LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

LEGISLATIVE SCRUTINY COMMITTEE

Public Hearing Transcript

Residential Tenancies Legislation Amendment Bill 2019

12.45 pm – 2.30 pm, Monday 9 December 2019

Litchfield Room, Level 3 Parliament House

Members:

Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Ms Sandra Nelson MLA, Deputy Chair, Member for Katherine
Mrs Lia Finocchiaro MLA, Member for Spillett
Mrs Robyn Lambley MLA, Member for Araluen
Mr Tony Sievers MLA, Member for Brennan

Witnesses:

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 (REINT)
Quentin Kilian, Chief Executive Officer
Allison O'Neill, REINT Director

Department of the Attorney-General and Justice and Department of Local Government, Housing and Community Development
Doug Burns, Senior Policy Lawyer, Legal Policy (DAGJ)
Hannah Clee, Senior Policy Lawyer, Legal Policy (DAGJ)
Christine Fitzgerald, Executive Director, Strategy, Policy and Performance (DLGHCD)
Tanya Hancock, Director Policy, Strategy, Policy and Performance (DLGHCD)

INQUIRY INTO THE RESIDENTIAL TENANCIES LEGISLATION AMENDMENT BILL 2019

Darwin Community Legal Service

Madam CHAIR: Good afternoon everyone, thank you for joining us. I am Ngaree Ah Kit, the Member for Karama, and Chair of the Legislation Scrutiny Committee.

On behalf of the committee I welcome everyone to this public hearing on the Residential Tenancies Legislation Amendment Bill 2019. I acknowledge that this public hearing is being held on the land of the Larrakia people and I pay my deepest respects to Larrakia elders past, present and emerging.

I also acknowledge my fellow committee members in attendance today, the Member for Brennan, Tony Sievers; and on the phone we have the Member for Araluen, Robyn Lambley; and the Member for Katherine, Sandra Nelson.

I welcome to the table to give evidence from the Darwin Community Legal Service, Linda Weatherhead, Executive Director; Tamara Spence, Managing Solicitor, Tenancy Advice Service and Specialist Services; and Caroline Deane, Tenancy Advice Service Solicitor. Thank you for coming before the committee. We appreciate you taking the time to speak to us and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be placed on the committee's website.

If at any time during the hearing you are concerned that what you will say should not be made public you may ask that the committee go in to a closed session and take your evidence in private. I will ask each witness to state your name and the capacity in which you appear before inviting you to make a brief opening statement and then proceeding to the committee's questions.

At this point I would also like to welcome to the table my fellow committee member, Lia Finocchiaro the Member for Spillett. Could you each now please state your name for the record and the capacity in which you are appearing?

Ms WEATHERHEAD: Linda Weatherhead, Executive Director, Darwin Community Legal Service.

Ms SPENCE: Tamara Spence, Managing Solicitor of the Tenancy Advice Service and Specialist Services at Darwin Community Legal Service.

Ms DEANE: Caroline Deane, Solicitor in the Tenants Advice Service at Darwin Community Legal Service.

Madam CHAIR: Thank you. Ms Weatherhead, would you like to make an opening statement?

Ms WEATHERHEAD: I am just here for window dressing today, so I will leave it to the specialists.

Ms SPENCE: Thank you, Ms Ah Kit. We thank the Legislative Scrutiny Committee for the invitation to speak on our submissions. As you are possibly aware our service is the sole tenants' advice legal service in the Northern Territory. We cover the whole of the Northern Territory. We have been advocating for residential tenancy laws that are fair, safe and certain for quite some time now.

We appear before you today because this is our business, but it is not only our business it is the business of over 50% of Territorians.

The government has shown a clear objective to attract more people to the Northern Territory but we know that people are leaving the Northern Territory because of a lack of housing security and out-of-date laws.

Key reform areas raised by both this committee and in a truncated submissions process include:

- the establishment of an independent bond board
- the elimination of arbitrary evictions without reason or notice
- regulation of bills and charges
- provision of fair and reasonable rents
- facilitation of longer term lease provisions
- establishment of minimum standards of habitability

- prohibition of discrimination in renting

- better regulation of co-tenancy arrangements.

The reforms that you have before you today are a long way short of what has been promised and we are keen to understand how comprehensive reforms will now be delivered in this term.

We want this committee to recommend to the government that at the very least they use this opportunity to make minor amendments to termination clauses. This is to bring the Northern Territory in line with other jurisdictions by increasing notice periods.

Currently, a tenant in the Northern Territory can have their lease terminated with only 14 days' notice at the end of a fixed term lease agreement. This is the lowest in Australia. Can you imagine the trauma and stress applied to families where they have to find a new home, pack up their belongings with only 14 days' notice?

In only allowing 14 days this means that families cannot find their perfect home or their forever home and they will often be forced just to take what they can get.

We often get calls from tenants to ask if their evictions without cause are illegal, they assume that they are and these tenants are then incredulous when they find out that they are legal despite what they feel is not fair.

You would think in the current market that finding a new home quickly would not be a problem, but what about when the market turns again and rentals once again become rare? We know families who become homeless, who couch surf and draw on friends and family for interim housing arrangements because of this short-term notice.

Earlier this year, the Productivity Commission commissioned a research paper titled *Vulnerable Private Renters*. For the committee, I have brought along a copy of one of the most powerful tables of that paper and am happy to hand that up to you. Thank you.

Whilst that is being handed out, we believe that the terms of the way the current law sits, makes our tenants in the Northern Territory vulnerable.

You will see in that table you have before you, on the far right hand side of the lowest notice periods, the Northern Territory has the lowest notice period for 'without grounds' or 'no fault terminations'. For the sake of clarity, Tasmania sits to the right of us. That is because they have laws that protect them from no-cause evictions. You will see that is an empty spot in that space.

In fact, that table is wrong, ironically, with the Productivity Commission, because that identifies the time frame of 42 days' notice for evictions that are on tenancy agreements that are periodic tenancy. We focus on 14 days, which is based on a fixed term tenancy agreement. So, if I have a tenancy agreement that ends tomorrow, 14 days ago I could have been given notice to move out of that tenancy without a reason.

The ability to terminate without reason also means that, on top of that, tenants do not raise maintenance issues or do not object to rent issues, in particular increases of rent, because they know they can be evicted without cause with as little as 14 days' notice, leading to tenants living in financial hardship and, in some cases that we are aware of, substandard accommodation and housing.

Amending notice periods in this tranche will send a positive signal that work to bring legislation up to date is under way. It will truly make a difference to the lives of many Territorians.

I will now pass to my colleague, Caroline, to speak to some of the other points.

Ms DEANE: First I will address the proposed amendment to section 90 in the bill which relates to fixed term tenancies. In relation to the proposed section 90, we support the terminology change. However, whilst this section is being amended, we urge the further amendment to extend the notice period from 14 days to 120 days, as proposed in the discussion paper which was released in July this year.

Section 89 of the Act, which relates to landlord-initiated terminations of periodic tenancies, also needs to be changed from 42 days to 120 days. At present, the Northern Territory has the shortest notice periods in Australia for landlord-initiated terminations. It is as simple as changing a number in both sections 89 and 90. This small amendment would have a hugely beneficial impact on tenants by providing them with adequate time to find suitable alternate accommodation for themselves and it would bring the Northern Territory into line with national standards.

I next want to address the proposed amendment to section 77. Section 77, as it stands, allows NTCAT to order that a landlord may enter a premises for the purposes of conducting periodic inspections, carrying out repairs or maintenance or collecting rent. This proposed amendment would allow a landlord to forcibly enter a premises for these purposes. It

is hard to imagine a situation where an order like this would be appropriate or necessary, as in an emergency situation that arises—for example, a gas leak where the tenant is overseas—the landlord is already permitted to enter the property without notice and without an NTCAT order under section 72 of the act.

An order permitting the landlord to forcibly enter a tenants' residence is dangerous for both parties in our submission. It is worth noting that the Northern Territory is the only jurisdiction with this provision and if this provision was adopted we would submit that the landlord should have to satisfy strict notice and service requirements in relation to the application. DCLS have addressed this in more detail in our response to the submission paper, page 30.

