REVIEW OF THE RESIDENTIAL TENANCIES ACT 1999

Darwin Community Legal Service

Response to Discussion Paper

August 2019

This discussion paper is supported by:

CAWLS Women's Legal Service

Northern Territory Legal Aid Commission

KWILS Katherine Women's Legal Service

domestic violence LEGAL SERVICE

Executive Summary

In the Northern Territory, over 50% of the population are living in rental properties. This figure will increase as home ownership becomes increasingly unaffordable for many Territorians. At present, the Territory's *Residential Tenancies Act* ('the Act') fails to provide tenants in the Territory with the same security and certainty that homeowners enjoy. Tenants' rights are clouded by unfair and ambiguous terms that favour landlords and do not represent modern rental practices. In the interests of fairness and clarity, the law must be changed.

In 2010 – nine years ago - the Northern Territory Government (the 'government') drafted an Issues Paper, which identified problems with the Act at that time. Those issues have still not been addressed, even as further problems - overcrowding, crime, and homelessness – have emerged to entrench the Territory as an undesirable location for renters. The government's inaction has seen the NT left behind.

The release of this Discussion Paper 'Review of the *Residential Tenancies Act 1999*' gives the government an opportunity to correct these earlier mistakes and future-proof tenancy law in the Territory. However, this overdue review falls short of the comprehensive overhaul that the government promised, doing an injustice to all Territorians, since bad tenancy law affects everyone.

Darwin Community Legal Service's ('DCLS') Tenants' Advice Service ('TAS') view is informed by our clients experiences as tenants living in the NT. It is through that lens that TAS critically appraises the Governments approach in the Paper. TAS have collectively handled more than over 6000 questions and requests for assistance from tenants since the 2010 Discussion Paper was released. In lobbying for change to this legislation we have been conducting a petition, which now has 510 signatures supporting this reform.

To inform these submissions the service has consulted with tenants, tenancy support workers, community workers, lawyers and a range of service providers, including other housing peaks. The service is advocating for a fairer system that allows tenants to make their properties their homes. This would deliver tangible benefits to tenants, landlords and the broader economy. The Territory can lead the way in tenancy legislation and become an attractive destination for renters – surely a better selling point to remain in, or move to the Territory, than any incentive scheme.

Unfortunately, the review assumes that if the Act is breached, tenants can simply commence proceedings at the Northern Territory Civil and Administrative Tribunal ('NTCAT') and everything will be fixed. This is either naïve or wilfully misleading. Tenants are often ill-informed, ill-equipped and under-resourced financially to commence expensive proceedings at NTCAT. Our anecdotal advice is that tenants find the experience daunting, stressful and not worth the effort. Conversely, real estate agents are paid to attend proceedings (when tenants take unpaid leave to represent themselves), have experience at the tribunal, and are well versed in the proceedings. Consequently, most tenants decline to bring their matter to NTCAT – even when there are clear breaches of the law.

DCLS stresses that within this submission there are several recommendations which recognise that additional consultation is required (including more time for this submission), such as the proposal for standard forms and tenancy agreement. Priority must be given to involving legal services and specialists in drafting documentation, particularly for their accessibility. Contact details of relevant legal services should be provided with this documentation should a tenant require legal advice or assistance.

The review falls short of addressing all of the problematic issues in the legislation that were previously identified by Government. In her debate speech on 10 May 2018[1], Minister Fyles stated that "the [Policy Scrutiny] Committee recommended that the government undertake a comprehensive review of the Residential Tenancies Act to … make the Northern Territory Act more contemporary.' She indicated that domestic violence would be a 'central issue of the full review'. In the event, it barely rates a mention.[2]

[1] Northern Territory, *Parliamentary Debates*, Legislative Assembly, 10 May 2018, Page 3932 (Attorney General Natasha Fyles).
[2] Ibid at page 3941.i

The government's failure to honour this commitment to a full review, and its apparent unwillingness to act decisively on the critical need for an independent bond board is lamentable. It suggests that the problems of tenants are not important to the government, and that they have opted to endorse only non-contentious reforms.

The review fails to acknowledge the power imbalance in the tenant/landlord relationship. Landlords often enter into the rental market voluntarily to maximise profits as their asset improves in value. Tenants generally enter the rental market because they cannot afford to buy a home. Every decision a tenant makes in their relationship with the landlord has implications for their housing - and their security more generally. Landlords often offer a tenancy on a take-it-or-leave-it basis. Tenants become 'locked in' - not able to seek a better arrangement because of the high financial and emotional cost of moving.

Landlords commonly employ a specialised agent to advise them on legal technicalities and to deal with tenants on their behalf. Tenants must fend for themselves - often taking guidance from the landlord's agent, despite frequently reminders that these agents 'don't work for you." This huge gulf in bargaining power often causes significant social and economic hardship for tenants. This issue can only be addressed by fair and certain legislation that acknowledges this inherent imbalance, thereby enabling the reality to reflect the legislative intent.

A 2009 report from the *Australian Housing and Urban Research Institute* found that "the relationship between investment and tenancy law reform continues to prove weak. Previous research has emphasised that investors simply do not consider tenancy issues when investing for the first time … and in this study it was almost impossible to get investors to engage on tenancy law as an issue, let alone an important factor connected to investment decisions.".[3]

The Northern Territory currently has a reputation for unscrupulous agents, poor living conditions and excessive rental costs. The government must act to introduce a fair, safe and certain tenancy system, which provides an independent bond board, offers protection for victims of domestic violence and ends no-fault evictions.

Shelter and housing are fundamental human rights. In our affluent nation, housing should be available to all. No Australian should be disadvantaged by the jurisdiction in which they live. The law must embody the honourable expectations of our society.

[3] Seelig, Thompson, Burke, Pinnegar, McNelis and Morris, *'Understanding what motivates households to become and remain investors in the private rental market*', AHURI Final Report No. 130 (March 2009).

Acronyms

Note that for consistency DCLS has adopted the same acronyms as the Paper.

Acronyms	Full form
Act	*Residential Tenancies Act 1999* (NT)
Agent	This term is used to loosely describe both a licenced real estate agent and/or any representative of the landlord, often called a 'property manager'.
CAALAS	Central Australian Aboriginal Legal Aid Service
Commissioner	Commissioner of Tenancies
Consumer Affairs	Consumer Affairs Northern Territory
DCLS	Darwin Community Legal Service, including the Tenants' Advice Service
DoH/Department of Housing	Department of Local Government, Housing and Community Development, the Northern Territory Government agency responsible for public housing
DFVA	*Domestic and Family Violence Act 2007* (NT)
DVLS	Domestic Violence Legal Service
FDV	Family and Domestic Violence
LGANT	Local Government Association of the Northern Territory
NAAJA	North Australian Aboriginal Justice Agency Ltd
NT or Territory	Northern Territory
NTCAT	Northern Territory Civil and Administrative Tribunal
NTLAC	Northern Territory Legal Aid Commission
Paper	Discussion Paper – Review of the *Residential Tenancies Act 1999* dated July 2019
RBA	Reserve Bank of Australia
Regulations	*Residential Tenancies Regulations 2000*
REINT	Real Estate Institute of the Northern Territory
TEWLS	Top End Women's Legal Service

*****NOTE THAT ALL OF THE CASE STUDIES PROVIDED ARE REAL EXAMPLES AND DE-IDENTIFIED TO PROTECT THE PRIVACY AND CONFIDENTIALITY OF THE INDIVIDUALS******

Issue 1: Application of the Act

Paper Recommendation 1

a. The Commissioner consider whether fact sheets regarding boarders and lodgers need revising.
b. Consider amending section 6 to:
   i. exclude managed and supported accommodation;
   ii. exclude retirement villages;
   iii. exclude on-campus accommodation provided and operated by educational institutions generally; and
   iv. omit reference to use on the basis of homelessness, unemployment or disadvantage for charitable purposes.

DCLS RESPONSE

1 Boarders and lodgers

This issue is dealt with at **Issue 6** of this submission.

2 Scope of Residential Tenancies Act

The current Act does not adequately provide for the broad scope of accommodation options currently experienced by people who pay rent for their accommodation throughout the Territory. Many people are not adequately protected by laws or fall into 'grey areas' where there is considerable debate as to whether they are excluded under the Act. For those, not lucky enough to fall into the traditional landlord/tenant relationship, the only rights (if any) are limited to contract law and are difficult to enforce.

Unfortunately, DCLS has found an increasing number of accommodation providers exploiting the lack of clarity within the law and engaging in unsavoury rental practices. Often these arrangements target low income Territorians who have very few housing options, often leasing or living in substandard dwellings which are often charged an extortionate price. These providers and landlords are keenly aware that unsophisticated tenants lack the capacity to bring applications at NTCAT and therefore continue sham arrangements without fear of legal recourse. Moreover, the growing trend of share houses, room for rent arrangements, charitable organisations providing long term accommodation, aboriginal hostels and motel type housing is increasingly contributing to the variety of accommodation options that exist on the market and are largely unregulated.

Reform to the scope and operate of the Act would assist not only tenants but also many accommodation providers who seek clarity as to their responsibilities to people who pay rent for accommodation.

The solution should be a 'catch all' provision within section 6 of the Act which provides clarity for people living in circumstances where their status as a tenant is unclear. This clause should stipulate that, where there is a residential tenancy in substance, subject to specific exclusion within in the legislation, that the default position is that such people should be protected by the Act. The onus being placed on tenants to prove their status should be reversed, with landlords who disagree that people who pay them rent for accommodation should not be afforded rights would need to prove their case at NTCAT.

Applying a catch all provision within the Act, the Act itself should also be a catchall for all tenancies, effectively resulting in increased certainty and clarity for all parties involved and ensure no-one falls unintentionally through the gaps. Currently there are multiple Act's that encompass differing law, DCLS advocate that, at the very least, the *Residential Tenancies Act* and the *Housing Act*[4] should be merged, to streamline processes for tenants in DoH Housing.

This position reflects the growing trend that tenancies should be seen as people's homes rather than simply an investment for the landlord. Having such a provision would provide certainty and clarity to many Territorians who live within these grey areas and it is not unreasonable to support tenants who are in such circumstances.

Given the above position, specific care should be taken to assess what type of accommodation arrangements should be specifically excluded from the operation of the Act.[5]

Suggested parameters of what NTCAT should consider in determining whether an accommodation arrangement meets the requirements of a residential tenancy under the Act include:

- Whether the tenancy has existed for more than three months;
- Whether some form of bond or security paid has been paid;
- Evidence of an intention to stay long term;
- Evidence of a right to exclusive possession of a space;
- Evidence of regular and consistent rental payments; and
- Evidence of an intention that the property or room be used for residential purposes.

This is by no means an exhaustive list and in some situations more weight would reasonably apply to certain indicators than others. It should also be clear that a tenancy relationship may be found to exist in only one area of a property or premises, and that multiple types of accommodation arrangements can exist and be supplied by the one provider.

For example, it would be possible for a tenancy to exist for someone living in a unit at an accommodation motel where they have lived for nine (9) months, but for another unit not to be subject to the Act where the occupier is travelling through and only intends on staying for a few days.

Frequently DCLS encounters tenants living in a variety of accommodation arrangements. These include; educational institutions, dwellings under commercial leases, supported accommodation, holiday accommodation where tenants are living long term not for holiday purposes, certain charitable accommodation long term and caravan parks. These occupiers have not been afforded rights or protections under the Act or other legislation, despite clear infringements of their basic human rights to housing and arguably as tenants. Such examples are set out below:

3 Charitable Accommodation

DCLS agrees with many of NAAJA's comments as described in the 2010 issues paper relating to the lack of clarity surrounding the exclusion of charitable organisations under the Act. Indeed, many charitable organisations have approached DCLS querying their obligations under the Act. These stakeholders have been concerned that inclusion under the Act may limit their ability to impose certain "house rules" necessary for the operation of the organisation's goals or purpose. For example, alcohol rehabilitation accommodation that requires residents to be sober as a house rule.

DCLS therefore recommends that charitable organisations providing long term accommodation (over 3 months) should be subject to the Act. Such organisations may impose "House Rules" so long as they are not harsh or unreasonable and are in keeping with the objectives of the facility.

[4] *Housing Act 1982* (NT).
[5] *Residential Tenancies Act 2010 (*NSW) sections 7, 8.

The definition of ‘charitable’ for the purposes of the Act should be focused on the intent or function of the accommodation provided (e.g. homeless shelter, emergency shelter, women’s shelter), rather than the charitable status of the organisation providing the service.

4 Hostels and Holiday Providers (including boarding or rooming houses)

Some organisations seek to use their status as a holiday provider or charitable provider to avoid obligations and liability with respect to their tenants under the Act. DCLS have found the NT’s indigenous population to be commonly vulnerable to such providers given the long waitlists for public housing, lack of community housing and difficulty in securing private rentals. Rather than affording guests proper rental terms and conditions, tenants’ experiences are typically signposted by excessive rent, poor living conditions, overcrowding, inadequate facilities, oppressive house rules, lack of repairs and sudden evictions without any appeal or proper appeal rights.

To ensure that people who find themselves as long term tenants within these accommodation arrangements are afforded proper protection, the Act should be extended so that people are afforded the same rights and protections as a tenant under the Act.

4.1.1 Case Study 1

Brian is an Indigenous Australian who lives in a Hostel in Katherine. He has been living there for six (6) months. He pays $400 a week for a one-bedroom unit that has a shared toilet and communal shower. Brian is on the waitlist for public housing and is unable to enter the private rental market as local Agents will not accept his application through lack of references. Brian’s peace and quiet enjoyment of the property is constantly interrupted by the activity of the owners and other residents. The owners have recently advised Brian that the rent is going up. When Brian complained, the response was “if you don’t like it, leave.” What choice does Brian have to refuse when there are no other options for housing?

Holiday accommodation providers that see themselves in leaner times during the wet season and generally poorer tourism seasons, along with providers that see themselves as ‘holiday or backpacker accommodation’ often take advantage of vulnerable tenants. They use their exemption as a holiday accommodation for poor management of their facility, kicking out tenants on a whim, even when they are only a day or so late with the rent. These tenants may have been staying at the accommodation facility for months or years, with their understanding of the arrangement being unlimited, but see themselves under constant threat of eviction and exposed to the same lack of peace and quiet enjoyment.

4.1.2 Case Study 2

Fred is a person who has lost his well-paid employment and has found himself short of funds. He rents a room at a property which would normally be considered holiday accommodation to stay long term for three (3) months to allow him to save the funds for a bond. He has his own room that he has exclusive possession and is paying rent. He is harassed at all hours of the evening for rent to be paid and is threatened with eviction daily. He is told by the manager of the accommodation that because he has signed an agreement that says ‘holiday accommodation’ that this would not provide him with any protections under the Act and told that this means he can be kicked out at any time.

