to give notice in accordance with this section.

Maximum penalty: 20 penalty units.

(6)   An offence against subsection (5) is an offence of strict liability.

127   Notice of listing if database used

(1)   This section applies if:

(a)   a landlord uses a tenancy database to check whether personal information about a potential tenant is in the database; and

(b)   personal information about the potential tenant is in the database.

(2)   As soon as possible but within 7 days after using the tenancy database, the landlord must give the potential tenant written notice stating the following:

(a)   the name of the database;

(b)   that personal information about the potential tenant is in the database;

(c)   the name of each person identified in the database as a person who listed the personal information;

(d)   how and in what circumstances the potential tenant can have the personal information amended or removed under this Part.

(3)   A landlord commits an offence if the landlord fails to give notice in accordance with this section.

Maximum penalty: 20 penalty units.

(4)   An offence against subsection (3) is an offence of strict liability.

(5)   In this section:

potential tenant, see section 126.

128   Listing can be made only for particular breaches by particular persons

(1)   A landlord or database operator must not list personal information about a person in a tenancy database unless:

(a)   the person was named as a tenant in a tenancy agreement that has ended; and

(b)   the person breached the tenancy agreement; and

(c)   because of the breach:

(i)   the person owes the landlord an amount that is more than the security deposit; or

(ii)   the Tribunal has made an order terminating the tenancy agreement; and

(d)   the personal information:

(i)   relates only to the breach; and

(ii)   indicates the nature of the breach; and

(iii)   is accurate, complete and unambiguous.

Examples for subsection (1)(d)(ii)

Personal information in a tenancy database indicates the nature of the breach if it includes a reference to the following:

(a)   "rent arrears" – for a person who has breached a tenancy agreement by failing to pay rent;

(b)   "damage to premises" – for a person who has breached a tenancy agreement by damaging premises.

(2) A person commits an offence if the person:

(a)   is a landlord or database operator; and

(b)   lists personal information about a person in a tenancy database other than in accordance with subsection (1).

Maximum penalty: 20 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

129   Further restriction on listing

(1) A landlord or database operator must not list personal information about a person in a tenancy database unless the landlord or database operator:

(a)   has, without charging a fee:

(i)   given the person a copy of the personal information; or

(ii)   taken other reasonable steps to disclose the personal information to the person; and

  (b) has given the person at least 14 days to review the personal information and make submissions objecting to its entry into the database or about its accuracy, completeness or clarity; and

  (c) has considered any submissions made.

(2) Subsection (1) does not apply if the landlord or database operator cannot locate the person after making reasonable enquiries.

(3) Subsection (1)(b) and (c) do not apply:

  (a) to information that, at the time of listing, is also publicly available from court or Tribunal records; or

  (b) to a listing involving only an amendment of personal information under section 130.

(4) A person commits an offence if the person:

  (a) is a landlord or database operator; and

  (b) lists personal information about a person in a tenancy database other than in accordance with this section.

  Maximum penalty: 20 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

130 Ensuring quality of listing – landlord's obligation

(1) This section applies if a landlord becomes aware that personal information listed in a tenancy database by the landlord is inaccurate, incomplete, ambiguous or out-of-date.

(2) Within 7 days after becoming aware that the information is inaccurate, incomplete, ambiguous or out-of-date, the landlord must give the database operator of the tenancy database written notice stating the following:

  (a) that the information is inaccurate, incomplete, ambiguous or out-of-date;

  (b) if the information is inaccurate, incomplete or ambiguous – how the information must be amended so that it is no longer inaccurate, incomplete or ambiguous;

(c)   if the information is out-of-date – that the information must be removed.

Example for subsection (2)

A tenant owes a landlord an amount that is more than the security deposit. The landlord lists the unpaid amount in a tenancy database. The tenant pays the landlord the amount owed more than 3 months after it became payable. Within 7 days after becoming aware of the payment, the landlord must give the database operator written notice stating:

(a)   that the personal information is inaccurate; and

(b)   the details of the payment to be included in the personal information so that it is no longer inaccurate.

(3)   The landlord must keep a copy of the notice for 1 year after it is given.

(4)   In this section:

inaccurate, in relation to personal information in a tenancy database, includes information that is inaccurate because it shows that the person owes a landlord an amount, but the amount owed was paid more than 3 months after the amount became payable.

out-of-date, in relation to personal information in a tenancy database, means the information is out-of-date because:

(a)   it shows that the person owes a landlord an amount, but the amount owed was paid to the landlord within 3 months after the amount became payable; or

(b)   it was listed in accordance with section 128(1)(c)(ii), but the order was set aside by a court or the Tribunal.

131   Ensuring quality of listing – database operator's obligation

If a landlord gives a database operator written notice under section 130, the operator must amend or remove the personal information as stated in the notice within 14 days after the notice is given.

