



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

ECONOMIC POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Residential Tenancies Legislation Amendment Bill 2019

Tuesday 29 October 2019

Litchfield Room, Level 3, Parliament House, Darwin

Members:

Mr Tony Sievers MLA, Chair, Member for Brennan
Mr Jeff Collins MLA, Member for Fong Lim
Mr Lawrence Costa MLA, Member for Arafura
Mr Gary Higgins MLA, Member for Daly (via teleconference)
Mrs Kate Worden MLA, Member for Sanderson

Witnesses:

Department of the Attorney-General and Justice

Douglas Burns, Senior Policy Lawyer, Legal Policy
Hannah Clee, Senior Policy Lawyer, Legal Policy

***Department of Local Government, Housing and Community
Development***

Christine Fitzgerald, Executive Director, Strategy, Policy and
Performance
Tanya Hancock, Director, Strategy, Policy and Performance

The committee convened at 12.50 pm.

RESIDENTIAL TENANCIES LEGISLATION AMENDMENT BILL 2019

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

Mr CHAIR: Welcome everyone. I will introduce the committee. We have Mr Gary Higgins, the Member for Daly, on the phone and Mr Lawrence Costa, the Member for Arafura and our Deputy Chair.

I welcome to the table to give evidence to the committee Mr Douglas Burns, Senior Policy Lawyer, Legal Policy, Department of the Attorney-General and Justice, Ms Hannah Clee, Senior Policy Lawyer, Legal Policy, Department of Attorney-General and Justice, Ms Christine Fitzgerald, Executive Director, Strategy, Policy and Performance, Department of Local Government, Housing and Community Development and Ms Tanya Hancock, Director, Strategy, Policy and Performance, Department of Local Government, Housing and Community Development.

Thank you, everyone, for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you all today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public briefing which is being webcast through our Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website also.

If, at any time during the hearing, any of you feel that 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 we take your evidence in private.

I welcome Kate Worden the Member for Sanderson back.

For the record and Hansard's recording, could you each please state your name and the capacity in which you are appearing here today. Then, I believe Mr Burns—Doug, you will make an opening statement?

Mr BURNS: Yes.

Mr CHAIR: Great. We will start with Tanya.

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

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

Mr CHAIR: We will skip to Hannah. Sorry, Doug.

Mr BURNS: That is all right.

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

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

Mr CHAIR: Thank you, Doug. We welcome the opening statement, thank you.

Mr BURNS: This Bill is the first of a tranche of reforms to the *Residential Tenancies Act 1999*, following a review that occurred earlier this year. The purpose of this Bill is to align the name of certain notices that may be given with the actual nature of those notices. It is also to remove the requirement that a property condition report can be based entirely on images. It establishes a rebuttable presumption in favour of pets unless the landlord has reasonable grounds to refuse the tenant's request. It clarifies the Northern Territory Civil and Administrative Tribunal's powers in respect of ordering entry into premises, to clarify that it includes a power to authorise the use of reasonable means to gain entry and what those means might be. It also makes an offence of failure by a landlord to place a tenant's unclaimed bond monies into the Tenancies Trust Account. It also provides a process for the Chief Executive Officer (Housing) to gain vacant possession of public housing premises, firstly for the purpose of refurbishment of replacement and provide the tenant with alternative accommodation therein, and also a mechanism for the CEO (Housing) to transfer a tenant to alternative public housing premises that are better suited to the tenant without terminating the actual relationship between the CEO (Housing) and the tenant.

Mr CHAIR: Great. Can you tell, us, Doug or anyone, what consultation has taken place by the department?

Mr BURNS: In relation to the matters other than those dealing with the Chief Executive Officer (Housing), these matters were all raised in the discussion paper that was published in August for public consultation, from which we received some 20 submissions from a variety of stakeholders, both organisational based as well as individuals.

The matters relating to the CEO (Housing) I understand have arisen through various interactions with Housing and stakeholders in that regard and were identified as a result of the review process.

Mr CHAIR: What impact or feedback did you receive around the proposed legislation, particularly on tenants, landlords and any relevant service providers.