5 Educational Institutions

Many aspects of a student's arrangements whilst living in on-campus or off-campus accommodation resemble that of a tenant. It is DCLS's position that it is not appropriate for this legislation to apply to a secondary or lower school accommodation such as boarding houses. However, it should apply to tertiary institutions. The students are often required to pay bond, undertake inspections, pay weekly rent, and enjoy the right to exclusive possession of their room. This experience is not dissimilar to tenants living in a share house arrangement, whereby they rent a room whilst using shared communal spaces such as a kitchen and bathroom. It is not unreasonable (subject to house rules and eligibility requirements) for students to be given the same rights as tenants and that educational institutions should be held to the same standards as other housing providers.

5.1.1 Case Study 3

Liu is a university student who was living at International House. After twelve months of living within the student accommodation Liu decided to leave at the end of his tenancy agreement. Upon leaving he was informed by International House that he would be required to buy a new bed for the room he had stayed in and would not be receiving his bond back due to a cleaning fee imposed by International House. Liu disagreed, stating that he was provided with a second-hand bed when he first moved in and therefore should not have to pay for a new one. He also argued that he had spent considerable time and expense cleaning the room and left it in a better condition than when he moved in. Liu had little avenue to dispute the claim made against his bond by International House. As the *Residential Tenancies Act* did not apply, Liu could not take the matter to NTCAT under the Residential Tenancies jurisdiction.

6 Commercial/Industrial Tenancies

Given the scarce availability of low-income accommodation (particularly during the Darwin region recent economic boom), the number of tenants that signed commercial leases or living in commercially zoned buildings or warehouses had grown. Typically, tenants who are choosing these types of accommodation are unable to enter the private housing market and are on the waitlist for public housing.

There is no reasonable basis as to why tenants who live in such circumstances should be denied the same basic rights as tenants in formal residential arrangements. Landlords who attempt to dodge legal responsibilities by offering such arrangements should be held accountable and should no longer be supported and protected unfairly by the current gaps in the legislation.

6.1.1 Case Study 4

Leon was living in a storage shed under a commercial lease. Leon did not carry out a business commercially and was using the shed as a residential property. The commercial lease had been drafted and was managed by an Agent. Leon paid rent on time and looked after the property well. Leon reported a number of repairs that the Agent said would be fixed 'one day'. Leon did not have proper access to water and had done his own wiring to get access to electricity. Leon said several other people were also living in the sheds next to him and experiencing the same difficulties he was.

7 Caravan Parks

Many people who live in Caravan Parks are not covered by either the *Residential Tenancies Act* or the *Caravan Park Act*[6] due to the limited application of both pieces of legislation. DCLS see a number of long-term tenants living in caravan parks who are not covered by any legislation due to the provider also offering holiday accommodation or terminating the lease before the *Caravan Park Act* takes effect. Some caravan park operators exploit this lack of protection and residents often report that they are treated unfairly due to their weak legal position.

[6] *Caravan Parks Act 2012* (NT).

7.1.1 Case Study 5

Sia and Daniel moved to Alice Springs with their newborn baby. Unable to afford the private rental market, they decided to live in a caravan park with the caravan they had bought over from Western Australia. The park was advertised as holiday accommodation but there were more homemakers living there than there were holidaymakers. Sia and Daniel had a six (6) month agreement with the caravan park operator to live there with their caravan. Two (2) months into this arrangement, Sia and Daniel ran into trouble with the manager of the park who also lived on site. He complained that their baby cried too much, and they had issues with his loud and obnoxious behaviour when he was drunk. The owner of the park told Sia and Daniel they had to leave in two days and if they didn't, he would call the police for trespassing. Sia and Daniel had nowhere to go and no rights to rely on to protect them.

8 Supported Accommodation

In the context of this discussion DCLS recognises that the term 'Supported Accommodation' can refer to multiple accommodation types, such as alcohol and drug rehabilitation facilities, accommodation with additional tenancy support for tenants who are new to renting and long term supported accommodation for people with disabilities who are seeking to live independently. For the purposes of this submission our recommendations relate to long term accommodation for people with disabilities, noting that these can be facilitated by various types of organisations, including those that may have charitable status.

DCLS emphasise that the primary recommendation is to focus on the purpose of the accommodation, not the organisation that runs the facility.

The need to address the rights of people living in long term supported accommodation has been recognised and well documented in New South Wales. They have taken the lead in setting best practice for persons living under such arrangements.[7] Given that many aspects of long term supported accommodation take on the same form and substance of residential tenancies, there is no reason why people living in long term supported accommodation should not also be afforded the same basic rights as a tenant under the Act. There are currently very limited protections for such persons in the NT which is highly problematic given their vulnerabilities and subsequent susceptibility to abuse.

8.1.1 Case Study 6

Frank is a person with a disability. He has mental health issues and lives in the supported accommodation that is head leased by a local provider. His sister Ellie is his guardian. Frank pays $300 per week to the provider. There are four residents in one house which has a support staff for each client and a supervisor. Frank signed house rules upon taking residence at the premises. Ellie was concerned about repairs that were not being seen to at Frank's accommodation. She was also concerned that Frank was getting little peace and privacy from other residents who would frequently wander into Frank's room. When she raised the issues with the landlord, she received little to no response. These issues had been going on for some months and Ellie was frustrated as she can see the effect these issues are having on her brother. Ellie sought legal advice in relation to Frank's rights as a tenant. DCLS advised that although Frank pays rent, a bond and has been there long term, these arrangements are not covered under the Act., as a result, she and Frank are left with limited avenues in which to improve Frank's conditions.

[7] Family and Community Services, New South Wales, Technical Issues Paper, 'Protections for Residents of Long Term Supported Group Accommodation' (January 2018)<https://www.facs.nsw.gov.au/__data/assets/pdf_file/0008/546776/Resident-rights-Technical-Issues-Paper.pdf>, Tenants' Union of New South Wales, Submission on Protections for Residents of Long Term Supported Group Accommodation in NSW' (11 March 2018) <https://files.tenants.org.au/policy/2018-03-11-Long-Term-Supported-Group-Accomodation-Submission.pdf>,NSW Federation of Housing Associations Inc, 'Submission on Protection for Residents of Long Term Supported Group Accommodation in NSW' (March 2018) <http://communityhousing.org.au/wp-content/uploads/2019/01/Protection-for-Residents-FACS-Consultation-NSWFHA-Submission.pdf>.

DCLS Recommendations and Model Legislation

Currently, there exists no model legislation that accurately reflects the vision outlined above. The closest legislation that achieves similar outcomes in another jurisdiction is Victoria's *Residential Tenancies Act 1997*.

DCLS recommends the insertion of legislation like Division 2 and 3 of the Victorian legislation, with the exception of section 21 of that legislation.

DCLS Recommendation 1:

1. DCLS recommends the amendment of section 6 of the Act to:

    a. include that all tenancies for residential purposes will be included under the operation of this Act. Any party to the agreement wishing to exclude such operation can apply to the NTCAT to have the matter determined. In making their decision the NTCAT is to have regard to:
        i. whether tenancy has existed for more than three (3) months;
        ii. whether some form of bond or security paid has been paid;
        iii. an intention by the parties that it is to be long term;
        iv. whether there have been regular and consistent rental payments; and
        v. whether the dwelling occupied by the tenant is being used for residential purposes despite other services or activities undertaken on the property.
    b. include long term supported accommodation;
    c. exclude retirement villages;
    d. include on and off campus accommodation provided and operated by tertiary educational institutions generally;
    e. omit reference to use on the basis of homelessness, unemployment or disadvantage for charitable purposes; and
    f. include that accommodation provided for charitable purposes can be subject to house rules so long as they are not harsh or unreasonable or oppressive (definition to be determined). NTCAT has power to determine whether such rules unfairly infringe upon a tenant's right under the Act however must have regard to the aim and purpose of the charitable accommodation provided.

2. Amend section 4 of the Regulations to **omit** reference to North Flinders (International House) from being excluded under the Act.
3. DCLS recommends the insertion of legislation similar to Division 2 and 3 of the Victorian legislation, with the exception of section 21 of that legislation.[8]
4. DCLS also commend the inclusion of section 20 of the legislation in Victoria – allows that the Act covers rooming/boarding houses or motel accommodation if more than 30 days consecutive occupation.[9]

[8] Residential Tenancies Act 2010 No 42 (NSW) Part 1, Division 2 – 3.
[9] Ibid, s 20.

Issue 2: Additional Fees and Charges

DCLS RESPONSE

DCLS regularly sees tenants being charged fees for a myriad of reasons. These fees are often being charged in a manner that is inconsistent with the current law, reflecting a requirement that the law needs to be changed.

Fees such as attendance fees for tradespeople for 'unsubstantiated' repair requirements, unreasonable lease break fees, advertisement fees, renewal or administration fees, carpet / steam cleaning, pest treatment and fees for key replacement. (Note that break lease fees are dealt with in **Issue 43** of this paper). In some cases, tenants have identified that the 'call out fees' have been issued by repair people who are 'friends' of the landlord who perceive it to be a moneymaking exercise. Further, terms that explicitly require certain things, such as professional cleaning to be done upon vacation of a property should be expressly illegal.

In the case that the cost amounts are small (for example: $165 for a callout fee) it is burdensome and not cost effective for tenants to have to pursue their return. They often find that they are taken from the bond or their rental ledger and due to NTCAT proceedings bearing a cost (which in the case of small fees additionally make the process pointless) and are time consuming, they 'just accept the loss'. This is particularly the case if the tenancy has been difficult.

The Paper states that there is a problem with tenants not allowing access to property in the case of no-show fees, but the DCLS position is that it is more regular than not that there is a failure of Agents and tradespeople to attend properties at agreed times (often once again providing a 'window' of time requiring a tenant to take many hours off work) and that this arguably affects tenants more than it does landlords.[10]

The Paper posits there is no need for change in this area but given the time that these matters consume for both tenants and landlords, there is a need for clarity. DCLS also forms the view, supporting NAAJA's previous submissions from 2010 (as referenced in the Paper), that section 51 of the *Residential Tenancies Act 1997* (Vic) should be adopted.

Unconscionable behaviours, particularly with relation to inducements to enter tenancy agreements, are an unspoken reality in a marketplace that is under demand. This promotes discrimination against vulnerable and low socio-economic tenants who cannot afford to pay such inducements, which then leaves them on an already compromised playing field when trying to access tenancies.

8.1.2 **Case Study 1**

> Veronica advised her agent that the air conditioner is not working properly in her premises. A tradesperson attends and tells her that there is nothing wrong with the air conditioner. The agent then advises Veronica that she needs to pay the attendance fee for the tradesperson. Veronica stated that the air conditioner is still not fully functional and is not cooling. The agent refuses to send out another tradesperson until Veronica pays the call out fee for the first tradesperson.

[10] Northern Territory Government, 'Discussion Paper – Review of the *Residential Tenancies Act 1999*' (July 2019) Page 22 footnote 45.

DCLS Recommendation and Model Legislation

DCLS Recommendation 2:

a. DCLS disagrees with the view of the Discussion Paper that there is no need for amendment to the Act in this area. DCLS submits that they would like to see section 24 of the Act tidied to reflect that a landlord cannot impose any other charge or fee that is outside of rent or bond and that any additional fees need to be determined by NTCAT as a compensation claim under section 122. DCLS also supports the addition of section 51 of the *Victorian Residential Tenancies Act 1997*.
b. DCLS wants to see the Act also amended to make any special conditions, such as professional cleaning clauses, made illegal with penalty under the Act.

Issue 3: No-cost rent payment options

Question 1

a. Have the concerns of stakeholders been largely addressed by the increase in electronic transaction options and the Reserve Bank's regulation of transaction fees?
b. Are there non-regulatory alternatives available, such as changes in business practices that enable product differentiation amongst landlords and real estate agents, or should a provision like section 17(3A) of the *Residential Tenancy Act 1997* (Tas) be considered?

DCLS RESPONSE

Having to pay a fee to pay rent often places a heavy burden on tenants from low socio-economic backgrounds. The Paper suggests that an Agent would be more attractive to tenants providing product differentiation, when tenants have no choice as to the Agent when they are looking for a property. When tenants are presented with no options other than that of a payment option that incurs a "penalty" for doing so is unconscionable.

This is particularly galling if the method for payment imposing an additional cost is not brought to the attention of the tenant prior to signing of the lease agreement.

While the steps taken by the Reserve Bank of Australia (RBA) in regulating fees should be applauded, the simple act of paying for accommodation should not incur a further surcharge for a matter which is totally beyond the control of the tenant. The position of the RBA does not take into account the appointment of rent collection agencies, that may also have connections to the agents that use them, and that may charge their own fees that are excluded from inter or intra bank transfer fees regulated by the RBA.

The Tasmanian model, which specifically states that any fees on rent are prohibited with a corresponding fine of up to 50 penalty units[11], should be adopted in the NT.

As a minimum, the NT should adopt the position of other jurisdiction where at least one no-cost method of payment is mandatory. Both in New South Wales[12] and Victoria[13], failure to do so elicits 10 penalty units and 60 penalty units respectively. Penalties for failing to include a "no-cost" option should be encompassed in the NT model.

[11] *Residential Tenancy Act 1997* (Tas) s 17(3A).
[12] *Residential Tenancies Act 2010 No 42* (NSW) s 35(2).
[13] *Residential Tenancies Act 1997* (Vic) s 51(3).

8.1.3 **Case Study 1**

Vera contacted DCLS as she could not work out how there was a separate transaction of $1.00 from her bank account each day her rent was withdrawn. It transpired that this was a fee being charged by the firm that her Agent was using as a third party to transact her rental fees. This means that, as she was paying her rent weekly, in line with her Centrelink payments, she was paying an additional $52.00 a year in rent. She was not informed about this prior to setting up the payment arrangement and had no other options to pay her rent. This was an additional burden on her already low income.

DCLS Recommendation and Model Legislation

DCLS Recommendation 3:

a. The NT should adopt the Tasmanian approach where fees for collection of rent are forbidden.

b. Alternatively, as a minimum, the NT should adopt legislation that makes at least one form of "no-cost" payment method available to tenants with penalty units for landlords or their agents for non-compliance.[14]

Issue 4: Charging of lease break fees

Paper Recommendation 2

Consider amending the Act to specify that:

a. a landlord is only entitled to compensation for losses reasonably incurred as a direct result of the tenant's breach of its obligations under the Act due to early termination e.g. actual rent forgone between leases (if any), and that 'lease break' fees are not recoverable; and

b. 'lease break' clauses are prohibited.

DCLS RESPONSE

An important distinction needs to be made at this point between fees that may be claimed by a landlord or Agent which may be 'reasonable fees' to re-let the property and for lost rent. When this paper talks about break lease fees, it refers to the former. This may be a smaller fee, which Agents often state are a set fee to break a lease.

The use of 'lease break' clauses in tenancy agreements, which lead to a tenant paying a mandated fee are not supported by DCLS. Situations whereby the tenancy is not lawfully terminated may leave the landlord at a financial disadvantage, but the Act has other means for compensation available to the landlord.

