



TOP END WOMEN'S LEGAL SERVICE INC.

FREE LEGAL ADVICE FOR WOMEN

Advice | Information | Referral | Advocacy

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13 November 2019

Attn: Dr Jennifer Buckley
Committee Secretary
Economic Policy Scrutiny Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
Darwin NT 0801

By email to EPSC@nt.gov.au

Dear Madam,

Submission of the Top End Women's Legal Service – Residential Tenancies Legislation Amendment Bill 2019

The Top End Women's Legal Service Inc. (**TEWLS**) welcomes the opportunity to make a submission to the Residential Tenancies Legislation Amendment Bill 2019 (**the Bill**).

Our submission will be focused on our experience of and expertise in assisting women across the Top End of the Northern Territory (**NT**) in respect of tenancy and safe and secure housing. We note that our client group includes Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds, and women at risk of and/or experiencing domestic and family violence.

In August 2019, the Northern Territory Women's Legal Services (**NTWLS**), a coalition of the three women's legal services in the NT, being TEWLS, the Katherine Women's Legal Service and the Central Australian Women's Legal Service, made submission to the Discussion Paper, "Review of the Residential Tenancies Act 1999" (**the Discussion Paper**). The Discussion Paper, a review of the *Residential Tenancies Act 1999* (NT) (**RTA**), purported to be the most comprehensive review of same legislation in nearly a decade. For your reference and by way of grounding this submission, we **enclose** a copy of the NTWLS' submission to the Discussion Paper.

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. We provide high quality, responsive, and culturally appropriate free legal advice, information, casework and representation services, community legal education and advocacy in civil and family law to women living in the Greater Darwin region.

TEWLS' service area and targeted outreach services include Darwin, Palmerston, the Royal Darwin Hospital, Dawn House Women's Shelter, six Indigenous communities in the Greater

Darwin region, at Adult Migrant English Programs, and women incarcerated at the Darwin Correctional Centre. We provide advice and representation services for civil and family law matters, with the most frequently requested areas of assistance being family law, domestic and family violence, housing and tenancy, consumer law, credit and debt, fines, sexual assault, discrimination, employment law, compensation for victims of crime, and complaints.

TEWLS primarily deliver services to women at risk of or experiencing domestic and family violence, where a large number of our clients do not speak English as their main language. An even greater number of our clients seek legal assistance whilst experiencing financial disadvantage.

Our submission

I Not fit for purpose – the Bill does not meet the expectations set by the RTA review

The private rental sector is the fastest growing part of the Australian housing system,¹ and with renters accounting for 50% of the housing market, the NT has the highest percentage of renters in the country.² This reality stands in stark contrast with our current tenancy legislation, where, in its eighteen years of operation, the RTA has been subject to only minor amendments. As noted in the Discussion Paper,³ the changing landscape of housing in the NT meant that a review of the RTA was viewed as beneficial, and in our submission, necessary to cater to a changing environment.

As it stands, the Bill is proposed as part of a broader reform strategy – one “piece of the puzzle” in upcoming amendments to be proposed in respect of the RTA. However, with the NT being one of only two jurisdictions where domestic and family violence victimisation rates rose in the 2016 – 2017 period,⁴ the absence of proposed amendments regarding domestic and family violence in the Bill is a disappointing and glaring omission. As a result, and whilst acknowledging that the intention of the NT Government is for amendments to the RTA to occur over time, it is TEWLS’ submission that the Bill does not meet the expectations set by the RTA review and is consequently not fit for purpose.

For information regarding proposed reforms in relation to domestic and family violence within the scope of the RTA, please see the afore mentioned **enclosed** submission of the NTWLS to the Discussion Paper.

II Response to the Bill

In reviewing the Bill, we provide response as follows;

A Pet provisions – proposed sections 65A and 65B of the Bill

In its most recent report, the Australian Housing and Urban Research Institute noted that one of the ongoing concerns for private renters are prohibitions that limit home-making, including

¹ Hulse, K., Martin, C., James, A. and Stone, W. (2018) Private rental in transition: institutional change, technology and innovation in Australia, AHURI Final Report No. 296, Australian Housing and Urban Research Institute Limited, Melbourne, <http://www.ahuri.edu.au/research/final-reports/296>, doi: 10.18408/ahuri-5112101, 2.

² Australian Bureau of Statistics, Census of Population and Housing: Nature and Content, Australia, 2016 – Tenure Type.

³ Department of the Attorney-General and Justice, NT Government (July 2009) Discussion Paper: Review of the Residential Tenancies Act 1999, 14.

⁴ Australian Institute of Health and Welfare 2019. Family, domestic and sexual violence in Australia: continuing the national story 2019. Cat. no. FDV 3. Canberra: AIHW, 21.

pet ownership.⁵ Noting that section 65 of the RTA provides for “quiet enjoyment”; that a tenant to be able to use and enjoy their property without interruption by a landlord,⁶ and that autonomy has been highlighted as a central aspect of housing security,⁷ TEWLS gives in principle support for the proposed pet provisions, sections 65A and 65B, in the Bill. We commend the proposal to create a rebuttable presumption in favour of tenants keeping pets, and note that this proposal would seemingly serve tenants, as well as the wider NT community, including animal rescue groups.