I turn to deal with the proposed amendments to the *Housing Act*. We acknowledge that the intent of these provisions is to improve living standards for public housing tenants. We support the premise of the legislation, however the drafting of the legislation needs to be amended to ensure that the rights of the tenants are protected and these provisions cannot be misused.

There are two main divisions. Division 2 allows for termination of tenancy agreements for renovation, replacement and demolition and Division 3 allows for termination of tenancy agreements for the purpose of relocating tenants. Our concerns are in relation to Division 2. Firstly, tenants will be placed in transitional accommodation while their house is being renovated. These agreements are not subject to the *Residential Tenancies Act*, meaning that these tenants have no rights and the landlord has no responsibilities under the Act. This may be for an extensive period of time.

Secondly, tenants have no right to make submissions or to appeal the CEO's decision to terminate their tenancy.

Thirdly, there are no notice periods in the proposed legislation. A tenant may be provided with a notice to terminate and in some cases may have to move out immediately.

In relation to Division 3, which talks about relocating tenants, our three main concerns are firstly, a tenant will not be consulted in relation to a decision to terminate their tenancy and relocate them. Secondly, a tenant is provided with an opportunity to make submissions to the CEO on their relocation, however, they are given a timeframe of seven days, which is too short particularly for remote tenants to access legal services and make those submissions to the CEO.

The third point in relation to Division 3, is that a tenant is only given seven days to vacate their tenancy after the decision has been made. This is not adequate and we submit should be changed to a minimum of 28 days.

Ms SPENCE: We are happy to ask for questions at this point in time.

Madam CHAIR: Thank you, very much. I will now open to the committee for any questions.

Mrs FINOCCHIARO: Thank you. In regard to pets, section 65A and 65B, you said in your submission that currently a landlord could refuse a prospective tenant's rental application on the basis that they have a pet. Is that a 'lived experience' of DCLS?

Thinking it through: a family with a dog, the family want to rent a home, the landlord thinks they are a wonderful fit but does not want the dog, therefore is happy to approve the application of the family, just not the dog. That is quite distinct from rejecting the application because of the dog.

Are you seeing both happening, or it is more that people are coming to you saying we have just been rejected point blank? Sometimes other people can make arrangements; it is only for six months so my sister can look after the dog. I am trying to see what your experience of people coming in.

Ms SPENCE: I suggest we see the whole range of those examples. We see people who are blatantly told that they are rejected because of the dog; people who make the assumption they are rejected because of the dog. It might come up later in the discussions and then they are told unfortunately their application is unsuccessful.

The other thing we have seen a number of times in the past 12 months is where there might have been some insinuation, whether that be via the advertisement, that the property was pet-friendly but then upon making an application for a dog later on, they are turned down for that pet. That is a concern to them, they have entered into the agreement based on the representations that it was pet-friendly. We see the whole range.

Mrs FINOCCHIARO: The new processes proposed would then require a landlord to make an application to NTCAT to put their case as to why the pet should not be allowed. Do you have concerns around the impact on prospective tenants to go through that process?

Ms DEANE: Well a landlord does not need to provide a reason why they have refused an application, so it will not be prospective tenants that will benefit from this provision, nor will it be existing tenants that will benefit from this provision. This only relates to people entering into a tenancy agreement after the commencement of the legislation. It only relates to people to who are already in those tenancies who then decide they want to get a dog and then they put in this application.

For people who already have a dog and are applying for a tenancy, if they landlord does not want a dog they will just refuse the application.

Ms SPENCE: I would suggest that probably a concern that we have kind of talked through, that is whereby a person may make the application the landlord may not be aware of the process and may go through, or be silent on it, and that sort of imposes that approval. Upon finding out that there is then a pet, if they were not particularly happy about that, they would then use that opportunity at the end of the fixed term tenancy agreement just to terminate anyway. So we take the opportunity to highlight that is an issue with the notice periods and fixed term arrangements with no cause evictions.

Mrs FINOCCHIARO: So you are saying the pet clause will not apply—just pretend the Bill has passed obviously—it will not apply to new tenants? So the family come with the dog, put their application in—I am using a scenario we did before. If the tenant does not want the dog, or there is no wriggle room there, they cannot work something out, they can reject that application? It is only for people who are in current tenancies who might then get a pet?

Ms DEANE: Yes.

Mrs FINOCCHIARO: So if the family were already renting and they were like let us get a dog for the kids, they would have to go to NTCAT?

Ms DEANE: Yes.

Mrs FINOCCHIARO: Potentially?

Ms DEANE: Yes.

Mrs FINOCCHIARO: Okay, thank you. I will keep going. With the right to enter and your concerns around right to enter, what situations would a tenant not allow a landlord to enter? If a landlord just—looking at your submission—if a landlord wanted to have their agent or whomever go through, you know a plumber or something, to go through and check everything because they might be old, they might live interstate and not sighted it for many years. Whatever the situation might be, presumably the tenant would have been asked? You know the landlord wants to come through and check the plumbing, is that okay? If the tenant is insisting no, that is not okay, I am wondering why that would …

Ms DEANE: It is an unusual situation and our experience is that section 77 as it is, is not used a lot. However, what we most commonly see is in situations where the relationship between the landlord and the tenant has broken down and at that point the tenant for whatever reason is impeding the entry of the landlord. At that point the relationship has broken down and often can be quite hostile, and that really is our basis for objecting to this legislation because it means they can get a NTCAT order allowing forced entry where the parties can be very emotionally involved and can be quite hostile. Despite the safeguards it could potentially result in property damage or injury.

Mrs FINOCCHIARO: Is DCLS opposed to that amendment or you are saying it needs to have stronger safeguards around service and notice?

Ms DEANE: We are opposed to the amendment. If it was to be passed, we would be pushing for strict notice requirements and service requirements. Ensuring that at least a tenant knows that this forced entry has been ordered so that they can protect themselves if their safety is a concern.

Mrs FINOCCHIARO: Do you have many cases that come to you where the tenant is insisting that no they cannot? No? Okay.

Ms SPENCE: I also express that our concern for safety is for both parties. That is important.

Mr SIEVERS: Are you saying you feel there is enough provision for landlords to enter?

Ms DEANE: Yes. At this stage, where a landlord has to go to NTCAT to get an order to forcibly enter a property, at that point, the relationship has likely broken down. If it was an emergency there is provisions in the Act for them to enter anyway. We submit that this amendment is not necessary.

Ms SPENCE: If it has got to this level of breakdown in the relationship, it is likely that the landlord or one of the parties would be seeking termination of the tenancy anyway. We are not really sure—we see it very rarely.

Mr SIEVERS: Yes.

Ms DEANE: Where this is situated relates to inspection and repairs, it is not for changing the locks to terminate the tenancy.

Madam CHAIR: I have a question in regard to the notice to terminate. Currently, it is a seven-day notice period?

Ms DEANE: No, that is a proposal in the new Divisions 2 and 3.

Madam CHAIR: So, 14 days? Is that the current …

Ms SPENCE: Yes, that is correct.

Madam CHAIR: Okay. I guess there are a couple of different perspectives I have, as a local member in an area that has the highest density of public housing. Thank you. I understand that you do a wonderful job and I am always sending people over to have a talk with you. You have a wonderful and helpful website and DCLS does an amazing job. It is always a balancing act between ensuring that human rights are upheld—nobody ever wants to be homeless or wants to make somebody live without that shelter over their head.

I see the common impact every day on the mental health and wellbeing of my community members who are forced to tolerate bad behaviour of next door neighbours and it is unacceptable. I fear that having a minimum of 28 days would do more damage to my community for all of those people who are going through those hardships. Every day in my office I am contacted by two new complainants in regard to housing.

Whilst I recognise that seven days is quite short, 28 days would be a very long time. Somewhere around 14 days, in my opinion, might be more suitable. It would allow people in remote community settings, those people who do not have easy access to services, perhaps people who do not speak English as a first language, to be able to contact your service or get some legal advice to put their case forward.

I was also wondering, in regard to concerns of the lack of notice for termination—would that be one of the biggest issues you guys deal with at DCLS in your tenancy support area?