This provides the opportunity for the landlord to show that they have undertaken steps to mitigate their loss and such loss cannot be determined until a time that a new tenant is found. At that time the costs can be calculated with a claim for compensation being lodged with NTCAT.

Some jurisdictions have expressly exempted fees in their legislation, such as Tasmania.[15] New South Wales have additionally imposed a Standard Form Agreement, which expressly states that a landlord cannot claim damages for loss which could have been avoided by reasonable effort by the landlord[16].

[14] Ibid 7 and 8.
[15] *Residential Tenancy Act 1997* (Tas) s 17.
[16] *Residential Tenancies Regulations 2010* (NSW) Schedule 1, Paragraph 36.

The position of DCLS is that lease break fees are something that can be claimed by a landlord through a compensation process at NTCAT and that compensation awarded by NTCAT should be determined by the formula that is on the NT Consumer Affairs Factsheet, '*Breaking a Lease Early*'[17] where the amount is determined by the below formula:

Rent per week x weeks reletting till the end of the agreement

¾ of weeks of total term of agreed term/s

This formula limits the amount that can be claimed by a landlord, or their agent, to what is reasonable for the time that is remaining on the lease before the designated termination date.

There is currently a process for the landlord to claim expenditure for advertising, cleaning or any other ancillary charges that occur during an early lease termination, however these costs can only reasonably deduce after a new tenant is found.

Application of a lease break fee is allowing the landlord or their agent to claim money that has not been accounted for and has not been expended to mitigate any losses.

Once again, a lease break fee is separate to a landlord claiming compensation for loss of rent, which can sometimes be a much larger sum, once again with consideration that a landlord has mitigated their loss.

9 Set break lease fees – Whole Compensation

As an alternative option, should there be a need to avoid ambiguity as Agents and landlords alike still feel a need to insert illegal clauses, then there should be a standard set to maximise the whole loss for a landlord.

In this case the Government could consider amending the Act to include a clause similar to that of NSW, whereby, if a set clause is inserted into a lease agreement, a cap is put on the amount of a' break lease fee', which includes the maximum compensation that a landlord is entitled to, taking into account rent as well, but also has a requirement for a landlord to mitigate their loss.[18]

9.1.1 Case Study 1

Sean needed to break his lease as he lost his job and was moving interstate. He had three (3) months left on his lease and asked the agent how he could terminate his lease early with minimal cost. Sean's weekly rent was $580. The agent responded by sending him a break lease form, stating that this was the only way Sean could get out of his lease and he would need to sign and pay for the costs written in the form otherwise he couldn't leave and they would not assist him. Sean signed the form and paid the $998 stated in the form. The agent then placed an advert on realestate.com. Sean was incredibly frustrated by this as the ad and photos the agent used were the same from when he first applied for the property more than three (3) years ago. The agent also informed Sean that he would have to continue to pay the rent and for the costs of the pool and garden maintenance once he left until a new tenant was found. After vacating Sean continued to pay these costs and for electricity until the end of his tenancy agreement.

[17] Northern Territory Consumer Affairs, 'Breaking a lease early' <https://consumeraffairs.nt.gov.au/__data/assets/pdf_file/0011/668117/breaking_tenancy_lease_early_factsheet.pdf>

[18] *Residential Tenancies Act 2010 No 42* (NSW) s 107.

DCLS Recommendation and Model Legislation

DCLS: Recommendation 4:

Amend the Act to:

a. Prohibit rogue 'lease break' clauses; and

b. Compensation for losses for a break lease fee, that may be reasonably incurred due to early termination of lease, to be determined by the formula:

$$\frac{\text{Rent per week x weeks reletting till the end of the agreement}}{\text{¾ of weeks of total term of agreed term/s}}$$

c. Include that any additional costs associated with a break lease are to be determined by an application to NTCAT if no maximum is applicable by the insertion of a set clause.

d. Consider a set clause in relation to total loss for the landlord, with an option to insert a clause mirroring section 107 of the NSW legislation which considers a whole set fee, which includes all fees and loss of rent and would put a cap on total loss for a landlord. It is important to note that we would want an amendment to section 107 which means that if a landlord includes a fee for lessor loss that there is no windfall for the landlord (for example, the landlord should not get a set break lease fee for four weeks if the property is re-let within a week of vacant possession).

Issue 5: Condition reports

Paper Recommendation 3

a. Consider amending section 24A to remove the option that condition reports may be entirely image based.

b. Consider inserting a provision in the Regulations that prescribes the information required to be in ingoing and outgoing condition reports, including:

   i. a requirement that images be clear and of sufficient detail to accurately represent the condition at the time the image is captured; and

   ii. that the following information be recorded for each image; date taken, the room the image is taken in, the name of the person taking the image, the name of other persons present when the image was taken, and any additional information necessary to assist in the explanation of the condition of the property that is depicted in the image.

DCLS RESPONSE

It must be unequivocally stated at this point that three of the most problematic issues for tenants, as reported to DCLS, are:

1. The return of bonds or security deposits;
2. Landlords completing repairs on properties; and
3. Tenants knowing their rights and responsibilities at the beginning and end of tenancies, particularly with relation to condition reports.

With all three of these issues, condition reports form part or all of the vital ingredients in determining outcomes. Whilst it may seem unclear as to the intertwining of inspection reports on landlords completing repairs, a common complaint is that a landlord will say that the tenant knew what they were getting themselves into (particularly with sub-standard properties) and that they accepted the property 'as is', referring to the inspection reports (or lack thereof).

DCLS agrees that fully picture based condition reports, particularly those that are not date stamped and contradict evidence of tenants, along with unclear and unspecific photographs, is problematic. DCLS acknowledges the benefit of having the option available for those with limited or poor literacy skills. DCLS's first position is that it would see section 24A(1)(c) repealed. DCLS submits that should the section be kept, then there must be specific requirements, including the essential items of photographs being date and time stamped and that there must be a basic standard of detail and clarity included.

It is commonly found by tenants that an outgoing condition report will have copious photographs claiming damage or a substandard cleanliness. However, it is unclear when, where or who took the photographs and in many situations the damage or cleanliness being purported cannot be clearly seen and whether it even relates to the current tenancy in dispute.

In the view of DCLS, the review of the Act should go further, to require that the Act or Regulations include a standard form for a condition report. Many jurisdictions have freely available condition reports available as a standardised form NSW[19], Queensland[20], South Australia[21], Australian Capital Territory[22] and Victoria[23] which, as discussed further in this document has information about interpreter services as an integral part of the document.

The introduction of a freely available document will mean that the type and quality of inspection reports will be easier to read, understand and should clearly state both the rights of the landlord and tenant in one simple, easy to understand document. In DCLS's experience no two tenants appear with the same condition report. Each landlord or agent will present different report templates with different requirements or levels of information on each report type.

10 Standardised Condition Reports, Information Sheets and Lease Agreements

Further to the inclusion of standardised condition reports, the Northern Territory should adopt, as part of its legislation, a standardised lease agreement and mandatory information sheets. Information sheets are required in Queensland[24], NSW[25] ,Western Australia[26] and Victoria[27]. These information sheets vary in form and content; however, they generally outline the rights and responsibilities of a tenant.

Giving standard information would give a tenant an additional opportunity to understand what their rights and obligations are under the law and stop any misunderstandings that occur when landlords or agents may misrepresent requirements under the Act.

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[19] *Residential Tenancies Regulations 2010* (NSW) Schedule 2.
[20] Form 1A, Residential Tenancies Authority, <https://www.rta.qld.gov.au/~/media/Forms/Forms-for-general-tenancies/RTA-entry-condition-report-form1a.ashx?la=en>.
[21] Inspection sheet, Consumer and Business Services, SA Government found at <https://www.sa.gov.au/__data/assets/pdf_file/0008/9836/Inspection_sheet.pdf>.
[22] Condition Report, Revenue ACT found at <http://www.search.act.gov.au/s/redirect?collection=act-gov&url=https%3A%2F%2Fwww.revenue.act.gov.au%2F__data%2Fassets%2Fword_doc%2F0016%2F1093030%2FCondition-Report.docx&index_url=https%3A%2F%2Fwww.revenue.act.gov.au%2F__data%2Fassets%2Fword_doc%2F0016%2F1093030%2FCondition-Report.docx&auth=8HVbCN12tnNE5cwVzPqkfw&profile=www-revenue&rank=1&query=%5Bpowerpoints%5E12.8040+switches%5E10.6119+blinds%5E9.5152+fittings%5E8.5587+screens%5E8.4222+curtains%5E8.2070+ceiling%5E8.1106+doors%5E7.3234+windows%5E7.3079+walls%5E7.1097%5D>.
[23] Condition Report, Consumer Affairs Victoria, found at <https://www.consumer.vic.gov.au/library/forms/housing-and-accommodation/renting/condition-report-word.doc>.
[24] *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s 67.
[25] *Residential Tenancies Act 2010* (NSW) s 26(4).
[26] *Residential Tenancies Act 1987* (WA) s 27B.
[27] *Residential Tenancies Act 1987* (Vic) s 66.

This standardisation of documents should also extend to the lease agreement itself. Currently most Agents use the REINT's agreement (although many will insert their logo on the document), many private landlords use a variety of different documents leading to confusion. Several other jurisdictions have a standardised form as part of their legislation including Western Australia[28], Victoria[29], NSW[30] and Queensland which set out general terms that must be included[31]. Whilst the Northern Territory has a prescribed residential tenancy agreement, DCLS submit that landlords must have access to a standard free agreement.

Additionally, DCLS submit that it should be legislated that it is mandatory to include in the lease agreement that a tenant will be provided any strata title or body corporate rules if a tenant is subject to these rules.

Unfortunately, tenants are often only advised of body corporate rules after they have signed lease agreements, and often only once they have breached these rules. Supplying the body corporate or strata title rules is mandated in Queensland legislation[32].

The NT must take steps to include standardised forms that are mandated, simple to read and be understood by all parties. This will ensure that all parties to a tenancy agreement are aware of their rights and responsibilities under the Act.

10.1.1 **Case Study 1**

Adam had been living at a property for a year when his neighbour, who owned her unit, raised issues with the way that his front carport light was pointing towards her unit. She threatened to take the matter to the body corporate to have him (and his partner and baby) evicted from the unit because he wasn't following body corporate rules. He was then given a copy of the body corporate rules, which was made up of one page of rules, coincidently one of the rules being about the direction of carport lights. Adam was not given a copy of these rules when he moved in and suspects that they had just been drafted.

10.1.2 **Case Study 2**

Alex came to DCLS to ask questions about the way that his outgoing condition report had been done. He had been given the report (without being invited to attend the property inspection) and there were photographs which were not given to him until he queried the report. Some of the photographs were unclear but showed some marks on a wall. He claimed that the photographs weren't taken of his property, that the marks on the wall were not within his unit. The Agent argued that they were of his unit and said they were going to hold his bond because he would need to pay for repainting the whole wall.

[28] *Residential Tenancies Act 1987* (WA) s 27A.
[29] *Residential Tenancies Act 1997* (Vic) s 26.
[30] *Residential Tenancies Act 2010* (NSW) s 10.
[31] *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s 55.
[32] *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s 69.

DCLS Recommendation and Model Legislation

Note that this matter is further discussed in Issue 13. The inconsistency of condition reports and timeframe requirements cause tenants much distress, often at a difficult and stressful time, both moving in and out of a property.

DCLS Recommendation 5:

1. Condition Reports, Information Sheets and Lease Agreements are mandated in the legislation to be of a standardised form and form part of the Regulations of the Act and include rights of both the tenant and landlord as an integral part of the documents; and
2. Photographs should not be relied upon solely as a base standard for a condition report and section 24A(1)(c) be repealed; and
3. If photographs are relied upon either solely or as additions to condition reports insert a provision in the Regulations that prescribes the information required to be in ingoing and outgoing condition reports, including:
    i. a requirement that images be clear and of sufficient detail to accurately represent the condition at the time the image is captured; and
    ii. that the following information be recorded for each image; date taken, the room the image is taken in, the name of the person taking the image, the name of other persons present when the image was taken, and any additional information necessary to assist in the explanation of the condition of the property that is depicted in the image; and
4. Timeframes for tenants to complete an incoming condition report extended to 14 days after moving in AND moving out; and
5. Mandating that any strata title or body corporate rules or regulations are included information in any lease that intends to bind the tenant.

Issue 6: Co-tenants and Sub-tenants (including Boarders and Lodgers)

Paper Recommendation 4

a. Consider providing the NTCAT with the power to:
    i. order assignment of a vacating tenant's portion of a bond to the remaining co-tenant(s), or order a landlord to refund a vacating tenant's portion of a bond to that person, with ancillary orders (where necessary) that the remaining co-tenant(s) pay the vacating co-tenant or the landlord (as the case may be) the sum equal to that portion; and
    ii. remove a person's name from a tenancy; with
    iii. the need for an order under (i) or (ii) to be subject to a test of being necessary due to the unreasonable refusal of a co-tenant/landlord to assign the vacating tenant's portion of the bond and/or remove the vacating tenant from the lease;
b. Consider clarifying that a former co-tenant is not liable for any loss caused by an act or omission of any other tenant remaining in occupancy of the premises if that act or omission occurred after the co-tenant ceased to occupy those premises.

Paper Recommendation 5

It is recommended that the Commissioner and/or community legal services consider whether current information platforms sufficiently communicate the rights, responsibilities and differences between sub tenants and lodgers.

DCLS RESPONSE

Relationships between co-tenants and sub-tenants are a long-standing problematic legal issue. Tenants are still entering into co-tenancy or sub-letting (or share housing in various forms) lease arrangements for many reasons, including social and affordability.

What is clear is that contractually the co-tenants are jointly and severally liable to the lease agreement. When one tenant leaves the property, generally the co-tenants are forced to terminate the tenancy for affordability reasons. To do this they need to make a hardship application at NTCAT under section 99 of the Act. The other option is that they simply find a replacement for that co-tenant, which is more likely in a common share house arrangement.

Balancing the needs of the landlord versus the financial hardship of the tenant is problematic and the approach taken by NTCAT is that financial hardship alone is not enough, due to the landlord often being considered an 'innocent party', thus traditionally a section 99 application has had a high bar to reach in order to be granted for tenants.

If a tenant is in a position that they are no longer able to afford the rent, then the Landlord is unlikely to obtain full value of rent for the property in the current market with dropping rental prices and the resulting debt is unlikely to be paid quickly. The process tenants need to follow to break lease and provide adequate protections for tenants to not incur debt should be made clear in the Act.

DCLS submit that the Act should provide a clearer process for the severing of a tenancy between co-tenants and the landlord. This is particularly the case where there is problem 'share houses', of co-tenants that may have entered into an agreement without a prior history or knowledge of each other, and partners co-habiting resulting in a domestic violence relationship.