While we support the proposed pet provisions, TEWLS raises concerns as follows:

- In TEWLS’ view, possible interpretations of the phrase, “keep a pet” in section 65A of the Bill may give rise to strict application of same and unintended consequences thereafter. In the situations that 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 (i.e. for an afternoon), it appears that the tenant would be in breach of section 65A of the Bill were they not to have given notice per subsection 65A(2), opening same tenant to risk of proceedings under section 95B of the RTA. To mitigate this risk, we recommend that section 65A of the Bill be re-drafted to make clear that the section is intended to apply to pets who are sought to permanently reside at the respective premises;
- On its face, the Bill appears to be unnecessary restrictive and burdensome in capturing all pets. In TEWLS’ view, it would be unusual for the example provided for subsection 65A(7) of the Bill to require approval of a landlord, as opposed to a dog, cat or other animal living outside of a contained tank/ bowl, or similar. To lessen the burden of the proposed pet provisions, TEWLS recommends clarification regarding the types of pets to which the provisions apply, i.e. a non-exhaustive list noting that pets contained within a tank/ bowl, or similar are not captured by the provisions; and
- While the Bill provides for tenants to give notice of the pet during a tenancy agreement, the Bill does not capture the situation of a prospective tenant who already has a pet making an application for a tenancy. This means that these tenants seeking to move to premises within the NT or from interstate to premises in the NT would continue to be unprotected under the RTA. In a survey undertaken by CHOICE, National Shelter and NATO,⁸ the refusal of tenancy applications on the basis of having a pet is commonly referred to as “lawful discrimination” experienced by tenants,⁹ with similar situations encountered by prospective tenants who are the parents of young children or single parents.¹⁰ Noting that the purpose of the RTA is to strike a balance between the rights of tenants and landlords, TEWLS recommends that this scenario be given further consideration and/or research be undertaken for same.

B Notice periods for termination – proposed sections 90, 95 of the Bill

As noted in the Discussion Paper,¹¹ the NT has the shortest notice periods in Australia in relation to a landlord giving notice of an intention to terminate a fixed term lease. While TEWLS

⁵ See above n 1, 2.

⁶ *Residential Tenancies Act 1999* (NT), s 65.

⁷ Hulse, K. et al. (2011) *Secure occupancy in rental housing: conceptual foundations and comparative perspectives*, AHURI Final Report No.170. Melbourne: Australian Housing and Urban Research Institute, 10.

⁸ CHOICE, National Shelter and the National Association of Tenant Organisations (NATO) (2017), *Unsettled: Life in Australia’s private rental market*.

⁹ *Ibid* 8, 20.

¹⁰ *Ibid*.

¹¹ See above n 3, 54

appreciates the utility of the proposed sections 90 and 95 of the Bill in respect of providing clarification to the RTA, it is our submission that amendments should not be undertaken to these sections without consideration of notice periods; a critical component of the Discussion Paper.

C *Termination provisions for public housing – proposed Part 15 of the Bill*

As a member of the Housing Legal Services Group, a group coordinated by the Department of Local Government, Housing and Community Development (**the Department**) to facilitate open and transparent discussion between the Department and the membership of legal service/assistance organisations, TEWLS gives in principle support for the proposed Part 15 of the Bill. Given that the processes to be captured by the proposed Part 15 of the Bill are already underway, the importance of the proposed termination provisions for public housing tenants are clear for both the tenants of the Department and the Department, respectively.

While we support the proposed part 15 of the Bill, TEWLS raises concerns as follows:

- With respect to the proposed subsections 139(1)(c), 139(4), 145(1)(c) and 145(3) of the Bill, TEWLS queries whether the Department will be able to withdraw and/or renege on the undertaking made by the Department to the tenant. Noting that in typical civil proceedings, breach of an undertaking equates to contempt of court, TEWLS seeks information regarding the enforceability of the undertaking proposed to be made by the Department. In our submission, the strength of the undertaking will impact any assessment of feasibility of the proposed Part 15 of the Bill;
- With respect to the proposed subsections 139(2)(e) and 147 of the Bill, TEWLS would recommend the commencement of an active referral system to relevant legal assistance services such as the “SupportLink” system, with corresponding funding. Such a referral system would serve to ensure that a tenant has an understanding of and capacity to enact their rights during a termination process;
- With respect to the proposed subsection 141(b) of the Bill, TEWLS recommends that flexibility be afforded to both the tenant and the Department regarding timeframes, in the content of a tenant undertaking to pack their items and the Department undertaking to organise for those items’ removal. So as to provide a balance between the interests of both parties, TEWLS recommends that subsection 141(b) of the Bill be redrafted to read, “...no agreement – within 7 days of the date that the transitional accommodation is available”;
- With respect to section 142 of the Bill and noting that this is an issue of implementation/interpretation, TEWLS would recommend that an appropriate factsheet be created to advise tenants of the pros/cons of the Department retaining their security deposit; and
- With respect to section 147 of the Bill, TEWLS queries the seven-day timeframe provided for submissions by the tenant to the Department; on its face, the imposition of this short timeframe appears unduly onerous and unbalanced in relation to tenants’ rights. Noting that appeal periods are generally 28 days,¹² TEWLS recommends that tenants be given 28 days within which to provide submissions on relocation to the Department. In our view, this would provide tenants with enough time to receive the notice, seek legal advice regarding same, collate requisite information for the Department and engage with the Department regarding any relevant submissions. We