Ms SPENCE: Yes, that coupled with bond return. I take the opportunity to mention that there is a bit of confusion about the notice period. With Housing, the intent of that is separate. For the examples you gave, there is quite a drawn-out process. I do not mean drawn-out badly, it is just a process through NTCAT currently to provide for those examples you have given. We provide advice on a regular basis for those sorts of tenants. These provisions are slightly different to that.

Ms WEATHERHEAD: These provisions are just for circumstances where there is renovation, replacement or demolition proposed, they are not bad behaviour provisions—also, the movement into transitional housing. That is what these provisions are about. As Tamara has mentioned, there is a separate process for your behavioural issues provisions, so …

Madam CHAIR: Ensuring public housing tenants, if there needed to be—if there is a leaky roof. It is then the tenant actually being able to have their voices heard through that entire process of relocation to another public housing property?

Ms SPENCE: Very much so. I believe the initial attention of this is more to do with the renovations that are currently occurring on remote communities. That is the intention of the legislation, but as my colleagues indicated, we have some other concerns about that. But yes, that is the intention in terms of renovations.

Mrs FINOCCHIARO: I want to ask about section 90, following on from what Ngaree was talking about. The jurisdiction with the next shortest notice period is 60 days? Is that right?

Ms SPENCE: Yes.

Mrs FINOCCHIARO: What is that, Victoria and South Australia for 'intention to sell' and Western Australia and Queensland, 'without grounds'. I guess you guys want to see the longest possible, not that 120 is the longest. ACT is obviously 180.

Ms SPENCE: Of course. Our position would be that Tassie is actually the longest, because they have in place that a 'no grounds—eviction' is abolished. That is the baseline of our position and it certainly was in our initial response to the discussion paper.

Ms WEATHERHEAD: I think one of the things about the Northern Territory is that renting is the normal default in terms of housing. We are at 50.8% proportion of the population renting, the nearest is Queensland with about 30%. We are way beyond anyone else in terms of renting as the default position in the Northern Territory.

The other thing is, we are all aware that we are trying to attract people to the Northern Territory. If someone is going to move their whole family up here, their dog, grandma, all those sorts of things. They want to know that they can settle here and they want to know they have security and they get their kids in school. They do not want, after a year, to have 14 days' notice to try and find a new place, they are on a three-year contract. That is not a good experience. They are going to say, this is really different to where we have come from, why would we do that?

I think it is really important and it is a safeguard for landlords and tenants to have some security that people will actually stay in your house, if you are renting it out, some security over the investment. If they have grandma here and they might make positive improvements to the house, it is about the only way you are going to get any capital appreciation in a rental property in the current market.

I think it is those sorts of things that are really important. Let us look at the situation of the Northern Territory. It is traditionally a transient place, how can we encourage people to move here and to stay here and make their life here. They have to feel like their house is their home.

Mrs FINOCCHIARO: Does it impact renewal of the lease. If it is a six-month lease, at the end of that period the landlord cannot renew?

Ms SPENCE: The landlord has the discretion to do either.

Mrs FINOCCHIARO: On Division 2, you mentioned—I have not got the specific clause reference—when you were talking more globally about Division 2 that transitional placements essentially give the tenant no right and the landlord no responsibility, is this an oversight? Is it an omission in the legislation do you think, or is the policy intent that people in transitional placement have no rights, as you said, and that the landlord, that is the government, has no responsibility to provide improvements?

Ms DEANE: The specific section in the Bill is section 140 and there it specifically states that these transitional accommodation arrangements are not tenancy agreements and they are not covered under the Act. The practical effect of this is that tenants do not have the rights that tenants normally have. They do not have the right to safe and habitable housing and the landlord, being CEO of housing, does not have the obligation to repair and maintenance.

There is also the potential, certainly we are not submitting this is the intention of the legislation, as it stands to be misused. It means that a tenant does not even have the usual rights around termination so they could be terminated with no notice and become homeless.

In relation to this transitional accommodation with it not being under the Act there is also going to be some concerns and questions around the standards of that accommodation and we do not know what transition or accommodation is going to look like. As this falls under a section that is talking about demolishing a property—I do not know how long it takes to build a house, it could be a year or it could be longer—so people could be in these substandard arrangements with no rights for an extensive period of time.

Ms WEATHERHEAD: It may be because of the way the Act is framed that these tenancies are not covered, as a tenancy is where someone pays rent and this is a situation where someone is taken out of their house, put in transitional accommodation and they are not obliged to pay rent.

Our proposal is a tricky one but in order to enact or enable the rights under the tenancy legislation we are suggesting there might be a nominal rent provision and that might be a way around—we can see that this might be as it is because of a technical issue.

Mrs FINOCCHIARO: It could be a drafting issue and not the policy intent which could be overcome in a number of ways, either people keep paying rent and therefore their conditions are covered or whatever else.

Madam CHAIR: We asked the department for advice and I want to enter some of this on the record:

> *Tenants entering in to 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.*
>
> *The CEO of Housing is contractually bound to follow some 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 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 not to engage in illegal conduct or create nuisance and the obligation to notify the CEO of Housing if the property has been damaged or requires repairs and maintenance.*

I just thought I would add that.

Ms WEATHERHEAD: I think it seems that it was not the intention to deny people their rights so if we can have consistency in terms of application of the *Residential Tenancies Act* it would seem to make more sense than entering in to all these individual contracts.

Ms SPENCE: Certainly the legislation the way it is drafted at the moment does not reflect that.

Ms DEANE: Whilst it may be in this contract, tenancy agreements that are subject to the *Residential Tenancies Act* can be taken to NTCAT whereas I would imagine these will not be able …

Madam CHAIR: They can as well.

Ms DEANE: They can?

Madam CHAIR: Yes, that is the advice we have been given.

> *If there was a dispute in relation to complying with the agreement, the tenant has recourse through the Department of Local Government, Housing and Community Development's internal complaints and appeals mechanism, where the CEO of Housing is committed to addressing disputes in a fair and equitable manner the tenant will also have the ability to seek an enforcement of a breach of the agreement by the CEO of Housing through NTCAT or the local court.*

Ms SPENCE: Once again, the legislation does not appear to reflect that intent.

Madam CHAIR: I am sure the department will be able to provide a part of a response when they appear before us today.

I want to ask a question in regards to DCLS's recommendation to prescribe quality template documents for lease agreements condition reports. Your website has many fantastic documents. Do you think one standard document or template would suffice for every single Territorian for their housing needs?

Ms SPENCE: Every single Territorian?

Madam CHAIR: Every single housing matter. I think there was a comprehensive library like the one you have on your website where people can access, download, enter their details and print off.

Ms SPENCE: There is the potential for that and I take the exception that the Department's accommodation may be slightly different to that. Certainly it is our desire to see consistency. At the moment we are not seeing that consistency for whatever reason. In the past couple of weeks, we have seen a tenant that had a Queensland tenancy agreement. Because ours is not freely available, it is our desire to see that freely available. It is our understanding that there have been discussions with Consumer Affairs in relation to that with the Commissioner of Tenancies. We would like to see consistencies with a legal agreement that is up to date. The current one is out of date and not consistent with the law. We would also like to see consistency then with relation to ingoing and outgoing condition reports, as well as all of the other related documentation.

We acknowledge that Consumer Affairs at the moment also has a number of documents that are utilised in this space in the residential tenancies jurisdiction. We think they are quite adequate and deal with matters appropriately. We would like to see the addition of those documents in a similar manner.

Ms WEATHERHEAD: I add that it is a fairly simple thing to do. The Commissioner of Tenancies has responsibility to provide education and information to tenants and landlords in the space. It is something that is provided in every other state and territory by the Commissioner of Tenancies, or the equivalent position. It is provided free. You can get it off the website. If you are a landlord or a tenant, it makes things much easier, 'Where is the standard form? Here it is. Great. Let us download it, it has everything in it that we need.'

Madam CHAIR: Fair enough. Are there any further questions from the committee?

Mrs FINOCCHIARO: Can I ask about consultation. Was DCLS consulted during the development of the bill?

Ms SPENCE: None other than the public consultation that occurred in July.