A point to note here is the complications that a domestic violence relationship can cause in a tenancy is discussed at **Issue 42** in more detail. The observation of DCLS is that the Paper does not adequately appreciate the complicating issues of domestic and family violence.

DCLS also submits that there may be an option for raising breaches between tenants in the same way that a landlord can currently raise a breach against a tenancy and vice versa. The Act could be amended to better reflect these relationships and the issues caused.

DCLS experience is that in many cases, tenants in share housing arrangements are also unaware of their rights and obligations, whether they are tenants or just approved occupants (or in some cases, unapproved occupants).

DCLS sees many clients in this space that are from CALD (culturally and linguistically diverse) backgrounds, students and lower income / socio-economic backgrounds. These clients traditionally are more vulnerable to being induced into share house arrangements by head-tenants or landlords. Often these properties are sub-standard, and the landlord doesn't follow correct process.

In some cases, we see that the landlord does not directly manage the property, they have one of the other tenants do that on their behalf, which generally results in their knowledge of tenants' rights and process. Vulnerable tenants in these tenancies may not want to 'rock the boat' for fear of eviction and subsequent homelessness.

11 Termination

Given the extraordinary examples of bad co-tenancy, particularly those that involve violence or other poor behaviour, DCLS submits that NTCAT should have the ability to sever a co-tenancy, as long as one of the parties stays on the lease, particularly where the property or their safety is at risk.

12 Return of the Bond

The 2010 paper focussed on issues regarding the return of bond for these tenants. DCLS agrees that this is problematic, but not the only problem. We often receive reports from tenants who have paid the bond, but it hasn't been detailed in the share section of the tenancy agreement, causing problems at the termination of the tenancy agreement.

We also acknowledge the issue raised by TEWLS in their response to the 2010 submissions, whereby we see clients sacrificing their entitlement to the bond, with them often having signed lease variations that have been drafted by Agents before they have received advice as to their entitlements, or them having signed it because they have little choice as it is the only way for them to sever their ties to the tenancy.

The alternate to this difficult arrangement is the co-tenant arrangement whereby one of the co-tenants has vacated the premises and their whereabouts is unknown. In this case the remaining tenants may need the bond to rectify the issues raised by a landlord upon the termination of the tenancy. This is particularly the case whereby damage may have been the fault of the absconding tenant.

13 Communication of rights for sub-tenants and lodgers

The paper poses the question as to whether there should be better information out there to communicate the rights, responsibilities and differences between sub-tenants and lodgers.

DCLS submits that this information needs to be highlighted not just for these groups, but for co-tenants as well. The difficulty often faced by the people that have entered these arrangements is that the information is often only accessed once they have already entered the arrangement. Most of these tenants only require the information when the situation is dire or is already raising problems, often too late.

The compulsory information sheet, as discussed first in **Issue 5**, is to be provided to tenants before they enter into an agreement, whether at the beginning or part way through the life of a tenancy agreement. This information sheet should cover different tenancy relationships.

13.1.1 Case Study 1

Adrianne entered into a share house arrangement with Keith and Sven. Sven moved out, although his name was still on the tenancy agreement, leaving only Adrianne and Keith in the house. Adrianne and Keith continued to live in the house and things started to deteriorate as they had a falling out over violations of personal space and other incidents including; intimidating behaviour, not doing housework and garden maintenance, sexually intimidating messages, overcharging housemates rent, death threats to Adrianne's dog, hunting knives displayed around the house and an incident involving Keith bringing a dead animal into Adrianne's bedroom. All of these incidents had made Adrianne feel so uncomfortable and unsafe, that after multiple breakdowns she decided to move out.

Adrianne asked the landlord whether her name could be removed from the tenancy agreement so that her liability under the tenancy agreement cease however the landlord refused. This meant Adrianne continued to pay the rent, although was forced into extreme financial hardship as she had to pay double rent.

Due to there being no provision under the Act to resolve disputes between co-tenants, Adrianne applied to NTCAT to have the lease terminated under a hardship application. Adrianne's application was unsuccessful. The tenancy agreement expired, and the landlord claimed the security deposit for Keith's rental arrears and cleaning due to the dirty condition Keith left the house in. The landlord also claimed an additional $1,600 and damage caused by Keith's dog. As co-tenants are jointly and severally liable under the lease, despite Adrianne already paying a third of the cost, the landlord sought to claim the entire amount from her as Sven cannot be found and Keith had also disappeared.

13.1.2 **Case Study 2**

Fred signed a tenancy agreement with Sonya and Trent. They decided to split the rent and bond three ways. Fred paid his share of the rent and bond and was waiting for his other two co-tenants to do the same. On the day they were due to get the keys to the property and move in, both Sonya and Trent still had not paid their share of rent and bond. Because the rent and bond had not been paid, the Agent refused to give Fred access to the property. Fred did not have the money himself to pay the full bond and rent. Angry Fred said he wanted to get out of the tenancy agreement. The Agent said he could leave, however Sonya and Trent refused to let Fred off the lease, stating that they did not want to get stuck with the rent. Fred tried to break the lease, however he couldn't because under the law, while he does not need the consent of the landlord, he does need the consent of both Sonya and Trent as co-tenants to break the lease. Both Sonya and Trent did not want to break the lease as they were concerned that it would affect their rental record.

Fred therefore found himself in a very difficult position as he could not move into the property due to his co-tenants, but he could also not walk away from the lease without their consent. In effect, Fred remained liable for a property he couldn't access and there was no legal remedy he could rely on to resolve the issue.

DCLS Recommendation and Model Legislation

DCLS observes that no other jurisdiction deals with co-tenancy well, although some jurisdictions deal with bond in a fairer manner, particularly those with a bond holding authority.

DCLS accepts the recommendations raised by the Paper, however, urges the Department to consider co-tenancy and sub-tenancy further. NTCAT's jurisdiction to remove co-tenants or make amendments to the tenants under a lease agreement should ensure it has adequate coverage to include the definition of people in a domestic relationship under the *Domestic and Family Violence Act* (NT).[33]

The Economic Policy Scrutiny Committee, in its inquiry into the most recent changes to the *Residential Tenancies Amendment Bill* 2018, noted in its Committee's Comments that 'Problems regarding co-tenancy liabilities can be somewhat complex, relating to both the need for certainty and enforceability of contractual obligations and to provide adequately for the range of circumstances in which people may enter and leave shared accommodation arrangements. The Committee considers that these matters should be addressed in the review of the Residential Tenancies Act….'[34].

DCLS submits that section 33 of the Act still requires examination and that it needs to consider allowances for verbal agreements and the pressure tactics applied to tenants in providing written agreement to forfeit their bond entitlement in order to gain benefit of a co-tenant's agreement to assign or remove their name from the lease.

[33] *Domestic and Family Violence Act 2007* (NT) section 9.
[34] Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, '*Inquiry into the Residential Tenancies Amendment Bill 2018*' Page 18, point 3.20.

DCLS Recommendation 6:

1. DCLS agrees that NTCAT should have the jurisdiction to deal with the bond in the manner recommended, along with the ability to remove a tenant's name from a tenancy under the recommendation 4(a) from the Paper. However, it should be compulsory for the remaining tenant/s to prove that they have received legal advice prior to this occurring; and
2. DCLS submits that, in response to recommendation 4(b) from the Paper, that a former co-tenant should only NOT be held liable for a loss where NTCAT has made a decision to terminate that person from the tenancy. DCLS agrees that a tenant should not be liable for any damage once they have vacated the premises, however this could be seen to be an opportunity for a co-tenant to abscond to excuse themselves from the obligations of the tenancy, which creates an unfair situation for the remaining tenants; and
3. A compulsory information sheet is to be given to all tenants prior to entering into a tenancy arrangement. This document could be varied according to the arrangement (i.e. Co-tenants, sub-tenants, boarders and lodgers; and
4. DCLS recommends the insertion of a clause in relation to the termination of tenancies by co-tenants to mirror section 101 of the NSW legislation that allows that if one co-tenant terminates the agreement that this then means that the tenancy is terminated, thus breaking the bonds between the parties (see discussion at Issue 42).[35]

Issue 7: Increases in Rent s.41

Paper Recommendation 6

Consider making the following amendments to section 41.

a. Clarify that if a tenancy agreement does not provide for increases in rent, then, rent cannot be increased during the term of that tenancy even if the parties later agree to an increase. That is, the common law right of a landlord and tenant to mutually increase rent is abolished, and the rent for the premises is set by the original agreement even if that agreement is changed or replaced. This would also apply where improvements are made to the premises, e.g. furnishings or a pool, unless the original agreement allowed for rental increases in those situations.

b. If a fixed term expires and: a periodic tenancy applies under section 83; a new term is agreed to resulting in an extension of the agreement; or a new agreement is entered into, the arrangement is to be deemed a continuation of the tenancy. Therefore, a tenancy does not terminate, and a new tenancy is not created upon the occurrence of any of those events. A tenancy only terminates in the situations provided for in section 82.

c. If a tenancy becomes a periodic tenancy under section 83 and the tenancy agreement that existed immediately prior did not provide for rent increases, then there should not be an ability for the landlord and tenant to increase rent, except through the creation of an entirely new tenancy agreement. It should also be clarified that a periodic tenancy is not a periodic tenancy at common law, to avoid any argument that there is an ability for a landlord and tenant to enter into further contractual arrangements unless it is to create an entirely new tenancy agreement. In such circumstances, the formal processes to terminate a periodic tenancy are to apply before any new tenancy may be entered into.

d. Clarify that section 41 applies to periodic tenancies generally.

e. Increase the period of notice for rent increases from 30 days to 60 days in section 41(2).

[35] *Residential Tenancies Act 2010 No 42* (NSW) s 101.

DCLS RESPONSE

The way rent increases are calculated should reflect the way that rent rises in the NT are calculated. Australia has record low interest rates which should mean a lowering of demand on the amount of rent that a landlord requires, and the rental market is seeing a low demand, which should incentivise landlords to keep the rent as low as they can to attract tenants. There is no room for price gouging in the rental market as this disincentivises people staying in the NT.

Section 41 of the Act states that the amount of rent paid under a tenancy agreement may only be increased if the tenancy agreement permits an increase during the tenancy, and the agreement sets out the amount of increase or the method of calculation, with the current minimum of six months between rental increases from the date the agreement commenced, or the last rental increase.

The NT should amend the Act to come into line with other jurisdictions and limit increases explicitly to once every 12 months[36] regardless of whether a fixed term or periodic agreement.

There has been some confusion about what happens when a tenancy reaches the end of its fixed term and converts to a periodic agreement as to when, or if, rents can be increased. Dealing with this explicitly in the Act offers certainty to the tenant and landlord. Extinguishing the common law right to mutually agree to increase rents deals with the inherent power imbalance between a landlord and tenant, where the tenant may feel unduly pressured to keep their accommodation, particularly in times of a tight rental market.

14 Notice of Rent Increase

As stated in the Paper, all jurisdictions have notice periods of 60 days[37]. The time allowed for notification for rental increase is fair and reasonable when considering the tenant may negotiate with the landlord, search for new suitable accommodation or in extreme cases organise uplift to leave the NT. Extending the period of notice would be of assistance in the case of a tenant challenging the rent increase was unsuccessful and then had to relocate due to being unable to afford the increase.

15 Capping of Rent Increase

Generally increasing rent is seen to be a sign of a positive rental market, however even in the current depressed market DCLS is still receiving reports of excessive increases in rent.

The amount to which rents can be increased should be not only a reflection of the rental market, but also mirror the economic environment in which it occurs. It must be said that DCLS also recognises the right of a landlord to balance their own ability to rent their property and make choices which reflect their interests.

Notwithstanding the rights of a landlord, DCLS recommends the capping of rental increases to either 5% of current rent paid, or a weighted index of 20 per cent of the rent's component of the housing group of the Consumer Price Index in the ACT[38], <u>whichever is the lesser</u>.

This would be a more accurate reflection of the residential rental market than arbitrary price increases that can falsely inflate the market and skew the rental values to the detriment of both tenants and landlords. It also recognises the affordability issue that is a reality in the NT.

[36] *Residential Tenancies Act 1997*(Vic) s 44(4A).
[37] With the exception of Queensland, which states 2 months, *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s 91(4).
[38] This weighted index is applied in the Australian Capital Territory for determining whether rent is excessive or not under the *Residential Tenancies Act 1997* (ACT) s68(2)(a).

15.1.1 **Case Study 1**

Tamika and her large family of eight recently moved to Darwin. Given the size of their family she required a large house that could accommodate all her children. They moved into a rental property and although the rent was high, they decided they could budget and manage the rent responsibly. Six months after the family moved in and were getting settled into school the landlord purported to increase the rent. Tamika found this difficult to believe as they were already paying so much, and she knew that generally the rental market was dropping. When she contested the increase, the landlord responded by saying that there were more expensive houses on the market of a similar size and that if she didn't like it, she could move out. With few options on the market for a similar size house and the costs of moving, Tamika was left with little choice. Over 45% of their combined income now contributes towards rent and Tamika is not sure how long she can maintain this position.

DCLS Recommendation and Model Legislation

DCLS Recommendation 7

a. Amend section 41 to reflect section 44(4A) of the Residential Tenancies Act 1997 (Vic) and insert terms to abolish to common law right for parties to agree to an increase in rent outside of the legislated terms; and

b. Increase the notice period to 60 days for an increase in rent; and

c. Legislate to ensure a reasonable cap on rental increases; including

d. Only one increase every 12 months.

Issue 8: Repairs, maintenance and security

DCLS RESPONSE

16 Repairs by tenant

Repairs by a tenant is dealt with at **Issue 14** of this submission.

17 Alteration of locks in a domestic violence setting

Refer to the discussion of FDV, dealt more comprehensively, at **Issue 43** of this submission.

The current drafting of section 52 and 53 of the Act lack clarity of when a person who is experiencing domestic violence may change the locks to a tenanted property.

As noted in the Paper, "all stakeholders have acknowledged that a domestic violence setting could give rise to a reasonable excuse to change locks."[39] In order to provide certainty and clarity for people subject to FDV, the aforementioned sections should absolutely be amended to make clear that the tenant may alter the locks without first seeking the landlord's permission if they are subject to FDV and where prior consent would be unreasonable in the circumstances due to serious and imminent threats of physical harm.

It is not unreasonable for the legislation to be amended to make explicit reference that circumstances of FDV are a reasonable excuse to changing of locks.

[39] Northern Territory Government, 'Discussion Paper – Review of the *Residential Tenancies Act 1999*' (July 2019) Page 26.

18 Body Corporates

Tenants living within strata title residences often report problems experienced with neighbours, repairs, safety and privacy. While some of these issues are inherent when living in close proximity arrangements, others exist through a lack of legislative process. Repairs are a major issue that requires urgent legislative redress for tenants living within unit titles. Tenants frequently express their frustration in achieving repairs where often a "blame game" between the body corporate, landlord and agent exists as no party is willing to accept responsibility, particularly for things such as those that would be considered urgent repairs under section 63 of the Act.