Mr BURNS: In respect of sorry?

Mr CHAIR: Overall, any feedback?

Mr BURNS: Quite extensive feedback. These particular items that we have raised today are ones with some level of broad, basic agreement. There were a lot of other areas that were raised in that review, from memory—sorry I cannot remember off the top of my head, that require further work that we will be doing through later tranches of amendments.

Ms CLEE: Over 20 I think.

Mr BURNS: Well and truly over that.

Mr CHAIR: I will open it up to the panel and I know Ms Worden has few questions.

Mrs WORDEN: Yes, thank you. During those discussions was there any discussion about a bond tribunal? The formation of?

Mr BURNS: The review itself noted that it is certainly something that has been raised and would be dealt with separate to the review. A lot of stakeholders have however indicated they would like to see it. It is something the government is working on.

Mrs WORDEN: So it is underway? There is some review of that at the moment?

Mr BURNS: There is work going on on that.

Mrs WORDEN: Can you explain what the drivers behind the alternative accommodation changes are? For public housing, some of the drivers behind that?

Ms FITZGERALD: The drivers behind that are in cases where the CEO Housing wants to do the right thing by a tenant. Obviously, our focus is to avoid homelessness. There are instances that are social, medical, and physical where we may need to move a tenant to an alternative premises. There are also circumstances where there has been complaints from neighbourhoods, where it becomes very difficult for that household to remain safe and healthy within that environment or where issues of anti-social behaviour have occurred.

This provision comes in so that termination is not the only option. That we do everything we can to sustain tenancies and often that means moving someone to a different location. Moving to a different house can help sustain that tenancy. Whilst a lot of work happens before this may occur, it is about doing our absolute best to sustain those tenancies and to make sure it works for both the tenancy, the neighbours and the community in general if we do need to move someone.

Mrs WORDEN: This would work if the tenant does not agree to go?

Ms FITZGERALD: Yes.

Mrs WORDEN: I understand the process is that it is part of the process already. As you are saying it is probably more in department processes rather than legislative process. If that person does not agree would this compel that person to move if the department deems them to move.

Ms FITZGERALD: There are options there now to terminate, but this is about doing everything we can...

Mrs WORDEN: No, I am talking about termination. So often a tenancy will be transferred...

Ms FITZGERALD: Voluntarily, yes.

Mrs WORDEN: Voluntarily. So this is if the tenant does not voluntarily agree to go and the department's overriding view is that they should?

Ms FITZGERALD: That is correct. But there are a lot of circumstances, a lot of work with that tenancy before we get to that point.

Mrs WORDEN: Absolutely. But is that also the same in turns of upgrading. I think there is some fear about upgrades that people are potentially being moved, need an upgrade, get moved out and then never moved back in. There is some fear around that.

Ms FITZGERALD: This will resolve that because as you can see there is provision put in there to ensure that as part of that agreement there is documentation with that tenancy that sets out there will be a tenancy agreement following that move out for transition. This applies to remote housing as well as the stimulus we are doing in urban areas. When we go back to the NTCAT findings we do not have the basis to terminate by consent and with the current provisions the only way you can terminate legally is a 42 day notice. That is a hard fixed date.

In the instance of a remote housing program, if there is one day slippage for weather or materials have not arrived, it is impossible to manage. You then have to start the process again.

This is about having the ability to work with the tenants. When everything is in place, including transitional accommodation then we can terminate by voluntary consent with them, but as you can see in the provisions, they are written in a way that our documentation with the tenant agrees to a new tenancy agreement upon completion of that refurbishment or rebuilding of a property.

Mrs WORDEN: Back in the same dwelling?

Ms FITZGERALD: Same or it may sometimes be another dwelling. There is a guarantee of housing. In most instances, it will be the same dwelling but occasionally some families need a bigger dwelling.

Mrs WORDEN: Are you happy for me to keep asking questions?

Mr CHAIR: I would like to introduce Mr Jeff Collins, Member for Fong Lim.

Mr COLLINS: My apologies for missing he start.