Mrs FINOCCHIARO: So, you did not see a draft or anything like that?

Ms SPENCE: No.

Mrs FINOCCHIARO: Thank you.

Ms NELSON: In regard to the notification period. In the jurisdictions that have a requirement of 28 days to notify of an eviction, what is the reasoning behind that 28 days?

Ms SPENCE: I am not sure we could answer that, Sandra. You will see from the table—and I am sorry you do not have access to that, we will make sure—oh, wonderful.

Ms NELSON: I did get it, yes.

Ms SPENCE: Yes, thank you. Other jurisdictions have made the decisions they have for the reasons they have. We could not elaborate. There is no specific reason we could think of about that.

Ms NELSON: I am asking because I am thinking how long it takes, for example, to enrol your child at school? How long does it take to get power and water turned on? How long does it take to find a new house? I think of all those other practicalities that people have to take into consideration when they have to move.

Ms DEANE: Including raising bond money because your bond money …

Ms NELSON: Exactly, raising bond money. Hiring a truck to move if you need to do that. How long does all of that take?

Ms WEATHERHEAD: The bond money issue is one of the key things. We often find that people, in between rental housing, experience periods of homelessness. They may be staying with family, the may be couch, surfing. Because we do not have an independent bond board like every other jurisdiction, so there is a hold-up in that turnover. There is a hold-up in getting people into vacant housing because we do not have that turnover.

Tamara and Caroline can probably give an example of how long, on average it takes to get bonds back. If there is any dispute over the bond, then it is a considerable period. It means that people then do not have the resources to enter into a new tenancy agreement.

Ms SPENCE: Certainly we can give a fairly broad example. We had a client who was publicly published in the media that initiated proceedings in February and got her bond back in October. So, it is not a quick process. As we know, these things affect the most vulnerable in our community. Our clients, who we see as the most vulnerable, cannot just raise a bond which might be $1800 or $2000. That money is not found easily. Sometimes we are finding that these sorts of vulnerable clients are then subjecting themselves to either processes that get them into more financial hardship through pay-day loans and the like, which of course we all want to see people avoid.

Madam CHAIR: I want to come back to …

Ms NELSON: So, a bond usually consists of the first month's rent and last month's rent? Is that how that normally works?

Ms SPENCE: It is normally four weeks maximum in the Act for a bond, and normally plus two weeks rent in advance is normal.

Ms NELSON: Thank you. Anecdotally, I have couch-surfed quite a bit in my lifetime and it has taken me a lot longer than 21 days to find a place. I am concerned about that eviction notice period.

Ms SPENCE: We also acknowledge that you, and Mrs Lambley in Araluen, would also have similar issues with the housing demands in your jurisdictions being a lot higher. The feedback we are getting from our clients is that you are seeing demands that are a lot higher than here in Darwin at the moment.

It comes back to choice as well. That is one of the points I raised in my opening statement. Tenants are not then able to find the place they want to make their home. That shorter timeframe means they are then in a more urgent situation trying to find whatever they can, which may not necessarily be the best case scenario.

We had a client a couple of weeks ago that was struggling to find another place and that was because she had two dogs. Throw that part on top, that extra difficulty in finding appropriate accommodation is alive and well. That sort of client does not want to move into a unit and would potentially be inappropriate for a unit.

Ms DEANE: One point on bonds—this is a broader argument for the bond board and how much it is needed in the Northern Territory. We hear a lot of people who are really personally offended. They see themselves as clean people, they have rented all their life and they have always had their bond returned. Then they move to the Northern Territory and are told the house was not reasonably clean. People get offended and it leaves a sour taste in their mouth in terms of trying to promote people to stay in the Northern Territory long-term. A lot of people say renting is too hard and they want to go elsewhere.

Ms SPENCE: Can I take the opportunity to raise the issue of domestic violence. This issue was not addressed in this current proposed legislation. I know that some members of this committee felt very strongly and have spoken out quite publicly about that and in Hansard last year, spoke publicly telling some personal stories.

We want to raise with this committee that it is a really big priority for us and that it has not been raised to date in this legislation. We want to let you know, in advance, that obviously we have the opportunity to make our own submissions to the proposed legislative amendments by way of the justice legislation amendment.

Upon meeting with the Attorney-General, she advised us that she had been advised by her advisers that this would rectify the issue for victims of domestic violence in tenancies. We want to tell you that it does not.

I would love to have the opportunity in front of this committee to tell you why. 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 of 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.

Ms WEATHERHEAD: 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.

Ms SPENCE: We saw within the changes that occurred last year in relation to residential tenancy databases that the committee contemplated, with our recommendation, changes to residential tenancy databases as well, in terms of terminating a tenancy and ending up in debt. These are the reasons we see victims staying in relationships and those have not been contemplated in this round of legislative reform either.

Madam CHAIR: On behalf of the committee I thank you for appearing before us this afternoon.

The committee suspended.

Real Estate Institute of the Northern Territory (REINT)

Madam CHAIR: Good afternoon everyone, and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf on the committee I welcome you to this public hearing on the Residential Tenancies Legislation Amendment Bill 2019. I also acknowledge my fellow committee in attendance today, the Member for Brennan, Tony Sievers; the Member for Spillett, Lia Finocchiaro; and via teleconference we have the Member for Katherine, Sandra Nelson; and the Member for Araluen, Robyn Lambley.

I welcome to the table to give evidence to the committee from the Real Estate Institute of the Northern Territory, Quentin Kilian, Chief Executive Officer; and Allison O'Neill, Director. Thank you for coming before the committee we appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing that is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask each witness to state their name for the record and the capacity in which you appear, before inviting you to make a brief opening statement and then proceeding to the committee's questions. Could you each please state your name and the capacity in which you are appearing.

Mr KILIAN: Quentin Kilian, Chief Executive Officer of the Real Estate Institute of the Northern Territory.

Ms O'NEILL: Allison O'Neill, from the board of directors at the REINT. I have been in property management for 30 years.

Madam CHAIR: Mr Kilian would you like to make an opening statement?

Mr KILIAN: Only that we are very pleased to be here today to answer predominantly any questions you have. I think we have in many cases made our statements both in writing and in submission to this committee. So we are happy to respond to any questions they have. There is one issue that has not been identified or has not been explored, which Ms O'Neill will attend to later, which is the removal of a section from the act that we have been pushing for, for some time, for logical reasons. But it tends to be ignored in each of the rounds of submissions that go forward. We are here to address any questions that the committee may have and, in particular, the one area that we have some concern and that is the proposed pet clause.

Mrs FINOCCHIARO: Was the REINT consulted on the drafting of the Bill?

Mr KILIAN: Only in the respect of the public submission that were called. We had no prior notice of that, in fact, I was informed of the submission by an ABC journalist who rang me to ask if I had any comment on it. It was only then that I found that there was a notice in the newspaper identifying that submissions were open.

We asked for an extension of time given the size of the jurisdiction that we have to cover and the fact that I have to consult with 100 agencies and over 600 members. We were declined an extension to that submission time so the period that we had to prepare the submission in was a little bit shorter than we would have liked.

Mrs FINOCCHIARO: Did you see an exposure draft of the Bill?

Mr KILIAN: I spoke to the minister's office about an exposure draft and was told that one would not be done because they were not done for things like this.

Mrs FINOCCHIARO: Were you expecting a lot more in this than what is here? Would that be fair?

Mr KILIAN: Given the nature of the discussion paper that came out and the fact that it was 90 pages long, we responded to that with the assumption that the redrafting of the Bill would be going ahead in a much larger containment of areas. We are not averse to it being in tranches. It just makes it a lot more difficult because it means further consultation and further time and the potential for it to drag out.

Mrs FINOCCHIARO: There is no timeframe on the completion of reform is there?

Mr KILIAN: None that we have been advised of.

Mrs FINOCCHIARO: I might ask you about the one—unless Ms O'Neill wanted to talk about your area that is not covered in the submission?

Ms O'NEILL: Yes. As Quentin pointed out, 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.

We say that is extremely unfair and we think we should be in line with all of the other jurisdictions where it is not a requirement for the tenant to be present unless it is not practicable. We say that should be changed.