While the recent changes to the *Unit Titles Act*[40] alleviates some of these issues for tenants, clear expression in the Act that landlords' obligations under section 51 of the Act extend to common property would be a useful addition to the legislation. It would provide certainty and clarity to both tenants and landlords of obligations in respect to repairs and provide tenants clear recourse if issue with the common property remain unresolved.

Simply relying on the new provisions under the *Unit Title Act*, is unlikely to resolve the blame game as landlords could neglect responsibility, directing tenants to take their issue up with the body corporate, rather than performing their own due diligence with respect to repairs. It will be misleading for tenants and landlords alike to rely solely on the *Unit Titles Act*, without expressly making the intention clear, that the new provisions do not negate the landlord's obligations under the Residential Tenancies Act.

18.1.1 Case Study 1

Mike contacted DCLS as he was living in an apartment with a body corporate. The air conditioner to his unit was a centralised system that had not been constructed with enough power to adequately service the whole unit block. Mike had been told that the intake system had been built too close to the adjoining wall and so the air conditioner could not function properly. This made Mike's apartment unbearably hot. When he raised the issue with the agent, they informed him is was not the landlord's responsibility and that he would have to take the issue up with the body corporate. The body corporate did not like Mike investigating design flaws in the building and frustrated his ability to provide tradespeople access to do a proper assessment of the issue. The landlord refused to release Mike from the lease and provided no compensation for Mike's problems. Mike was forced to threaten legal action but was told by the body corporate that he could not do so as they did not have a legal relationship and that they were under no obligation to repair.

18.1.2 Case Study 2

Mia lives in a unit complex that has a shared underground carpark. This carpark forms part of the common property. Mia has been concerned about the security of the carpark, as one of the fire escape doors that leads into the carpark has a broken lock and the gate to get in and out has been jammed open for months. She raised these concerns with her agent who said they can't do anything about it as it forms part of the common property. She has tried talking to the body corporate about it, but they have said as she is not an owner, they do not have to listen to her complaints. The carpark was broken into and thieves smashed the window of her car and stole a bag from the back. Neither the body corporate nor the landlord are accepting responsibility for the break in or the fact that repairs to the security of the car park were not made.

[40] *Units Titles Act 1975* (NT) s106 and *Units Title Schemes Act 2009* (NT) section 86.

DCLS Recommendation and Model Legislation

DCLS Recommendation 8

a. Amend Section 52 and 53 of the Act to reflect similar terms to section 45 of the *Residential Tenancies Act* 1987 (WA); and

b. Include that if the perpetrator of the FDV is the landlord then the tenant should not need to provide copies of the keys to the landlord and that no approval or consent is needed in these circumstances; and

c. Amend the section 51 of the Act to include section 58 of the Residential Tenancies Act 1997 (ACT), which represents best practice in respect to landlords obligation concerning repairs to the common property as "the lessor must take all steps necessary to require the owners corporation to make the repairs as quickly as possible.".

Issue 9: Landlord's right to enter premises (breaking of locks)

Paper Recommendation 7

Consider amending section 77 to:

a. clarify that the power of the NTCAT to order entry onto premises includes a power to authorise the use of reasonable means (excluding physical contact between persons) to gain entry;

b. state that if a landlord damages an item of the tenant while gaining entry, the landlord must organise and pay for its replacement or provide compensation, except where that item was used to prevent entry; and

c. state that if a landlord gains entry in accordance with an order under section 77(1), the landlord or its agents cannot be held criminally or civilly liable for reasonable actions taken in gaining that entry (other than the statutory requirement to reinstate a lock or the requirement in (b) above)).

DCLS RESPONSE

DCLS is opposed to the changes as proposed in recommendation 7. Section 77 appears under Part 9 of the Act which relates to 'Landlord's Right to Enter Premises During Tenancy'. It can therefore be assumed that section 77 was intended to confer a power on the Tribunal to order a tenant to let a landlord enter the premises during the tenancy. It is implied that this was for purposes relating to the maintenance of the tenancy agreement as outlined in Part 9 of the Act (collection of rent, inspection of premises and repairs and maintenance).

The position of section 77 suggests that it was not intended to confer a power of the Tribunal to order that a tenant let a landlord enter the premises for the purposes of taking back possession of the property from an uncooperative tenant who has installed additional security (locks) to prevent the landlord entering the property. In such a situation there is a clear procedure the landlord must follow. A landlord is required to obtain an NTCAT order for termination and possession of the property. If the tenant fails to vacate the property on the date specified in the NTCAT order, then the landlord is required to apply to the Local Court to have the order enforced. The order for possession of the property is then enforced by the Sheriff, who would carry out the task of breaking the locks.

There are sound reasons for having this procedure in place. Where a tenant has been actively impeding a landlord's entry to the premises and the landlord has had to apply to NTCAT for an order under section 77, it can be assumed that the relationship between the landlord and the tenant has become unfriendly, if not hostile. An order permitting a landlord to forcefully enter a tenant's residence when the relationship is at that stage is dangerous for both parties. Despite the proposed safeguards (excluding physical contact between persons and landlord obligation to repair damage property), DCLS hold grave concern that such situations could result in physical altercations or damage to property.

Even in an emergency that arises during the tenancy (for example, a gas leak where the tenant is overseas), the landlord is permitted to enter the property without notice (and without an NTCAT order) under section 72 of the Act.

It is hard to imagine a situation where an order under the proposed changes to section 77 of the Act would be appropriate. It is notable that the NT is the only jurisdiction with such a provision.

If recommendation 7 was adopted, DCLS holds concerns about the notice requirements for such an order.

DCLS submits that the landlord should have to satisfy strict and onerous notice and service requirements notifying a tenant that such an application is being made (noting that a tenant may hold fears for their own safety if an order under the proposed section 77 was made).

DCLS also submits that the option posited by the Paper to pose an option excluding the landlord or Agent from civil or criminal responsibility is a slippery slope and should be avoided.

DCLS Recommendation and Model Legislation

DCLS Recommendation 9:

Amend section 77 to read:

77. Tribunal may order tenant to let landlord enter premises

(1) If a tenant unreasonably impedes, or fails to permit, the lawful entry

of landlord or a person authorised by an agent of the landlord to the premises

or ancillary property the Tribunal may, on the application of the landlord,

make an order permitting the landlord to enter the premises or ancillary property.

(2) If the Tribunal makes an order subsection (1), the Tribunal may authorise the landlord or a person authorised by an agent of the landlord to the premises

or ancillary property to use reasonable means (excluding any physical contact between the parties) to gain entry to the premises or ancillary property.

(3) The Tribunal may only make an order under subsection (2) if it is satisfied that:

(a) the tenant is aware of the application under subsection (2); or

(b) all possible steps have been taken to notify the tenant of the application under subsection (2).

(4) If a landlord or a person authorised by an agent of the landlord damages the property of a tenant while gaining entry (excluding a lock or item used to prevent entry to the premises or ancillary property), the landlord must organise replacement of the item or compensation.

Issue 10: Termination

Paper Recommendation 8

a. Consider amending section 91 to enable an employer to terminate a tenancy where an employee resigns from employment, with the notice period to be the same period of notice as per the resignation, or where the resignation notice period is waived by both parties, the same period as is currently provided in section 91(2)(b) (i.e. 14 days).

b. Consider amending section 96B to clarify that the test is that the landlord is to be reasonably satisfied that the tenant has (or has not) taken the required steps.

Recommendation 13

Consider rewording section 85 to better reflect the nature of that provision.

DCLS RESPONSE

19 Early termination due to employment

The NT has a number of highly transient industries and has seen a large influx of workers who have come to the NT for employment. Unfortunately, some of these industries are highly volatile, with tenants being forced to relocate due to employment needs changing and developing over time.

There should also be recognition of the high number of tenants in the NT employed in areas that may require posting their employees to other locations such as Defence, Federal Public Sector Employees, Territory Public Sector Employees and large national and multi-national private employers.

Currently in the Northern Territory there is no standard clause that reflects this requirement to relocate due to employment. There is a "defence clause" that is inserted into some agreements that allows a tenant to terminate their agreement early due to posting but is rarely seen outside of serving defence personnel and is read narrowly to really only include posting, rather than the contemplated 'service reasons'.

The Australian Capital Territory has included in their legislation a section that recognises the high proportion of its residential rental market as highly mobile, by including a definition called '*fair clause for posted people*' defined as a standard clause titled "Termination because of Posting"[41] which denotes that the tenant needs to give 8 weeks' notice and a letter from their employer.

20 Employees Accommodation

Other jurisdictions clearly recognise the relationship between employment and accommodation. In Queensland there is notice required for 1 month[42] for a tenant, if their employment ends or entitlement to occupy ends. The exception to this is that it should also reflect the amount of notice that an employee is required to provide either under their work agreement or under the National Employment Standards.[43]

The use of one month is a sensible and measured length of time as this gives the tenant, who in this instance is the employee, the ability to challenge any decision that has been made through their employment through an unfair dismissal application with the Fair Work Commission which has a limitation period for any actions of 21 days[44]. This time frame should also apply to employees who have resigned due to the *Fair Work Act* defining dismissed[45] as including resigned if forced to do so by the employer.

[41] *Residential Tenancies Act 1997* (ACT) s 8.
[42] *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s 374.
[43] *Fair Work Act 2009* (Cth) Part 2-2.
[44] *Fair Work Act 2009* (Cth) s 394(2)(a).
[45] *Fair Work Act 2009* (Cth) s 386(1)(b).

Not to include this provision is effectively undermining Commonwealth legislation where the Fair Work Commission must consider reinstatement first[46] and reinstatement must be at terms and conditions no less favourable[47]. If housing was included in the employment package it must be available to the applicant if reinstated.

On several occasions DCLS has seen tenants who have lost both their employment and their accommodation and the opportunity for the Fair Work Commission to reinstate the employee is removed as the tenant has already lost any claim to housing. This is particularly acute in the Territory's remote areas where housing is at a premium and relocation expenses are high. This is heightened during the wet season where the tenant may not be able to remove their belongings quickly or leave the property and community due to the weather conditions and limited transport options.

21 Termination of Periodic Tenancy effective despite inadequate notice

Section 85 of the Act should be reworded in such a way that is not confusing or contradictory. Currently section 89 of the Act gives the notice period for termination of a periodic tenancy as 42 days if not connected to a breach. Section 85 gives notice that other common law notice still can have effect[48] and the date on the notice is incorrect.

This clause should be amended to extinguish any common law right of notification of termination of a periodic tenancy and set the notice period at 42 days for all periodic tenancies as stated at section 89.

22 Insertion of "reasonable" into section 96(2)(d)

DCLS stands by its 2010 submission in stating that the reasonableness test should be applied and inserted into both sections 96B(2)(d) and 96C of the Act to make clear the test of whether the breach has been remedied is a reasonable one (i.e. what a "reasonable" landlord or tenant would require under the circumstances, not what the individual landlord or tenant may require.)

It has been seen by DCLS that there is much confusion in what some landlords expect, and it should be made clear in the Act that the remedy of the breach should be of a reasonable standard. Case law over time has shown that application of the "reasonable test" is successful in determining what would be expected of a tenant, particularly in section 51(2) where it states that a tenant must give the premises back to the landlord "in a reasonably clean condition"[49] allowing for reasonable wear and tear. This prevents the landlord from unreasonably claiming monies from the tenant to improve the premises beyond that which they initially received considering age and reasonable wear and tear.

22.1.1 Case Study 1

Dave and his father live in Nhulunbuy. Their housing is provided by Dave's employer. Due to issues at Dave's work, Dave's employment was terminated. Dave and his father were given two days to vacate the property. Dave disagrees with the decision terminating his employment and wants to take the matter to the Fair Work Commission claiming unfair dismissal. He raises this with his employer who simply tells him he must be out of the house otherwise they will get the police over to issue him with a trespass notice. It is the middle of the wet season, and all the roads are closed, meaning Dave and his father must wait for the barge in a week's time. As most of the other accommodation is owned by employers, there were no housing options for Dave and his father to move into. To make matters worse Dave's father had a rather large reptile collection and can't possibly relocate all the animals within such a short space of time.

[46] *Fair Work Act 2009* (Cth) s 390(3).
[47] *Fair Work Act 2009* (Cth) s 391(1)(b).
[48] *Residential Tenancies Act 1999* (NT) s85(a).
[49] *Residential Tenancies Act 1999* (NT) s 51(2)(b).

DCLS Recommendation and Model Legislation

DCLS Recommendation 10

a. Inserting standard clause that terminate lease agreement that relate to postings due to employment to include 8 weeks' notice and supporting letter from employer.

b. Amending section 91 to reflect that all tenancies that are connected to employment have a notice period of at least 28 days and can be shortened only by mutual consent of both parties.

c. This period of 28 days may be extended by application to NTCAT and NTCAT must consider other applications that may be in process under the Fair Work Act 2009 (Cth) and cannot terminate tenancy before those proceedings are complete.

d. Amend section 91(3) to state Fair Work Act 2009 (Cth)

e. Deletion of section 85 or rewriting to extinguish common law notification periods and have notification period for periodic tenancies as 42 days.

f. Amending section 96B to clarify that the test is that the landlord is to be reasonably satisfied that the tenant has (or has not) taken the required steps.

Issue 11: Roles of the Court or Commissioner on termination and other issues

Recommendation 9

Consider amending section 105 to provide an avenue for a landlord to apply to the NTCAT to revoke a suspension of an order for possession.

DCLS RESPONSE

This area in the Paper causes some duplication in consideration of the issues.

DCLS's view in relation to the insertion of definitions for 'serious breach' and 'unacceptable behaviour' is that NTCAT have the appropriate jurisdiction to determine what should be considered the reasonable meaning of these terms. The reason is that providing a list of examples may prove too restrictive and narrow and unduly influence the interpretation by the tribunal.

The Paper also contemplates the position of the landlord and NTCAT whereby a tenant falls into rental arrears or fails their obligation under the tenancy agreement to pay rent where a previous order has been made to extend the date for termination under section 105 of the Act.

DCLS submit that tenants encounter all manner of difficulties in their lives and there should be no contemplation of an arbitrary decision by a landlord to alter the orders of NTCAT without the matter being returned for further decision.

DCLS advocate that the best way for these to be dealt with is that the legislation should be changed to make it mandatory for NTCAT to consider section 105 in all termination matters. Forcing this consideration allows NTCAT to consider all matters and not just occasionally consider the appropriate extension of termination orders and not wait for it to be raised by the tenant.

DCLS Recommendation and Model Legislation

DCLS Recommendation 11

a. No changes need to be made to provide definitions for the terms 'serious breach' and 'unacceptable behaviour'.

b. No amendment to the legislation is required, it goes without saying that a new application can be made to NTCAT if a tenant falls into rental arrears again and this should follow the same process under section 96A and 104 of the Act.

c. Amend the Act to make it mandatory for NTCAT to consider a section 105 extension for each termination matter.