Mrs WORDEN: I think, Doug, you talked about property condition reports not just being photos. Could you tell me what the compelling push is behind this, are we saying there is currently a problem that needs to be fixed?

Mr BURNS: Yes.

Mrs WORDEN: In the private sector or...?

Mr BURNS: Across the board.

Mrs WORDEN: Across the board. Where did that evidence come from?

Mr BURNS: From industry themselves, from stakeholders. They have raised it on numerous occasions.

Mrs WORDEN: It has been explicit that it is not good enough just to have photos, yes?

Mr BURNS: Yes, that is right. Photos can be used but they will need to be accompanied by written or other material.

Mrs WORDEN: Doug, you raised that there are some provisions specifically on the keeping of pets, could you please explain? Did I hear you saying that pets are allowable unless explicitly said no, or was it the other way round?

Mr BURNS: They will be permitted unless there is reasonable justification otherwise.

Mrs WORDEN: It would need to be articulated in the lease, that pets are not allowed?

Mr BURNS: No, that would have to go to NTCAT.

Mrs WORDEN: That is what I am saying, could you walk me through that? If I am a tenant looking to rent a place and I have a dog. Can the person say, you cannot have pets?

Mr BURNS: You have to ask the landlord, whether that is okay. There is a presumption that the landlord says yes. If the landlord says no, the landlord has to have a justifiable reason and take the matter to NTCAT for them to confirm that is the case.

Mrs WORDEN: What is a justifiable reason for not allowing a tenant with pets?

Mr BURNS: They could be varied. One immediate reason is that where there is a body corporate involved and the body corporate by-laws say you cannot have one ...

Mrs WORDEN: But if that is then challenged by NTCAT?

Mr BURNS: ... that has already been factored into the Bill to say that is something that overrides those provisions.

Mrs WORDEN: Removing the rights to the tenant to have a pet as against the property owner?

Mr BURNS: Currently the Act does not prohibit it, it is just not clear.

Mrs WORDEN: Is there any case law? Is it anywhere else and has it been challenged?

Mr BURNS: In terms of what?

Mrs WORDEN: Where the property owner has said no pets and then someone has taken a matter...

Mr BURNS: Presently, if a property owner says 'no pets' that is an additional condition in the lease, which is permitted under the *Residential Tenancy Act* and that is the end of the matter.

Mr COLLINS: Are you talking about changing that to a presumption in favour of pet?

Mrs WORDEN: Yes, changing that to a presumption in favour of pet.

Mr BURNS: Yes, to a presumption in favour.

Mr COLLINS: What about in circumstances where the body corporate is silent, but it is an apartment block. You have a small apartment and someone wants to move in a couple of large dogs?

Mr BURNS: That would be one of those considerations where it would be reasonable to say no.

Mrs WORDEN: But that could then be challenged.

Mr COLLINS: They would still have to take it to NTCAT?

Mr BURNS: Yes.

Mr COLLINS: You have to put an application to NTCAT to have it upheld?

Mrs WORDEN: No, someone can challenge your decision as a...?

Mr COLLINS: No, you said the owner had to take the matter to NTCAT? If you were the owner, you do not want two Irish Wolfhounds in my one bedroom apartment, you have to take it to NTCAT?

Mr BURNS: That is right.

Mrs WORDEN: The tenant or the owner?

Mr BURNS: The landlord.

Mrs WORDEN: We might have to discuss that. Could you also talk us through the NTCAT's power of entry please?

Mr BURNS: Presently, NTCAT has the power to authorise entry but it is silent on whether it actually is able to authorise the use of means to enter. What this is doing is clarifying that that is the case because NTCAT has actually been operating under the quite correct assumption that it has the ancillary power to make those orders. All this is doing is just clarifying that that is actually the case and then saying that NTCAT then also has the ability to say what those means might be and so specify that in the order so that it is clear for everyone.

Mrs WORDEN: Thank you. That is the end of my questions.

Mr CHAIR: Thank you for coming before the committee today. If we have any other questions we will certainly be in touch. Thank you.

The committee suspended