Mrs FINOCCHIARO: Would you expect that is coming in, in further tranches?

Ms O'NEILL: We included it in this. It was not raised, but we raised it.

Mrs FINOCCHIARO: Okay.

Madam CHAIR: Can I expand on that? Mr KILIAN, is this the piece of information you said the REINT had been pushing for, for a number of years?

Mr KILIAN: Yes.

Ms O'NEILL: Yes.

Madam CHAIR: How long would be that duration?

Ms O'NEILL: Going way back.

Mr KILIAN: I have been doing this job for 10 years and it was one of the issues that was on my agenda when I first took over the job as the CEO. So, it is well over 10 years.

Madam CHAIR: Thank you.

Mrs FINOCCHIARO: When you say the landlord is left high and dry, you mean in terms of if the landlord is arguing, 'Well, it has not been returned to the standard we gave it to you. Here are all the photos' or whatever—the condition report—then they do not have a leg to stand on if the …

Ms O'NEILL: Correct. That is the position and there have been many cases where that has happened.

Mrs FINOCCHIARO: Okay. Thank you. I want to ask about the pets, which you guys expanded on in your submission. Did you have much of a chance to go back to your membership about the impact of a clause like this?

Ms O'NEILL: Yes, I am happy to speak to that. What we need to understand, first and foremost, is the majority of rental accommodation in Darwin comprises units and apartments. There is an automatic default no-pets provision in both the *Unit Titles Act* and the *Unit Titles Schemes Act*. When we talk about the right of any tenant to have a pet, there are approximately, I would say, 65% to 70% of rental stock which it will never apply to, because that is unit stock and the default position is no pets.

Really, what we are talking about is standalone housing and in our experience—and in my experience, certainly—the vast majority of landlords—I will be a bit off the cuff here—would far rather have a dog that sleeps on the back porch than young children in a property because dogs do not normally scribble on walls or spill coke on carpets. The dog issue—landlords are pet owners too. Occasionally—I will admit it now—some landlords just say no. 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. Let me tell you, I have yet to meet a tenant who says, 'I have a dog' and you ask, 'What kind of dog is it?', 'Oh, it is really old. It just sleeps. It only gets wide awake to eat and then it goes back to sleep. It never barks.' You go, 'Oh, yes.' 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.

Mrs FINOCCHIARO: So, even if this amendment were to pass, it would not impact any units?

Ms O'NEILL: No. A very small proportion—very small, minute. It will not apply to the majority of your accommodation.

Mr KILIAN: Whether they come under the *Unit Title Schemes Act* or the *Unit Titles Act*.

Mrs FINOCCHIARO: Yes.

Mr KILIAN: The other thing to consider in the pet issue is 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.

The further step is the impost that it is going to have on NTCAT. We know that NTCAT—and I hear it from my agents all the time that NTCAT is busy, it is overstretched and it has a lot on its plate.

If we then take a number of potential pet arguments to NTCAT, what does that add to its roster at the cost to somebody—in this case the landlord who has to put a filing fee in which from memory is about $68.00 or something? Okay, it is not an outrageous amount of money but it is still an impost for somebody who, by all means, is giving you the right to live in their property for an agreed amount of money.

We do have an issue with the reverse onus. If you look at our submission to the discussion paper, one of the points that I took to was a survey that was done by our colleagues in the REIV in Melbourne and they had a similar law put

before them. They did a survey of a much larger membership than we have and found that around 20% to 25% of their investor landlords would leave the investment market if their rights like this were taken away from them to make those decisions.

You take out of our market a similar amount if 20% to 25% left, what that does is it lessens the amount of available rental properties thus increasing the price of those properties because market forces will push the prices up, so the end result is that while having the right to have a pet is actually going to lead to less properties at an increase in those available properties. End result is it is going to cost you more to live in that property if you want to have that right.

Mrs FINOCCHIARO: Where does this come from? What other jurisdictions have this rule—the reverse owners?

Mr KILIAN: My understanding is that Victoria was the only one that pushed it through but Tasmania may also have a similar jurisdiction. Western Australia has a pet bond, which talking to my colleague at REIWA works extremely well. It is not a sizable bond but it gives the landlord some surety over the cleaning of the property afterwards which is not allowable under the Act as it currently stands, unless you can prove it was entirely tick and flea free beforehand, so the landlords are more likely to say yes to a pet if that pet bond is there.

Mrs FINOCCHIARO: Does REINT have the same understanding as DCLS that this would only apply to people with existing tenancy agreements, it does not apply to new tenancies going forward?

Mr KILIAN: My understanding was that it applies to new tenancies from a set date. I cannot remember off the top of my head the set day, but is not grandfathered or retrospective back in to existing tenancy agreements.

It would only be once this act is passed in to law. Tenancy agreements signed after that date would come under the new regime and anything prior to would remain as it currently is.

Mr SIEVERS: How long has been in Victoria?

Mr KILIAN: It is only fairly recent. They did their tenancy Act last year.

Mr SIEVERS: And the feedback?

Mr KILIAN: Horrendous. I can only speak from the industry side of things and from the landlords. The feedback from REIV members was absolutely horrendous. Unimpressed.

Mrs FINOCCHIARO: Do you think it could have a negative impact—so people looking to invest look at the jurisdiction and might go 'let us spend our money in Queensland instead?'

Mr KILIAN: It would definitely have a negative effect. The more you take away the rights of an investor the less likely they are to look at a market, which is at present time a more difficult market to get your returns in while we have the highest rental yields in Australia still at around 5%. It is one of the hardest markets to get your returns because of the lower number of tenancies here at the moment.

People are more inclined to look at investing in Queensland or WA if there is a freer market for them to invest in. You start taking away their rights as an investor and landlord, they are going to steer away from this marketplace.

Madam CHAIR: Are you aware of many cases where tenants revisit their lease agreement with the landlord and say I now am looking at getting a dog, would that be okay?

Ms O'NEILL: Very common.

Madam CHAIR: They just make an amendment to their current lease arrangements?

Ms O'NEILL: You ask them what breed and type of dog and assess, yes that would be a suitable animal to be on the premises. Absolutely.

Mr KILIAN: We have a document to support that, it is called a 'memorandum of variation' which allows you to vary the lease simply by a few signatures and details.

Madam CHAIR: Okay. Are there any further questions from the committee?

Mr KILIAN: If I could bring the committee's attention to the discussion about section 90 and changing that to 120 days. We raised an issue in our submissions, that it is just quite an unacceptable period of time. We did say, in the submission, that we would not be objecting to say a 30-day period, but for both parties. What you are looking at in the submission or discussion paper was 120 days' notice for the tenant but only 14 days' notice for the landlord. The argument is that it is a lot easier for them to find a tenant, well it is not.

The same argument holds, in fairness and equity, if you are going to have a notice period for either party. I do not like to refer to them as 'no-fault evictions' because that is a nonsense, it is the end of a lease. You have a contracted period, the end of the lease comes about, that is it. 30 days is a reasonable period and I think 30 days' notice to the landlord, if you are going to cease your lease and move on, should be an equal period of time.

Ms O'NEILL: I would like to add that having an extraordinary long period, which 120 days is, actually can backfire quite badly against your tenant and I will tell you why.

Normally when you give the tenant notice to go—I will give you the for instance now; when it is a periodic lease we have to give them 42 days' notice. They will start looking as soon as they get that notice and they will invariably find something, a week or two weeks in the current market condition, which is very much a tenants market, and they will be long gone before that 42 days' notice matures.

If you reverse that into a fixed term tenancy and you are giving 120 days' notice, the writing is on the wall, we have to go, I have found the perfect thing, but we have 100 days left on our notice; double rent. It can have a backfire on the tenant. I think Quentin's quote that 14 days taking into account that sometimes the market has not been tenant-friendly—that is not the case now let me tell you—but 28 days would be a fair compromise.

Mr KILIAN: We are not adverse to that at all, we would not hold out on that.

The other thing to consider in there of course is that a six-month lease, if you have 120 days' notice period, either it becomes a 10-month lease or the landlord gives you notice the minute you move in. If it is a 3-month lease, well I have given you notice before you sign the lease. Again, it is a period that does not really make sense.