Issue 12: Service of Notices

Recommendation 10

a. Consider amending section 154 of the Act so that methods of service better align with those under section 25(1) of the *Interpretation Act 1978*, with the addition that service may be made by email.

b. Consider inserting a provision in section 154 that requires the person relying on service of a notice to provide evidence of its service, with a rebuttable presumption that such evidence is deemed sufficient to establish that service took place (thus legislatively overriding the 'ordinary course of post' presumption).

DCLS RESPONSE

DCLS's position on service has not changed and we strongly advocate for the amendment of section 154 to allow for electronic service.

It is regular for agents and landlords to establish a regular method of contact with a tenant. It is now the norm rather than the exception that this is via email or other electronic means. NTCAT, the principle jurisdiction for dispute resolution for residential tenants, also accept service via electronic means.

Australia Post has been reporting significant losses due to a decline in the use of postal services which can predominately attributed to the increased ability for people to access communications through electronic means.[50] Arguably some young adults may not know that they can put a redirection on their mail and that, because they have always communicated with their Agent via email, would not be expecting to receive service of documents via the post.

The Northern Territory has long accepted delivery of notices by electronic means and this is supported by legislation.[51] It is noted that courts are increasingly moving to electronic methods for document lodgement and, in keeping with this shift, and to account for more common methods of communication, that the preferred position is for the legislation to provide for electronic service of tenancy documents as a service option.

Should postal service remain in the legislation then it must be with the following amendments:

1. There must be evidence to show that the landlord or Agent has contacted the tenant via their usual method of contact (text message or email) to request a forwarding address; and
2. The letter, report or form must be sent registered post so that the landlord or Agent has evidence of delivery; and

[50]Bridget Judd, 'Australia Post seeks permission to increase price of stamps in face of declining letter business' ABC News (online, 7 August 2019), <https://www.abc.net.au/news/2019-08-07/australia-post-want-to-increase-stamp-price-letter-losses/11392796>.

[51] *Electronic Transactions (Northern Territory) Act 2000* (NT) s 7.

3. The notice should be dated 3 days after the sending, to take into consideration delays in delivery and receipt; and
4. Leaving the notice at the front door or in the letter box, should not be sufficient service under the personal service provision, but if it is personally handed to the tenant then they should have to provide a signature to acknowledge receipt; and
5. Sections 154(a) and (b) are confusing and a dispute could arise as to the correct address of a body corporate or whether a body corporate is the correct term to use when referring to the landlord's Agent.

The specific problem with relation to the notice requirements is highlighted when discussing the outcome of delivery, influenced when notices are required to be received within a set timeframe. Landlord and Agent misinterpretation has occurred when, for example, the notice is sent 'on the seventh day' rather than 'received by the seventh day'. This is discussed in much detail in the Paper, along with raising the issue highlighted by *Social Security v O'Connell* (1992) 38 FCR 540, which, in pointing out that posting a notice to the last known address of a person was not proper notice when the sender had knowledge that the recipient no longer resided at that address. This raises the issue of poor business practice in the landlord or Agent just doing the basics of what needs to be done or arguably behaving unconscionably when they know that the tenant no longer resides at the address.

22.1.2 **Case Study**

DCLS does not raise any one case study in this section, but merely seeks to highlight that nearly all clients that the Agent states have been served an RT08 notice by mail report that they do not receive them or if received they arrive well outside of the required 7 days. Further, many report issues with the failure of postal service to different areas raise that post to remote communities or regional townships are exceptionally unreliable in terms of relying on the tenant having received the notice.

DCLS Recommendation and Model Legislation

DCLS Recommendation 12

a. Section 154 is amended to include:
    1. 154 (a) ... last-known place of business or residence or postal address, where all reasonable attempts have been made to request a tenant's new address.
    2. 154(c) a copy of all correspondence is to be served to a tenant via the established method of contact, such as electronic means.
b. DCLS agrees with the recommendations put forth by the Paper at Recommendation 10.
c. Consideration should be given to adopting Victorian legislation[52], but amending to detail that preference should be given to using the usual mode of contact. This is to avoid landlords or Agents simply taking a tick box approach and superficially issuing service in accordance with their legislative requirement, knowing that the tenant would not receive the notice.

[52] *Residential Tenancies Act 1997* (Vic) s 506.

Issue 13: Condition Reports: Signatures and Ongoing Tenancies

DCLS RESPONSE

23 Signatures

As previously mentioned in this paper at **Issue 5**, DCLS is in strong support for a simple standardised condition report that is clear and unambiguous. It should be legislated that a standard form for condition reports be used and included in regulation as per other jurisdictions[53]. Included in this should be both the incoming and outgoing condition of the premises so they can be easily compared and both signatures and dates are clearly shown. That report then should be freely available on the Consumer Affairs website and should be the one the one consistent method.

The standardised inspection report should also clearly state that the tenant has a right to be at both the incoming and outgoing inspection, along with the timeframes and process for disputing the content of the report. This document must also provide information regarding interpreter services that are available at no cost to a tenant or agent.

Too often we are approached by tenants who have disputed the outgoing condition report and had been told by the Agent or landlord that they are not required to be present at the inspection. This leads to disputes arising which may have been resolved quickly and amicably at the time the inspection was done.

Further to this, a landlord or Agent must supply to the tenant a copy of the incoming condition report within 3 business days of them taking possession of the property. Once received the tenant then has 5 business days to return it with their comments.[54]. If the landlord then fails to apply to NTCAT for an independent report to be done then the landlord is taken to have accepted the report.[55]

It is commonly reported by tenants that they have not discovered some of the problems with a property until some days after living in the property. For consistency with other jurisdictions, such as the ACT, the time for returning an incoming Condition report should be extended to two (2) weeks after moving into the premises for the tenant to complete the report.[56] This extended period allows for the incoming tenants to be thoroughly acquainted with their new tenancy before having the condition report finalised.

The additional time also allows time for the tenant to have settled in the property. Most tenants report to DCLS that they have not got the time in the initial days following being given the keys, to examine the report and most decide to forgo the opportunity as they do not recognise the importance of disputing the document. One of the most common comments made to DCLS is that ‘there was a lot of problems with the property when I moved in, but I didn’t realise I was supposed to write them all down on the report’.

DCLS submit that an unreturned or unsigned report completed by a tenant should not in default mean that the tenant accepts the condition report, rather that it should be compulsory that the tenant is given an information sheet (as detailed in **Issue 5**) and that the tenant realises that by signing they are acknowledging that this will be considered the acceptance of the report.[57]

[53] NSW, Qld, Victoria and ACT all have standardised condition reports, see **Issue 5**.
[54] *Residential Tenancies Act 1999* (NT) s 25, 26(1).
[55] Ibid s 26(4).
[56] *Residential Tenancies Act 1997* (ACT) s 29(3).
[57] Ibid s 26(2).

24 On-going tenancies

Regarding the issue raised about the requirement of a new condition report where an existing tenancy agreement is continued, the original condition report should continue if the tenancy continues. The landlord or Agent throughout the life of the agreement have access to the property through inspections and have opportunity to ensure that the agreement is being complied with. There is no need to subject ongoing tenants with the onerous task of completing subsequent and further inspections.

Another common complaint made by tenants is that the Agent or landlord has visited the property regularly during the tenancy but has not raised any issues during that time. This is discussed further at **Issue 22 and 25**.

25 Service of Ingoing and Outgoing Reports

Sections 25(1) and 110 (1) state that an ingoing and outgoing condition report must be provided to the tenant within 3 business days of them accepting the keys or providing vacant possession. What is not clear in the legislation is how this is to happen. The legislation currently states the 'landlord may give the tenant a signed condition report'.[58]

These terms are unsatisfactory. It must be explicit that the report is to be given and how it is to be given. There are no provisions in the Act to provide express terms as to the evidence that a landlord or Agent must give the tenant a copy of the ingoing condition report, or outgoing condition report.

There must be an agreed way that the reports are to be received and this can be stated in the information sheet provided to the tenant at the beginning of the tenancy.

DCLS commonly receives reports from tenants that they have never received, nor been invited to be present during the conduct of these reports.

DCLS Recommendation and Model Legislation

DCLS Recommendation 13

a. That a standard form inspection report be used for all tenancies; and
b. That section 26(2) of the Act be repealed or amended to say that a signature will be required to prove acceptance of the report by the tenant; and
c. That section 26(1) should be amended to read 14 days, replacing 5 business days; and
d. A standard information sheet must be provided to all tenants at the time of signing the tenancy agreement and the condition report; and
e. The use of an interpreter be compulsorily used when a tenant identifies that they speak English as a second language and require an interpreter (recognising that there should be a way to recognise whether an interpreter is required); and
f. That section 28A of the Act remain unchanged; and
g. That sections 25 and 110 are amended to reflect how the tenant is to be given the condition reports; and
h. DCLS also recommend that the independent bond authority hold copies of all condition reports and tenancy agreements.

[58] Ibid at section 25(1).

Issue 14: Repairs generally

Recommendation 11

a. Consider amending sections 58 and 63(1)(c) to remove the requirement that notification of the need for repair be in writing.

b. Consider amending section 63(2) to list water heaters, air-conditioners and household heaters as items which the emergency repair provisions apply.

Question 8 (taken from Issue 30 – Agent's Authorisation of Repairs)

a. Should the Act be amended to stipulate that in addition to the landlord, an agent is also responsible for repairs and maintenance? If so, should there be a limit on the agent's level of responsibility, such as a monetary cap or set scope of works that the agent may authorise?

b. Alternatively, should there be an obligation placed on an agent to disclose to the tenant, or prospective tenant, the level/nature of 'pre-authorisation' to undertake repairs and maintenance provided by the landlord to the agent under the agent/landlord property management agreement?

DCLS RESPONSE

Repairs and maintenance are *the* most common issue that tenants experience in the Northern Territory. DCLS provided close to 300 advices to client specifically related to repair issues last financial year, not including legal information provided over the phone and through our factsheets.

Repairs represents one of the most frustrating and acute points of tension between landlords and tenants and an efficient and effective resolution of disputes regarding repairs is key to a healthy and effective tenancy system.

26 Repairs generally

The current system is unworkable for Agents, tenants and landlords in respect to both emergency repairs and ordinary repairs.

The main issues commonly reported are:

- Slow response and timeframes taken to undertake and complete repairs;
- Tenants feeling the need to constantly notify about repairs in order for them to be actioned (this is also reflected in the opinion of the tribunal as to the urgency of the repairs);
- Lack of communication about when repairs will be actioned;
- Poor record keeping on behalf of agent or landlord of when tenant has requested repairs;
- Tenants only being permitted to report repairs through an App or online platform where they are denied access to view their report log;
- Tenants withholding rent in an attempt to get the landlord or agent to respond to repair requests, causing the tenant to be in breach of the tenancy agreement;
- Repairs not being completed by a qualified or trained service person;
- Tenants being charged 'call out' fees for repairs that have been requested; and
- Poor or inadequate compensation in respect to inconvenience caused by damage, breakdown or failure to the property which require emergency repairs.

In order to overcome these issues, it is important that legislation provide strict timeframes in respect to repairs that gives certainty, structure and clear timeframes about when tenants can expect repairs to be completed.

The current process is cumbersome, overly burdensome on tenants and lacks certainty of timeframes. DCLS often sees either tenants "give up" due to fatigue in chasing repairs or choosing to break lease and terminate their tenancy rather than go through the hassle of NTCAT. These issues then commonly resurface for the next tenants who take residency at the same address.

As the Paper notes, given the extreme conditions the NT often experiences, DCLS highly recommends that air-conditioners, heaters and hot water services be explicitly added as emergency repairs as these issues are frequently reported and are often left unresolved for weeks if not months.

27 Emergency Repairs

DCLS submits that the NT should adopt the process surrounding emergency repairs as outlined in section 33 'Urgent Repairs' in the *Residential Tenancies Act* (TAS).[59] This represents best practice and achieves the objectives of the Act in balancing the rights of landlords and tenants.

This scheme is best complemented with the provision of a Special Rent Account as experienced under Victoria's *Residential Tenancies Act*.[60] Given the high prevalence of tenants withholding rent out of frustration from lack of repairs, having a separate avenue for rent relieves this tension while at the same time ensuring tenants are not in breach of their own obligations under the Act. NT should adopt a similar model, considering the proposed reform to the operation of the Special Rent Account as part of Victoria's modernisation of their tenancy legislation.[61]

Finally, a fair and equitable legislative scheme with respect to emergency repairs should explicitly include provision that there is an onus on landlords to reasonably compensate tenant for inconvenience caused by emergency repairs, even when there is no breach of the landlord's duties under the Act.

28 Ordinary Repairs

DCLS recommends the adoption of ACT legislative scheme in respect to ordinary repairs as it clearly outlines the obligations of both parties and provides a set timeframe for which repairs must be complete from date of notification but allows for some flexibility with agreement.[62] DCLS however strongly recommends maintaining the current 21 day timeframe provided in the NT under section 51.

Tenants should be permitted to report repairs either verbally or in writing and landlords and agents must accept notification of repairs in writing (including via email, SMS or other on-line applications such as Facebook) and landlords and Agents must accept the notification of repairs. DCLS recognises that many tenants cannot report in written form, so an option for verbally is a necessity, but often evidence of the reports is an issue when attempting a claim for compensation or making an application for an order for repairs. Agents can not restrict a tenants' right to report repairs to a given medium and must provide a tenant a copy of repairs notification log within 14 days from when a tenant requests.

DLCS also advocates for the inclusion of NTCAT to be able to order for ordinary repairs to be carried out. DCLS suggests that if the standard 21-day timeframe is exceeded, with no update from the landlord or Agent as to when the repairs will be carried out, then they should be able to make an application for the repairs to be completed.

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[59] *Residential Tenancies Act 1997* (TAS) s 33.
[60] *Residential Tenancies Act 1997* (Vic) ss 77, 134(3) and 193(3).
[61] Ibid and **Reform 59.** To encourage residential rental providers to maintain their properties in good repair, renters will have increased access to the Rent Special Account. The Rent Special Account is designed to hold rent payments that have been redirected when the RRP has not undertaken any necessary repairs. Upon application by the renter, VCAT will be required to order that rent be paid into the Rent Special Account instead of to the RRP, unless the RRP can prove that they would experience financial hardship if the rent was paid into the Rent Special Account. If, despite having been ordered by VCAT to undertake repairs, the RRP still has not fulfilled their duty, the renter may now apply to have any rent held in the Rent Special Account repaid to them in full as compensation for the inconvenience of having to wait for repairs to be performed. This reform also applies to rental arrangements in rooming houses, caravan parks and residential parks, and responsibility for administering the Rent Special Account will be moved from VCAT to the RTBA.
[62] *Residential Tenancies Act 1997* (ACT) s 55.