132   Providing copy of personal information listed

(1)   A landlord who lists personal information about a person in a tenancy database must give the person a copy of the information if the person asks for the information in writing, unless the landlord charges a fee for giving the information and the fee is not paid.

(2)   A database operator who keeps personal information about a person in a tenancy database must give the person a copy of the information if the person asks for the information in writing, unless the operator charges a fee for giving the information and the fee is not paid.

(3) The landlord or database operator must give the copy of the information to the person within 14 days after the later of:

    (a) the day the person asks for the information in writing; and

    (b) if a fee is charged for giving the information – the day the fee is paid.

(4) A fee charged by a landlord or a database operator for giving personal information under this section:

    (a) must not be excessive; and

    (b) must not apply to lodging a request for the information.

133   Keeping personal information listed

(1) A database operator must not keep personal information about a particular person in the operator's tenancy database for longer than the shorter of:

    (a) 3 years; or

    (b) the period ending when the information must be removed under the Australian Privacy Principles as defined in the *Privacy Act 1988* (Cth).

(2) However, a database operator may keep a person's name in the operator's tenancy database for longer than the period allowed under subsection (1) if:

    (a) other personal information about the person in the database is attached to the name; and

    (b) the other personal information is not required to be removed under subsection (1) or by another law.

(3) A database operator commits an offence if the operator keeps personal information about a person in the operator's tenancy database other than in accordance with this section.

Maximum penalty: 20 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

(5) This section does not limit the operation of another provision of this Part or another law that requires the removal of the personal information.

134   Powers of Tribunal

(1)   A person may apply to the Tribunal for an order under this section if personal information about the person is, or is proposed to be, listed in a tenancy database.

(2)   The Tribunal may make any orders it considers appropriate to ensure that a landlord or database operator complies with this Part, including an order:

(a)   prohibiting a landlord or database operator from listing personal information about a person in a tenancy database; or

(b)   requiring a landlord or database operator to amend or remove personal information about a person that is, or is to be, listed in a tenancy database.

(3)   If the Tribunal makes an order against a person who is not a party to the proceeding, the Tribunal may order a party to give a copy of the decision or order of the Tribunal to that person within a stated period.

135   Claims of privilege under this Part

(1)   In a proceeding before the Tribunal under this Part:

(a)   sections 71 and 72 of the *Northern Territory Civil and Administrative Tribunal Act* do not apply; and

(b)   a person is not excused from giving evidence or producing evidentiary material on the ground that the evidence or evidentiary material may tend to incriminate the person in relation to an offence against this Part.

(2)   However, evidence and evidentiary material is not admissible as evidence against a person in a criminal proceeding for an offence against this Part if the evidence or evidentiary material:

(a)   was given or produced by the person before the Tribunal under this Part; and

(b)   may tend to incriminate the person in relation to the offence.

136   No internal review under this Part

Part 5, Division 1 of the *Northern Territory Civil and Administrative Tribunal Act* does not apply to a decision of the Tribunal under this Part.

9   Section 159 amended (Definitions)

Section 159

omit

Part, unless the contrary intention appears

insert

Division

10   Part 18, Division 5 inserted

After section 171

insert

Division 5   Residential Tenancies Amendment Act 2018

172   Definition

In this Division:

commencement means the commencement of the *Residential Tenancies Amendment Act 2018*.

173   Transitional provision for Part 14

(1) From the commencement to the day immediately before the transition day, Part 14 applies only in relation to a tenancy agreement made, and personal information listed, on or after the commencement.

(2) On and from the transition day, Part 14 applies in relation to a tenancy agreement made, and personal information listed, before, on or after the commencement.

(3) In this section:

transition day means the day 3 months after the commencement.

174   Jurisdiction of Tribunal for Tenancy Act leases

(1) Despite Division 1, the Tribunal has jurisdiction to deal with a lease that was in force immediately before the commencement.

(2) Part III of the *Tenancy Act* does not apply to an order, determination, decision or variation made by the Tribunal under that Act.

(3) In this section:

lease, see section 159.

Tenancy Act, see section 159.

Part 3   Amendment of Residential Tenancies Regulations

11   Regulations amended

This Part amends the *Residential Tenancies Regulations.*

12   Schedule 1 amended (Offences and penalties)

(1) Schedule 1, entry for section 37(1) and (2)

omit

37(1) and (2)

insert

37(1), (2) and (3)

(2) Schedule 1, after entry for section 118(2) and (3)

insert

126(5)	4
127(3)	4
128(2)	4
129(4)	4
133(3)	4

Part 4   Repeal of Act

13   Repeal of Act

This Act is repealed on the day after it commences.