If the issue is one predominantly around public housing or social and welfare housing, then perhaps the government somehow should look at quarantining it to the new section of the act and focus it is on public housing rather than the private housing sector.

Madam CHAIR: What are REINT's thoughts on the DCLS suggestion for an independent bond board to be established in the Northern Territory?

Mr KILIAN: We have been opposed to this previously largely because of the cost of running it. We submitted to a very lengthy paper just four years ago where it was established that the Territory was not a large enough jurisdiction to run its own independent bond board. It was then discussed to outsource that to Tasmania, where we discovered that the Tasmanian Bond Board is actually outsourced to an American company that does its work in India.

Madam CHAIR: What makes it so expensive?

Mr KILIAN: The cost of running it, essentially. You have government departments—if you ran it independently, for instance, if the REINT ran it, we could minimise the costs. If you run it through a government department it is an expensive beast to run because of the number of people involved in it. When you go to get your bond back, for instance, you would have to have a mechanism where NTCAT was involved to make sure there was a clearance and to make sure there was not an issue with that before you could then issue the bonds back. There would have to be mediators involved. It is not a small organisation to run a bond board.

Madam CHAIR: If it was run independently of government, that would be the best way to get that done?

Mr KILIAN: That is one way to consider it. What we need to consider also is that under the current Act, real estate agents that are involved in the rental area are required to keep trust funds and they are required to acquit the trust funds every year and have them audited. We provide a service that is not broken.

I cannot speak for the private rental market or the public rental market because we are not involved in that. In our area, in the agent-managed rentals, it is a system that works well. If there is an issue with bonds or trust funds, they are picked up very quickly. It is very heavily regulated. We do not believe that system needs changing. It is not broken. What are you trying to change?

Ms O'NEILL: For the vast majority of bond refunds, there is no squabble. We tend to overlook this because we are dealing with NTCAT cases and bond squabbles but with the vast majority of tenancies, there is no issue at the end of the tenancy. People who have been in jurisdictions with a bond board are quite surprised when they ask me how soon they can get their bond back and I say 'tomorrow.' And they say it took three weeks through wherever with the paperwork.

I understand that there can be delays when there is a dispute over what has been taken out of a bond but it is not a big slice of the issue at all.

Mr KILIAN: That is one of the key roles that NTCAT plays is dispute mediation.

Madam CHAIR: Fair enough.

Mr KILIAN: I had one other thing that came up with our previous colleagues with the suggestion that we have a standard set of forms made up that are available for free. I take umbrage to the claim that the current tenancy agreement—and I am not sure what tenancy agreement they were referring to, I certainly hope it was not ours—was out of date and not compliant with the law.

I take absolute umbrage with that because we have had our documents prepared by a leading law firm. They meet and exceed all compliance with any acts and current laws including unfair contract terms laws and federal laws as well as state. They are current and are available both to our members and the public at a fee. We are a commercial organisation. It has cost us a lot of money to have those forms done. We charge money for them.

The opportunity to be forced to make those available for free would impact very heavily on our revenue sources and we would stand firmly against such a thing.

Madam CHAIR: Thank you for putting that on the record. I think the example they gave was that they saw someone who came in to seek assistance and it was on a Queensland lease agreement which I would not be sure if that would be legally binding in the Northern Territory.

Ms O'NEILL: It was probably a private landlord who googled it.

Madam CHAIR: That is what I assumed as well.

Ms O'NEILL: I would just like to briefly touch on section 77 access. Once again that is not an issue as far as our side of things go. From memory—and I have a very good memory and done a lot of law—there has only been about two cases where the real estate—the landlord—has been denied access to his property and has trotted up to NTCAT or the previous regime and said, 'They will not let us in', and orders have been appropriately given. One was for open inspections in the run-up to an auction of a property and the other was a refusal by the tenant—and it was a more recent one, it was only last year. The tenant flatly refused the contractors access because they did not want a tree removed. The tree was extremely dangerous and had to come down, and the tenant just would not allow the landlord to do that work.

Generally speaking, the issues about forcing entry are confined, almost exclusively, to public tenants. Your Housing Commission tenants where—and you see them all the time. I used to look at the Housing Commission lists and listen in. That is the problem area. It is very rare in the private rental sector.
Also, on giving no reason for termination, our position is you can give, on a periodic lease, 42 days' notice, no reason given. There could be any number of reasons. Normally it is because the landlord will sell, the landlord wants to move back in, or there is just a change in circumstance. Normally, tenants quite like being on periodic leases because, of course, they have enormous flexibility. They can go whenever they want by simply giving 14 days' notice, and off they go. A lot of them really prefer that when they think about buying—and there are lot of tenants at the minute transitioning from rental into buying because of the real bargains that are out there. A lot of them prefer periodic leases.

So, needing to give certain reasons to terminate a lease is just unnecessary, in our opinion.

Mr KILIAN: There is a lot of discussion in the paper, particularly about the length of leases. I tend to think it is largely the experiences in Melbourne and Tasmania where the average lease can be five to eight years. The average lease up here is about 12 months to 18 months. So, you do not have the same lived-in experience as you might get in Melbourne and Tasmania in particular.

As we pointed out to the committee, we have a very transient population. They do not tend to take leases for as long periods as they do in southern capitals.

Madam CHAIR: But if a tenant wanted a longer lease, they could discuss that with a potential landlord and go from there?

Mr KILIAN: Absolutely.

Madam CHAIR: I am also looking at the flip side as well. Not every tenant is a model citizen or tenant. We have read a couple of stories in the media where homes have been trashed and people have left. I am not even sure if they have been held to account afterwards for the damage they have caused. I guess having the right for the landlord to go into their property and access and make sure it is being looked after is very important as well.

Are there any final questions from the committee? No questions.

Thank you very much for appearing before us this afternoon.

Mr KILIAN: We thank you for your time.

The committee suspended.

Department of the Attorney-General and Justice
Department of Local Government, Housing and Community Development

Madam CHAIR: Good afternoon everyone and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf on the committee I welcome you to this public hearing on the *Residential Tenancies Legislation Amendment Bill 2019*. I also acknowledge my fellow committee in attendance today, the Member for Brennan, Tony Sievers; the Member for Spillett, Lia Finocchiaro; and on the phone we have the Member for Katherine, Sandra Nelson; and the Member for Araluen, Robyn Lambley.

I welcome to the table to give evidence to the committee from the Department of the Attorney-General and Justice, Doug Burns, Senior Policy Lawyer, Legal Policy; Hannah Clee, Senior Policy Lawyer, Legal Policy; and also from the Department of Local Government, Housing and Community Development, Christine Fitzgerald, Executive Director, Strategy Policy and Performance; and Tanya Hancock, Director Policy, Strategy, Policy and Performance. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing that is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will invite each witness to state their name for the record and the capacity in which you appear, before inviting you to make a brief opening statement and then proceeding to the committee's questions. Could you each please state your name and the capacity in which you are appearing.

Mr BURNS: Doug Burns, Senior Policy Lawyer, Legal Policy, Department of Attorney-General and Justice.

Ms CLEE: Hannah Clee, Senior Policy Lawyer, Legal Policy, Department of Attorney-General and Justice.

Ms FITZGERALD: Christine Fitzgerald, Executive Director, Strategy, Policy and Performance, Department of Local Government, Housing and Community Development.

Ms HANCOCK: Tanya Hancock, Director Policy, Strategy, Policy and Performance, Department of Local Government, Housing and Community Development.

Madam CHAIR: Who would like to make a brief opening statement?

Mr BURNS: We provided you some written answers, we would be happy to walk through those or answer any questions you have.

Mrs FINOCCHIARO: Thank you, we were talking earlier about this pets clause. It will not apply to properties covered by the *Unit Titles Act* or *Unit Title Scheme Act*, is that correct?