It is common for DCLS to have reported to them that the tenant is told that the landlord is overseas for an extended period of time or they are just uncontactable, without any evidence required to be shown to the tenant of the contact by the Agent, so an application is reasonable.

DCLS advocates for amendments to the Act to allow NTCAT to be able to order ordinary repairs, such as in the NSW legislation.[63]

29 Repairs by Landlords

Under section 62 of the Act the Landlord may name themselves a nominated person for a type of repairs. There is concern generally from tenants as to the standard of work being done and the lack of requirement that the work be done by a licensed tradesperson.

DCLS recommends that the Act should be amended to reflect that the person or company nominated as the person for a type of repairs, that they should be able to show that they have the skills to affect those repairs.

30 Repairs by Real Estate Agents

Note, the responsibility and accountability of agents and landlord is dealt with at **Issue 41.**

Generally, the responsibility of Agents in respect to residential tenancies is not covered nor envisaged in the Act in any direct sense. Any landlord may choose whether or not to employ an agent to carry out their obligations and duties under the Act, yet by doing so the landlord's own obligations are not extinguished. Nor, by virtue of their agency, will an agent become liable under the Act for breaches of non-compliance on the part of the landlord.

While many agents are entrusted with the care of seeing to repair issues, the issue of how much authorisation an agent has to undertake certain repairs and duties, is a matter specifically for a private landlord and their agent to determine. Amending the legislation to increase agents' responsibilities for repairs and maintenance both conflicts with the law of agency and presents difficulties in determining who is the responsible party when repairs are not appropriately undertaken. DCLS is concerned that amending the legislation as proposed would:

- confuse and conflate responsibility in respect to repairs, rather achieve quicker outcomes for tenants;
- create a blame game environment between landlords and their agents where neither would take responsibility for repairs, thus further delaying resolution;
- encourage agents to overstep their authority in other areas of the tenancy relationship.

DCLS is pleased with the outcome as directed by the tribunal in the *Christie-Johnson* matter as this reflects the frustration held by tenants in repairs not being affected resulting in them withholding rent.[64]

However, DCLS submit that if the legislative scheme in respect to repairs is adopted under the Act, there should be no need for agents to be given additional authority or responsibility as proposed by Question 8.

31 Repairs by tenant

DCLS position is that tenants should not undertake repairs. This should be avoided to ensure that there is no blame game whereby the tenant is accused of the repair not being up to standard and because it has the potential to force tenants into (often further) financial hardship.

Tenants are often forced to complete repairs when a landlord is unavailable or unresponsive. Sections 59 to 62 of the Act deal with when a tenant may complete repairs and be reimbursed by them. The current ceiling of two weeks rent is a low figure and is not matched by other jurisdictions, such as NSW which is capped at $1,000 and Victoria which is now capped at $1,800.[65] Additionally, there should be a clearer process to follow if the tenant does carry out the repairs.

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[63] *Residential Tenancies Act 2010 No 42* (NSW) s 65.
[64] *B & E Christie-Johnston v Murphy* [2017] NTCAT 761 (unreported).
[65] *Residential Tenancies Act 2010 No 42* (NSW) section 64(3); *Residential Tenancies Act 1997* (Vic) s 72(2)(a).

32 Repairs by where damage is caused by the tenant

Damage caused by tenants is a natural part of renting. Often this damage is caused unintentionally whether it be by pets, guests or through everyday accidents.

The current legislative scheme fails to provide clear guidance as to how such repairs are to be resolved. Whilst some tenants have a positive working relationship with the landlord or Agent, such that repairs can be resolved amicably through informal agreement, many do not. As a result, issues arise over cost, quality and timeframe and become a point of tension.

Tenants have often suffered the double cost of making repairs at the time of damage and then again are charged for costs of the re-repair as it is not to the standard of the landlord or agent.

To resolve these issues, legislation should set out a clear process for repair when a tenant negligently or intentionally damages the premises. This process should take into consideration that not all tenants are financially capable of meeting the costs of repairs and that the tenants should only be required to repair the damage to a similar condition or standard as before, taking into account the age, character and reasonable availability of repair items. For example, a tenant that damages a rare Swedish wooden door, should not be responsible to pay for an exact replacement when a similar door at a lower price would achieve substantially the same result both in terms of look and function.

32.1.1 Case Study 1

Maurice is an elderly man who has been living in the same property for almost 12 years. He is on a periodic tenancy and always pays his rent on time. He has always kept the property very clean and takes pride in the home he has made for himself there. Since November, Maurice's stove has been broken. He asked the Landlord for it to be repaired. The landlord responded by saying someone would be sent to look at it. A few weeks go by and no one has come to look at it. Maurice decided to contact the landlord again. This time the landlord snaps at Maurice, telling him that he would not be sending anyone out. Maurice is concerned that if he asks for the repairs again, he will be asked to leave the property. Maurice has made a life in this home and at his age feels like he has nowhere else to go. So, Maurice continues to pay his rent and live with a broken stove.

32.1.2 Case Study 2

Max and his partner are tired of the agent doing nothing about the repairs they request at their rental property. They have come to the point where the agent no longer responds to their calls requesting the repairs. Fed up by the state of the property Max decides to start withholding the rent. Several weeks pass by and Max is served with an Initiating Application and Orders that the agent has commenced proceedings at NTCAT to evict Max and his family. Max calls the agent as he does not understand the documents and wants to know when the repairs will be completed but receives no response. At the Tribunal, an order is made evicting Max and his family from the property due to the outstanding arrears.

DCLS Recommendation and Model Legislation

DCLS submits that the NT should adopt the process surrounding repairs as a result of tenant damage as outlined in section 78 and 79 of the *Residential Tenancies Act 1997* (Vic). DCLS submits that this section be modified to include explicit subsections stating that:

1. The tenant is only liable for the cost of repair to a similar manner, prior to damage, taking into consideration the character, age and condition of the damaged item; and
2. If a damaged item can be repaired to the substantially the same condition, the tenant should only be liable for the lowest cost to repair the item; and
3. A tenant cannot be required to pay for repairs again, if they are not completed to the landlord's satisfaction, if a tenant has already repaired a damaged item under this section; and

4. If a tenant states they are in financial hardship and cannot meet the cost to recover the item, the landlord and tenant are to enter into a payment plan to meet the cost of the repairs; and
5. If there is a dispute in relation to the repair in terms of quality, costs or timeframe, the landlord must bring an action at NTCAT within three (3) months after giving the tenant notice under section 78 requiring the tenant to repair the damage.

DCLS Recommendation 14

a. DCLS strongly recommends amending sections 58 and 63(1)(c) to modify the requirement that notification of the need for repair be in writing; and

b. DCLS strongly agrees with the recommendation to amend section 63(2) to list water heaters, air-conditioners and household heaters as items which the emergency repair provisions apply; and

c. Section 63 should be amended to include that NTCAT has jurisdiction to make orders for ordinary repairs, where it is considered that the landlord has not responded or made arrangements for repairs to be conducted in a reasonable timeframe, such as the NSW legislation; and

d. DCLS recommends that section 62 of the Act should be amended to reflect that the person or company nominated as the person for a type of repairs, that they should be able to show that they have the skills to affect those repairs; and

e. DCLS strongly recommends that section 58 be amended to reflect process of repairs as per Victorian and Tasmanian legislation; and

f. DCLS strongly recommends that similar amendments to the Act are made to include provisions such as sections 77(3), 134(3) and 193(3) of the Victorian legislation and section 33 of the Tasmanian legislation; and

g. DCLS does not recommend either a) or b) as proposed by Question 8 that Act should stipulate agents be responsible for repairs or required to disclose the level of their pre-authorisation to prospective tenants; and

h. DCLS recommends that two new sections be inserted into the Act, outlining a process for repairs as a result of tenant damage that aligns with s 78 and s79 of the *Residential Tenancies Act 1997* (Vic) considering certain modifications to those sections; and

i. DCLS recommends an improvement to the wording of 58 to 62 of the Act and an increase to the maximum amount able to be claimed by a tenant to $1,800, amending section 59 of the Act.

Issue 15: Bond Holding Authority

DCLS RESPONSE

The Northern Territory is currently the only jurisdiction in Australia that does not have an independent bond authority to manage the large amounts of money tenants pay landlords at the beginning of their tenancy as a security deposit ('bond'). At present when bonds are provided to landlords by tenants, the owner or agent holds the bond on behalf of the renter on trust and the return of the bond is discretionary, leaving tenants vulnerable to misuse of large sums of their own money.

An independent bond board would automatically return bond unless a valid claim against the bond has been made– freeing up monies for tenants to re-enter the rental market; prohibit the misuse of bond funds and free up NTCAT's jurisdiction, ultimately saving time and money caused by current delays.

A bond authority was discussed in 2015 when the Northern Territory Government released 'Issues Paper: Development of a Central Bond Holding Scheme in the Northern Territory under the Residential Tenancies Act' ('*Bond Paper*') in March 2015[66]. There were several responses to this issues paper, including that of DCLS.

The Bond Paper comprehensively discussed the role that a bond authority would play in the Northern Territory jurisdictions and the advantages and disadvantages of such a system. It also gave a number of options as to the structure of the proposed body.

Responses to this paper were generally consistent, agreeing with the recommendation that an independent bond board be established in the Northern Territory. The main objection came from REINT, who claimed the arguments made for the board were not sound.

This Paper also identifies that this is now also supported by the Members of the Legislative Assembly, but falls short, stating that the Department is now developing a further discussion paper on the 'possible structure and operation of a centralised residential tenancy bond holding scheme in the Northern Territory'.[67]

DCLS strongly opposes another discussion/issues paper being drafted and distributed for comment. This Paper has taken 14 months from the time the review was promised to commence. DCLS contends that the implementation of a bond board should be included in this review. DCLS further asserts that the Government has continued to pander to the whim of organisations working against a bond board, when there is a clear need based on all the same arguments that were made in 2010 and 2015.

Why is the NT any different in what has been in place and operating elsewhere in Australia satisfactorily for quite some time? The bond holding authority could be self-funding and any funds remaining could be utilised to contribute to the education of tenants and landlords.

Tenants are disadvantaged by the lack of an independent body to fairly assess their entitlement to the speedy return of their bonds. Currently if a tenant commences a process for the return of a bond it can take, in DCLS's experience, up to 6 weeks or more from an Initiating Application to the date of orders. In the meantime, a tenant can experience hardship without the ability to find a new residence, waiting on the bond return to fund, or having to raise additional monies for a new bond.

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[66] Northern Territory, Department of the Attorney General and Justice, 'Issues Paper – development of a central bond holding scheme in the NT' (May 2015)< https://justice.nt.gov.au/attorney-general-and-justice/law-reform-reviews/published-reports-outcomes-and-historical-consultations/historical/2015/issues-paper-development-of-a-central-bond-holding-scheme-in-the-nt>.

[67] Northern Territory Government, 'Discussion Paper – Review of the *Residential Tenancies Act 1999*' (July 2019) Page 50.

32.1.3 **Case Study 1**

Sarah moved out of her rental property believing she left it in a much better condition than when she moved in. A few weeks later, she was shocked to receive a notice that the landlord intended to retain a total of $2,400 from her bond for cleaning, new curtains and maintenance costs to the garden.
The Agent did not complete or provide Sarah with an incoming condition report at the commencement of the tenancy. Sarah has photos she took at the start and end of the tenancy showing that she left in a far better condition and that there were no curtains provided when she first moved in.
When Sarah raised these issues with the Agent, they refused to return the bond. Sarah's only choice was to proceed to NTCAT. She was apprehensive about appearing in front of a Tribunal; it caused her a lot of stress and anxiety. Not only that, but Sarah incurred an application fee of $67 and had to take two days off work. An independent bond board would have identified that the landlord had no right to withhold Sarah's bond in these circumstances and would have issued the money back to Sarah who would not have had to commence legal proceedings.

32.1.4 **Case Study 2**

Pauline is vacating a property as she is moving interstate. Pauline is relying on the money from her bond for her move, so she is doing everything she can to make sure she gets the bond back. She cleaned the property herself and then paid for a professional cleaner to go over any areas she may have missed. The agent instructed her that she needed to get a 'flea and tick' spray done despite the fact that it is not required under her tenancy agreement and she doesn't own a pet. Wanting to do the right thing, Pauline pays to have it done. A week after she hands back the keys, Pauline asks the agent when she is going to receive her bond back. The agent responded in an email stating that she would not be receiving her bond back due to the cleaning that is required at the property and the re-painting of some of the walls. The email simply had written the cost of the cleaning and re-painting which came to the exact same cost as Pauline's bond. When Pauline asked to receive quotes or proof of the amount, she didn't receive a reply.

Pauline had to take out a loan to cover the cost of her move and make an application to NTCAT from interstate. She was never provided with an outgoing condition report or RT08 notice and she is the one that must take the matter to NTCAT to enforce her rights against an unscrupulous Agent and/or landlord, with the Agent/landlord knowing that a significant number of tenants would be discouraged from commencing litigation. An independent bond board would eliminate the need for this.

32.1.5 **Case Study 3**

Sam and Laura had a troublesome tenancy with their landlord, who was self-managing their property. They had orders made from NTCAT in relation to both compensation and for their bond to be returned. The landlord had been given the bond by the ex-real estate agent (who the landlord had terminated part way through Sam and Laura's tenancy) and now the landlord has told them that they had spent the bond and they would never get their money back. Sam and Laura are now forced to take further legal proceedings, costing them more time and money, at the Local Court to attempt to get their money back. A bond holding authority would have at least avoided them needing to take action to have their bond returned.

DCLS Recommendation and Model Legislation

See attached at Annexure 'A' a document to evidence the structure and financing of an Independent Bond Board. Until this body is formed tenancy in the Northern Territory is not going to be a fair scheme.

DCLS Recommendation 15

a. DCLS strongly opposes the distribution of another discussion or issues paper for stakeholder input on the issue of a rental bond board and consider that this issue is part of their promise to do a full review of residential tenancy law; and

b. DCLS recommends the implementation of an independent bond board; and

c. DCLS recommends that the independent bond holding authority also hold copies of ingoing and outgoing condition reports and lease agreements.

Issue 16: Termination

Recommendation 12

Consider replacing references to 'notice of termination' throughout the Act with reference to 'notice of intention to terminate'.

DCLS RESPONSE

33 Mutual Termination

Mutual termination is contemplated under section 82(f) and DCLS agree that this does allow for landlord-initiated termination, however the section could be worded more clearly to reflect the position that both parties have to consent to the termination (not just the landlord). Once again this is to adequately reflect the power imbalance often in a tenancy relationship.

34 Repeal section 103

DCLS do not form a view that section 103 of the Act needs to be repealed.

35 Termination on Vacation as per Notice

DCLS do not form a view that section 82(1)(a) needs to be amended.