¹² See generally *Northern Territory Civil and Administrative Tribunal Act 2014* (NT), s94(3).

note that in line with this recommendation, corresponding amendments are proposed for subsections 146(b) and (c) of the Bill.

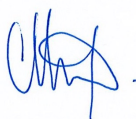
Conclusion

We appreciate the opportunity to make this submission and affirm our support for ongoing policy and legal development for women in the NT.

Should you wish to discuss this submission further, please contact Caitlin Weatherby-Fell by phone on (08) 8982 3000 or email to admin@tewls.org.au

Yours faithfully,

TOP END WOMEN'S LEGAL SERVICE INC.



Caitlin Weatherby-Fell
A/Managing Solicitor (Senior Solicitor)

Enclosed

NTWLS Submission dated 19 August 2019



19 August 2019

Director, Legal Policy
Department of the Attorney-General and Justice
GPO Box 1722
Darwin NT 0801

Email: Policy.AGD@nt.gov.au

Dear Ms. Daniel - Yee,

RE: REVIEW OF THE RESIDENTIAL TENANCIES ACT 1999 – NTWLS SUBMISSION

We refer to the Northern Territory's invitation for submissions on the *Discussion Paper: Review of the Residential Tenancies Act 1999* (July 2019).

The following is a joint submission of the three Northern Territory Women's Legal Services, collectively known as 'the NTWLS', limited to tenancy and domestic family violence.

The NTWLS

The NTWLS includes the Central Australian Women's Legal Service (CAWLS), the Top End Women's Legal Service (TEWLS) and Katherine Women's Legal Services (KWILS). The views put forward in this submission are informed by our direct professional experience assisting victims of domestic, family and sexual violence with respect to tenancy and safe and secure housing.

The NTWLS is part of a national network of community legal centres specialising in women's legal issues. Our services provide free and confidential legal information, advice and representation to women across the Central Australian, Barkly, Katherine and Top End regions.

We primarily deliver services to women at risk of or experiencing domestic and family violence, as well as related legal issues including family law, discrimination, child protection, housing and victims of crime compensation. A large majority of our clients identify as Aboriginal and Torres Strait Islander and do not speak English as their main language. Almost all women we assist experience financial disadvantage.

Casey's Story*

Casey separated from John, as a consequence of domestic violence assaults upon her and the parties' two children aged 3 and 1. Casey and the children obtained alternate safe short term accommodation. Casey and John were both parties to the tenancy. The police initiated Domestic Violence Order did not address the parties tenancy. Within a week of separation, Casey informed the real estate of her changed circumstances. The Real Estate agreed to remove Casey from the tenancy, however John did not. The lease expired 6 weeks after separation, however John did not vacate the premises or pay any rent during this period. The Real Estate commenced NTCAT proceedings for termination, possession and compensation with service upon John only. Casey is liable for rental arrears of 10 weeks and has received notification of intention to register her on the national tenancy database. Prior to the date of separation, Casey who was born overseas and speaks limited English, diligently discharged her tenancy obligations.

*Not her real name

NTWLS Submission

We commend for inclusion in any upcoming legislative amendment, domestic family violence provisions akin to those in New South Wales and Queensland which:

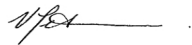
- Permit a tenant in circumstances of domestic violence to end their tenancy by serving a Domestic Family Violence termination notice, with relevant evidence, and vacating.
- Prohibit a landlord or agent from listing information about a tenant in a tenancy database when the tenant has terminated the agreement in circumstances of domestic violence, where any breach of the agreement is a result of the actions of another person who has committed an act of Domestic Family Violence.
- Permit an occupant to be recognised as the tenant.
- Permit the removal of the name of the person who has committed an act of domestic and family violence from the tenancy agreement.
- Permit termination of the tenancy agreement altogether (in specified circumstances).

We further commend a legislative amendment to require service of a tenant who has advised the landlord that they have ceased to reside at the rental premises as a consequence of domestic family violence and provided new contact details.

We acknowledge a hardship application can apply in limited circumstances during a tenancy where domestic family violence has occurred, and believe there is particular benefit for all parties in ensuring specific legislative provision to clearly address domestic family violence. Of note, such specificity would also advance and implement related policy initiatives of the Northern Territory Government that seek to address and reduce domestic family violence via a linked up and consistent whole of Government approach.

Yours faithfully,

NTWLS



Vanessa Lethlean
Managing Solicitor, TEWLS