Mr BURNS: Dependent on what the individual property actually has, because while there is a default in one of those Acts there is not in another and it really comes down to the individual units and the body corporates themselves. That is acknowledged in section 65A or proposed 65A. Where subsection 8 reads that a tenant's right to keep a pet on the premises under this section is subject to any prohibition on animals or birds applicable to the premises under either part 5 division 6 of the *Unit Titles Act* or part 3.5 division 2 of the *Unit Title Scheme Act.* While there are those individual body corporates have the opportunity to override that and actually permit pets if so desired.

Mrs FINOCCHIARO: Okay, that is what we were wondering. Generally speaking, for units that is dealt with at a body corporate level. So then what we are largely talking about is for homes.

Mr BURNS: Well if the body corporate allows to have pets then this would also apply, because some body corporates do.

Mrs FINOCCHIARO: If a body corporate allows pets and the owner is in support of having a pet, does that even matter? I mean you are allowed to have it so would you even need …

Mr BURNS: No, that then comes down to individual landlord. At the moment the landlord has that discretion to say no even though the body corporate says it may be permitted.

Mrs FINOCCHIARO: So, currently a landlord can still say no, even if they are in a body corporate that says yes?
Mr BURNS: Yes.

Mrs FINOCCHIARO: But under this law, if a body corporate says yes, a landlord cannot say no?

Mr BURNS: That is right.

Mrs FINOCCHIARO: Okay, right.

Mr BURNS: Unless there is reasonable justification.

Mrs FINOCCHIARO: Unless they go to NTCAT.

Mr BURNS: One case might be that the body corporate has a certain limitation on pets.

Mrs FINOCCHIARO: Okay. So, it might be a …

Mr BURNS: Cats are okay and a dog is not, something like that.

Mrs FINOCCHIARO: Yes, like a size or a type.

Mr BURNS: Yes. The number and all that.

Mrs FINOCCHIARO: Yes, okay. I have lost my train of where I was going now. Sorry, you can go if you want to.

Mr SIEVERS: Thanks, Lia. Can you tell us the thinking behind reverse owners? Why …

Mr BURNS: The feedback we have had through a number of reviews now is there is definitely an emphasis from landlords not, rather than to, allow pets. That has some impact on families. There is a growing change across the nation as to reversing that. As Mr Killian from the REINT noted, there are two different models out there at the moment—Western Australia which has a pet bond and the eastern seaboard which is starting to adopt the rebuttable presumption. That is in place in Victoria and the ACT and Queensland is considering it at the moment and, I think, Tasmania as well.

Mr SIEVERS: Given the feedback we have had today on that, in Victoria?

Mr BURNS: That is interesting. Those sorts of claims of flight from market are made on a number of different occasions. The most recent was here in terms of the introduction of regulation of tenancy databases. It simply does not occur. There has not been any evidence from Victoria to suggest that is the case, and the same with the ACT either. The simple fact of the matter is they are large investments. They are also somewhat hard to diverge very quickly. Given current market conditions, divesting on a single issue alone is something that is probably more detrimental to the investor than otherwise.

Mrs FINOCCHIARO: Did the department discuss with NTCAT how this would fit in with their …

Mr BURNS: Extensively.

Mrs FINOCCHIARO: … resourcing?

Mr BURNS: Yes. NTCAT is of the view that it is not an issue for them. They do not envisage too many, especially against their rate of general residential tenancy matters. They are not concerned.

Mrs FINOCCHIARO: Is that because, by and large, landlords allow pets?

Mr BURNS: No. By and large, the way the system is set up is the presumption there—then setting out what the ground is for, considering whether or not the decision is reasonable. NTCAT, on the basis of that, is not anticipating a heavy workload from us.

Mrs FINOCCHIARO: How will NTCAT know what is reasonable or not? Is that something the department will set out in some sort of regulation?

Mr BURNS: It is set out in proposed section 65B. That is under subsection (2) there, which is the type of the pet, the character of the premises, the nature of appliance, fixtures and fittings on the premises where the keeping of a pet is permitted or restricted or prohibited under any other law—and that is including the unit title scheme, or for example, Darwin City council bylaws, which regulate the number of dogs you can have on a premises—and any other matter that the tribunal considers relevant.

Mrs FINOCCHIARO: But that is very subjective, I suppose you would say, because one landlord might feel like a Chihuahua is a too big a dog for their house and yard, but then someone else might think it is more like a Great Dane example. How, in practice, will that play out? Will it just be developed through rulings through NTCAT which are then informed …

Mr BURNS: Well, it will take a certain degree of common sense. Then, the application of what is reasonable under the circumstances, given the nature of the pet to be kept, and the nature of the premises. Obviously, an elephant will just be out of order for a unit.

Madam CHAIR: Unless it is the best behaved elephant you have ever seen?

Mr BURNS: Even then, I think you would be struggling to consider that would be reasonable.

Mr SIEVERS: Can a landlord stipulate—whoever the tenant is—I do not want a pet?

Mr BURNS: No.

Mr SIEVERS: So every time it changes tenant you have to go through the process again?

Mr BURNS: Yes.

Mrs FINOCCHIARO: So it cannot be because they …

Mr BURNS: Not every tenant will want a pet, mind you, but for those who do.

Mr SIEVERS: And the cost to the landlord?

Mr BURNS: As Ms Clee pointed out, there is a $65 application fee. That is refundable if the landlord is successful. It would be an unwise landlord to try and suggest an unreasonable refusal was reasonable and run that argument given the criteria that is set out.

Madam CHAIR: Why did you not opt for the Western Australian model of a pet bond?

Mr BURNS: Mainly because the literature suggests that it places an additional unnecessary impost on the tenant themselves. As has been pointed out, there is four weeks rent that comprises the bond to start off with. The Western Australian model was based on loose estimates of what might be considered a reasonable amount and that is set in regulations at about $260 from memory.

Based on what is assumed to be the average cost of fumigation, that cost is somewhat less in the Territory at the moment. It is a bit of an arbitrary figure and additional money that is added on to the start-up. Say, for example, you have rent at $200 a week. You are up for $800 for the four weeks and on top of that you have any $200 or $300 so you are looking at just shy of $1100 to come up with plus the two weeks rent in advance. It is starting to add extra costs.

There is no evidence that the bond is necessary because it presupposes that the pet is going to cause some dramas to start off with. Comparing that sort of additional impost against something that says pets are not necessarily an issue in and of themselves, government has adopted the latter.

Mr SIEVERS: Can you tell us about the consultation processes that you undertook? We have heard today that there has not been much from the feedback we have received on the bill.

Mr BURNS: A discussion paper—and as it was pointed out, a rather lengthy one—was published in August. It was sent out to key stakeholders by email. Submissions were invited and they closed in September.

Mr SIEVERS: And that was the only formal consultation?

Mr BURNS: It was.

Mr SIEVERS: Can you tell us about your thoughts about the timeframes that have been discussed today? The 14 to 120 days, to the 30 days around the termination notice.

Mr BURNS: As we pointed out in our written answers that is not settled across the country in terms of what an appropriate date is. Some of the feedback we received in relation to that question from the discussion paper was that it certainly was not settled amongst stakeholders including those who were in favour of increasing the period.

As a result of that, it was determined that further consultation was required on that.

Mr SIEVERS: What about the timeframes around relocating a tenant in public housing? Seven days when some have suggested 28 days?

Ms FITZGERALD: Is that in relation to Part 2 or Part 3?

Mr SIEVERS: Part 3.

Ms FITZGERALD: Prior to any termination there is an awful lot of work that has gone on by the department. This is not the first interaction with the tenant. We have tenancy support programs—if there are any issues with the tenancy we work closely with them in terms of getting any additional support that tenancy might need, referring them to seek the advice of a legal advocate, if necessary, Aboriginal Interpreter Service or the translating service are utilised. There is quite a lot of engagement that happens with the tenant prior to us using that particular clause. Even with medical advice, where it is special needs, you might need a certain modification that we cannot do in the existing house.

This is not the first time. There has been an enormous amount of engagement before this happens. As you pointed out earlier, Chair, sometimes it would be to the detriment of the tenant but at other times the detriment of the neighbourhood if we were to extend that period out beyond seven days.

Madam CHAIR: I will re-emphasise seven days might be a bit short. I would be happy with 14 but I would not support 28 days and I am pretty sure the majority of my electorate would not either.

Mrs FINOCCHIARO: The department is not proposing to change the timeframes though, are they? Government has not come back and said 'actually, we might change it to 28?'

Madam CHAIR: Currently, where does the power to transfer …

Ms FITZGERALD: In our response to those questions obviously seven days is our preference but we would be open to considering 14 days or 28 days.

Madam CHAIR: Under the current provisions that exists now, what is the time frame for transferring?

Ms FITZGERALD: If it is a fixed-term tenancy, obviously it is 14 days. If it is periodic, it is 42 days.

Mr SIEVERS: What are your comments on the right to enter premises, section 77?

Ms CLEE: There is already a provision in section 77 which allows NTCAT to make an order, so it is not actually something new. It is just providing clarity for the NTCAT to specify how that order can be undertaken.

Mr BURNS: NTCAT already does that.

Mr SIEVERS: Okay.

Mr BURNS: What this is doing is just clarifying that that is actually permissible. NTCAT are relying on their inherent powers to do so. The power to make an order having the ability to make ancillary orders to give effect to that order. This is just making it clear.

Mr SIEVERS: That is not a common one that is used?

Mr BURNS: It is not very common at all. We are only aware of a handful of things and it is something that NTCAT has also mentioned to us, that it would be preferable that it was spelt out that they could actually do that.

Madam CHAIR: DCLS mentioned that domestic and family violence was not mentioned in this Bill and that—I am sure you would have heard the comments—they met with the Attorney-General and she told them that this Bill would rectify current housing legislation but it will not. Can I get your comments on that, and how domestic and family violence considerations are being considered in this Bill?

Mr BURNS: Domestic and family violence is not being addressed through this bill per se at this stage. There are some issues that are in the *Domestic and Family Violence Act* which are being addressed through the Justice legislation, domestic violence family amendments Bill that is currently before the Assembly as well.

It is our belief that that will actually rectify a majority of issues. There is some disagreement between ourselves and DCLS as far as the best fit for where this should actually sit, and their view is that it should be in the *Residential Tenancies Act* whereas our view is it should actually remain in the *Domestic and Family Violence Act* because that is where the rest of the issues are being addressed. That is also the view from my discussions at any rate with practitioners who specialise in that, including domestic and family legal services.

Madam CHAIR: Do you know if the considerations or the proposed supports that they raised in their testimony would be captured in the other legislation?

Mr BURNS: In terms of ability to change locks, that is available under the Act now. There is nothing preventing the tenant going to see the landlord and asking the landlord if they could change the locks. They can do that as an emergency provision and then notify the landlord later. The only proviso is they have to give the landlord a copy of the keys, it is something they can do now.
The other issue I think they raised, was having some generalist ability within the *Residential Tenancies Act*, outside of the domestic violence orders, where it is argued that on safety reasons, it is elected to do that way so it does not aggravate the situation.

There is some consideration for that elsewhere and what that would be is some other sort of form of evidence is provided—such as a note from your doctor or something like that. Ultimately, aggravating the situation would still come about because the offender has to be notified of an intention through NTCAT to then terminate the lease or have that person removed from it.

The idea of it deescalating with the absence of a protective order is not necessarily clear to the department and to other specialist operators in that field. It is certainly the view at this stage that the better venue for it is actually through the *Domestic and Family Violence Act* and through the Local Court, where all issues of safety can be dealt with at the one stage as part of the overall protection order.

There was another thing mentioned in terms of databases. NTCAT has not had a single application in relation to databases since those provisions came in last year. In terms of databases being an issue, it does not appear to be the case.

Madam CHAIR: Databases in regard to people who are …

Mr BURNS: Tenancy databases.

Madam CHAIR: Okay.

Mr BURNS: I am more than happy to hear evidence on it though, because if it is an issue then it should be addressed.

Mrs FINOCCHIARO: There is an indication that there will be additional tranches. Is there a number of tranches? Or is there a time line for them?

Mr BURNS: That is a question for the government.

Madam CHAIR: We heard from the CEO of REINT that he heard from an ABC journalist about the submission period being opened. Is there not an email that goes out to all stakeholders?

Mr BURNS: They were emailed.

Madam CHAIR: And the reason for denying an extension for his submission—time lines to stick to?

Mr BURNS: That is a question for the Attorney-General.

Mrs FINOCCHIARO: Coming back to the pets. In the REINT submission, they quoted from the minister's speech: 'This is based on the misplaced notion that a pet would damage or cause other problems with the premises'. Is that advice from the department?

Mr BURNS: That traces it back through a lot of literature and, indeed, the form of Residential Tenancies Commissioner in the matter of Litchfield Realty v Miles. I can give you the citation for that.

Mrs FINOCCHIARO: When was that?

Mr BURNS: I do not have that to hand but I can provide that later. That was some time ago now, obviously pre-NTCAT.

Madam CHAIR: I have a number of nuisance dogs barking in my electorate. It is almost impossible to find out who the landlord is to make sure that not only council are aware of the issue but to raise it with the landlord. Having such a nuisance dog might actually put off the next lot of tenants that come in there. Is there a way for information to be provided back to landlord for the property they are in charge of?

Mr BURNS: In terms of trying to identify?

Madam CHAIR: Notifying them of the tenant in their property having a nuisance dog. How do you put in a complaint? All my residents do is go to council.

Mr BURNS: Well that would probably be the most appropriate way to start off with. Currently, under the *Residential Tenancies Act,* the tenant can face eviction if NTCAT finds that the tenant has been causing a nuisance not only within the premises but to surrounding neighbours. If you are aware of who the landlord is there is always some way you can address that through the landlord to start off with. If you are not aware of who the landlord is then you probably have to undertake a property title search to find out who that person was and then take the process through them. That is currently something that exists now and is totally separate to the amendments.

Madam CHAIR: I am still conflicted in regards to the pets. I can see it would be great for people who were looking to lease properties to be able to bring their pets in, at the same time that is somebody's investment. That is a lot of money going in to something they pride themselves on having.

I cannot assume in my electorate it would go over quite well for people to be told you must have a pet whether you like it or not. You must rent your home, your property, your investment out to somebody just because they have a pet, if that is what they want. Then go and contest it at NTCAT if you do not want them in there.

I hear stories regularly about pet damage to places. I also see the flipside. It is a good security mechanism if you have a good dog or two, then that means that the likelihood if you have a high fence and you have some scary dogs and they are not nuisances, then your chances of being impacted by crime are going to come down. It provides the opportunity for the landlord to look at, but I do not have any investment properties and if I did I would not be happy about this change.

Mr BURNS: It is not a security issue, it is also a health, wellbeing and education issue. Numerous studies are now finding that especially children in houses that have pets are far more benefitted by the presence of that pet then families who do not. So there is that aspect.

Madam CHAIR: I think that is what it come down to, somebody mentioned it earlier in testimony, responsible pet owners. I think that is the key.

Mr BURNS: There is a lot of irresponsible tenants who do not have pets as well. In terms of the landlord themselves, there has been a change in the construct of landlords over time. From the accidental landlord who has inherited a house to those who are now professionally investing in properties for commercial gain, that 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.

Ms FITZGERALD: In public housing we allow our tenancies to have pets as long it aligns with the council bylaws wherever they are. Of our 14 000 properties there is very limited wear and tear or damage caused by pets in comparison to the wear and tear of the household themselves. We have probably almost 50% of the rental properties across the Territory and that is not something that is an issue for us.

Mrs LAMBLEY: Do you think tenants could be discriminated against by landlords if they have pets and the landlord is really preferring not to have pets? Is that an issue that has been thought of?

Mr BURNS: It is a theoretical possibility, just as it is a theoretical possibility that a single male might be discriminated against or a family with children.

Mrs LAMBLEY: There is really no way of mitigating that is there?

Mr BURNS: Ultimately, no there is not as there is no way of proving it.

Mrs LAMBLEY: No, okay thanks.

Madam CHAIR: That concludes our public hearing this afternoon. On behalf of the committee I would like to thank you all for appearing before us. I would also like to thank everybody else who appeared before us in our public briefings on introduced legislation and thank everybody for their time today.