36 Termination by tenant

DCLS does not agree with the Paper's interpretation of section 95 of the Act, which states that a tenant can terminate a tenancy agreement early with 14 days' notice to the landlord. Section 95 is clear that is only applies to a fixed term tenancy 'that is due under the tenancy agreement to terminate on a particular day'.

The Act does not explicitly deal with situations where a tenant terminates a tenancy agreement prior to the expiry of the date specified in the lease. This is commonly referred to as a 'break lease' situation. See the discussion of lease break at **Issue 43**.

37 Tenant Imprisoned

DCLS has received a number of recent enquiries as to a landlord and tenants' obligation when a tenant has been imprisoned. DCLS strongly advocates for imprisonment for an extended (more than one month) period of time as grounds for an application for termination of a tenancy without penalty at the election of the tenant due to their imprisonment. It is particularly concerning with the increased periods on remand, the impact that this is having on tenants and their tenancies.

38 Grounds for Termination – Anti-social behaviour

As a social housing provider, the DoH must take its role seriously in ensuring that homelessness is avoided at all costs, balanced with the safety of its other tenants. DCLS submits that acceptable behaviour agreements should sit outside of the legislation and these tenants be managed appropriately, with a section 100 application made as a last resort. These agreements target the most vulnerable in our society, often tenants that live without the required medical and social support that they need and subjecting them to the stigma of behaviour agreements may have a negative impact on their wellbeing.

DCLS raises particular concerns with section 99A and submit that it should be repealed for all of the reasons given by NAAJA in their submissions to the 2010 Issues Paper.[68] DCLS would be interested in statistics to be revealed as to how many times this legislation has been utilised by way of applications to NTCAT and what processes or steps the DoH has taken to support these tenants through a potential eviction process.

DCLS Recommendation and Model Legislation

DCLS Recommendation 16

a. DCLS agrees with the Recommendation 12 of the Paper for the purpose of clarity; and

b. DCLS recommend the amendment of section 82(1)(f) to: 'if a tenant gives up possession of the premises with the tenant/s and the landlord's consent'.

c. DCLS recommends that section be inserted in Division 3 of the Act to allow for the termination of a tenancy by the tenant without penalty, with a 14-day notice period to the landlord.

d. DCLS recommends the repeal of section 99A of the Act.

Issue 17: Notice Periods and 'No Grounds' Evictions

Question 2

a. Should the notice period for 'no reason' landlord-initiated terminations be extended from 14 days to 120 days?

b. Alternatively, should the 'no reason' termination be abolished for landlord-initiated terminations?

DCLS RESPONSE

39 Question 2(b) 'No Grounds' Evictions

DCLS agree with the proposal in question 2(b) of the Paper and submit that 'no grounds' evictions should be abolished. This is necessary for home stability, fairness, and freedom from discrimination.

The housing affordability crisis in Australia means that more people are renting and doing so for longer. Currently over half of those living in the Territory are renting. A very small minority of these tenants enjoy security of tenure with most tenants signed on to short term leases, ranging for 3 months to 12 months. Very few tenants are provided with the option to rent a property for more than 12 months.

[68] NAAJA, (May 2010), '*Response to the Residential Tenancies Act Issues Paper of May 2010*' < http://www.naaja.org.au/wp-content/uploads/2014/05/Response-to-Residential-Tenancies-Act-Issues-Paper-of-May-2010.pdf>.

At present, tenancy law provides landlords the right to evict a tenant at the end of a fixed-term lease, or during an on-going lease, without giving any reason, even when the tenant has paid their rent on time, looked after their rental home and the landlord wants to keep renting it out.[69] Our tenancy laws must be reformed to reflect the modern rental market and encourage longer term tenancies by protecting tenants against unfair terminations.

There are numerous reasons why no-cause evictions are bad for both tenants and landlords. This is detailed in many papers and research shows that good long-term tenants are what responsible owners want and that means that if landlords look after tenants, the tenants look after the landlord's property. Long term tenants also avoid having the unnecessary burden of searching for new tenants each year, along with the instability that this brings.

Tenancy law should provide that where a landlord wishes to end a tenancy, a renter should be provided with a notice that outlines the reasons for termination and provides them with an opportunity to appeal the termination. New law should be drafted to respond to this need which reflects changes enacted recently in Victoria.[70] This includes that reasons must now be applied, as per Victoria, examples include:

- Repairs to premises; or
- Demolition; or
- Premises to be used for business; or
- Premises to be occupied by the landlord or the landlord's family; or
- Premises are to be sold; or
- A tenant no longer meets the eligibility criteria.[71]

40 Question 2(a): Notice periods for 'no grounds' evictions

For the reasons given above, DCLS submit that the 'no grounds' evictions should be abolished at the end of fixed term tenancies. Should the no-cause evictions stay, once again seeing us inconsistent with our interstate counterparts, the notification period must increase for both sections 89 and 90 to be amended to 120 days to bring the Northern Territory into line with national standards and ensure that all tenants are provided with adequate time to relocate.

41 Section 101

DCLS recommend the removal of the words 'if any' from subsection 101(1)(d). Leaving those words in the legislation defeats the purpose of the details prescribed before it in section 101(1)(a) to (c) and then the removal from 101(1)(d) allows for the insertion of reasons per the Victorian legislation.

41.1.1 **Case Study 1**

Mindi and her partner's fixed term tenancy agreement was due to run out in October. Mindi was pregnant with her first child and expecting to deliver the baby in October. Mindy and her partner asked the Agent earlier in the year whether they could extend the lease until November as it would be difficult to move out in October due to the baby. The Agent said Mindi and her partner could move onto a periodic tenancy once their fixed term ended in October until they needed to move out in November. 14 days before their tenancy agreement was to end in October, they received a notice of termination from the Agent terminating the tenancy. When Mindi asked what happened to the possibility of a periodic tenancy, the Agent replied that they have a policy of not ending tenancies during the November to January period and that they would have to leave.

[69] *Residential Tenancies Act 1999* (NT) ss 89, 90.
[70] *Residential Tenancies Act 1997* (Vic) ss 254 – 261 under current law, Residential Tenancies Amendment Act 2018 (Vic) ss 91ZW – 91ZZE
[71] Ibid.

41.1.2 **Case Study 2**

Melanie lives in a rural property with her husband and three (3) children. Her husband had a workplace accident so can no longer work and her children all attend the local school. Melanie lease was coming up for renewal. When she asked the Agent about it, three weeks before the end of the lease the Agent called Melanie to inform her that the landlord would like to offer her a 6- or 12-month extension. Melanie said she didn't mind and would be happy to have a 12-month extension. 15 days from the end date of her fixed term lease Melanie received an email from the Agent with a Termination Notice. When she called the Agent to ask what happened to the renewal, they said the landlord changed their mind. Melanie now only has 15 days to look for a new property. As she lives rurally there are not many properties in the same area, and she does not want to move and disrupt the children's schooling. Her husband also cannot help with the move due to his disability to Melanie will have to do all the moving and likely have to take time off work in which to do this and in managing her young family. There was just no way Melanie can move her and her family out of the house and find a new place within just 2 weeks. Melanie cannot even appeal to the NTCAT to be given more time, as the landlord has validly terminated the lease.

41.1.3 **Case Study 3**

Kel lives in unit complex. She has had a pet snake for 12 years (Murray Darling Carpet Snake)- for which she has all the permits/licenses from Parks and Wildlife to keep it residentially. Kel keeps the snake securely locked up. Issues arose after Kel's next-door neighbour complained to the landlord about the snake. The neighbour started going around to other residents inciting hysteria about the snake. Kel received 2 letters from body corporate saying that she could not keep the snake at the premises. Kel instructs that she either put on the application form or lease that she would have a pet snake and a pet cat, and her application was accepted. However, instructs that the Agent appeared have appeared to 'conveniently' misplace that. A standard term in the tenancy agreement says that a tenant is not to;

'Keep any animals or birds including reptiles and mammals upon the property'

The landlord made an agreement with Kel that if she got rid of the snake, they would renew her lease. Kel got rid of the snake and the Agent then informed her that they are still not going to renew her lease. The Agent sent Kel a termination notice in the same email trail that they sent her telling her that if the snake is removed, they would renew her lease! Kel advised the Agent that the snake had been removed and the Agent then told Kel that the property is 'no longer available', so the notice of termination still stands.

DCLS Recommendation and Model Legislation

DCLS Recommendation 17

a. DCLS recommend the removal of no-cause eviction. DCLS advocate that reasons now need to be provided to avoid discrimination and to protect the tenant from unjust dealings.

b. DCLS recommends the inclusion of a 120-day notice period in the case of a 'grounds' eviction.

Issue 18: Section 85 termination of periodic lease effective despite inadequate notice

This matter is dealt with at Issue 10 – Termination Generally.

Issue 19: Occupant to remain as tenant where tenant has died

Question 3

Should the Act be amended to:

a. apply section 82(1)(e) to public housing tenancies?;

b. limit the application of the deemed continuation of the tenancy under section 82(1)(e) to a set period, say six months, to enable smooth transition to a new tenancy?

DCLS RESPONSE

DCLS often encounters difficulties when advising clients when a sole tenant passes away. The nature of the enquiries falls into two categories. The first is when the family or occupants wish to maintain the tenancy, the second is where the termination of the tenancy is the desired outcome. This section in the Paper only deals with this subject in the context of public housing, but DCLS submits that there are larger problems with this issue.

42 Death of a co-tenant

Before addressing the difficulties of the death of a sole tenant it is important to note that there are no express terms as to what happens if a co-tenant passes away. The legal position is that, under common law, the death of a co-tenant means that the tenant who has passed has their name removed from the tenancy and the co-tenant name/s remain.

In this situation there is no option for the co-tenant/s to terminate the tenancy. It would not be uncommon for a co-tenant that there may be a preference for the remaining (often partner) to move closer to family or find the tenancy untenable for other reasons.

DCLS recommend the insertion into the legislation a term such as section 78 of the NSW legislation that allows for the possibility for a co-tenant to terminate the tenancy, regardless of whether the fixed term has ended, within 21 days of the date of the termination notice.

43 Maintain the tenancy

When a head tenant passes away leaving occupants in the property, either pre-approved (or known) or not known, the legislation adequately deals with the tenancy allowing the spouse, defacto partner, or dependants to stay in the property. It is silent on whether those occupants were known, but regardless, allows them to stay without becoming homeless.

DCLS submits that it agrees with the repeal of section 82(2), which makes exception for tenants in the Department of Housing accommodation, pending the remaining occupants being subject to the income and assets test.

In relation to the DoH tenancies the remaining occupiers will still subject to the DoH eligibility and if remaining occupants exceed the income and assets test then they should be given six (6) months to find alternative accommodation. Currently, the DoH policy allows recognised occupiers (who are residents not signatories to the tenancy agreement) to continue to reside in the property for us to six (6) weeks, allowing time to arrange alternative accommodation and not charge the occupiers rent during that time. DCLS argue that this is not enough time and should be extended to six (6) months and, with the added timeframe, the expectation that the occupants must continue to pay the rent, by way of a new tenancy agreement. A new tenancy agreement would be required as the old tenancy agreement could not be relied upon by the landlord as they cannot enforce against an occupant.

DCLS's position is that this should not be an arrangement unique to the DoH premises, but should be legislated for, allowing that private tenancies can be adopted in the same manner.

Additionally, the section 82(e) should be extended to recognise non-relative carers of the tenant.

44 Termination of the tenancy:

The termination of the tenancy upon the death of a sole tenant leaving no occupiers leave family members in a difficult position.

Issues such as the location of keys to the premises, whether they are allowed access to the premises and their ability to pack up and clean the premises are but a few examples left to remaining family and friends. When a sole tenant leaves a Will (the location of which is known to family) and it is clear as to who the executor of the Estate, then most Agents will allow access to the property in order to remove belongings, furniture and clean the premises, upon provision of the Will.

An intestate deceased tenant causes larger problems. Landlords and agents have raised concerns with allowing family or friends access to property whereby they may be leaving themselves exposed to risk of litigation due to the removal of property potentially illegally, outside of an Estate process through probate or letters of administration. Sometimes an agent may want the family to take action at the Supreme Court to get probate approved and make the administrator or executor known so that they are giving access to someone with authority. This may cause difficulty in the case whereby there are not sufficient funds in the Estate to justify taking this action.

This can cause a catch 22 situation, particularly where a family is not aware of whether the tenant had a Will and access to the property may be the only way of searching to ascertain the existence and whereabouts of a Will.

Further issue comes with the release of the security deposit or bond. Some Agents will not release the bond to family. Even at the prompting of the return of the bond to a bank account in the name of either the tenant or the Estate, which then leaves the responsibility of access to the funds to the appropriate financial institution, who will often at the very least, allow access to funds to organise a funeral with the provision of an invoice from a funeral provider.

45 Abandoned Goods:

Section 109 of the Act deals with abandoned goods after a tenancy has terminated. DCLS submit that there needs to be the insertion of an additional section at 109A which deals with 'abandoned documents'. If a tenant leaves the property, particularly in the case of a domestic violence incident or situation, they may leave quickly and be forced to abandon important personal documents.

DCLS advocates for the insertion of an identical provision to section 80A of the Western Australian legislation[72] which adds protection for these documents, and this includes that the landlord must take reasonable care of the documents for a period of 60 days after the tenancy is terminated.

[72] *Residential Tenancies Act 1987* (WA) s80A.

45.1.1 Case Study 1

A female tenant of a DoH property passed away, leaving a recognised occupant being her father (who had been diagnosed with dementia) that she cared for and a non-recognised occupant being her partner. The tenants partner stepped into the role of carer for his defacto 'father in law' but both faced eviction as they were subject to section 82(2) whereby the *Housing Act 1982* did not allow for a spouse, de facto partner or dependant, despite the legislation. The father and partner faced eviction and homelessness under the current legislation with the DoH only offering their policy of a 6-week transition period.

45.1.2 Case Study 2

A mother contacted TAS in relation to her son who had passed away in a tragic accident. He was in a private tenancy and she had been trying many services to try and find out if he had left a Will. He was in his late 20's when he passed away and she was not sure if he had got around to doing a Will.

The Agent for his property had told her that they would not allow her access to his property until she showed them the Will or Supreme Court documents that showed them that she had the right to access his property. We had to advise her that there was nothing in the law that allowed for this situation, but that she should ask the Agent for a supervised access to not remove anything except for a Will if they found one.

In this same case study, the mother needed access to the bond in order to bury her son. The family had no access to funds and as far as she knew her son had no money. The Agent refused to release the bond.

45.1.3 Case Study 3

Mary's husband passed away unexpectedly. Mary has been a stay at home Mum since her adult children were born and has never been in the workforce. Mary had been supported by her husband and now has no income, therefore cannot afford to pay the rent. Mary was stuck with an expensive lease arrangement with no means of paying the rent. Mary applied for Centrelink payments, but it took some 8 weeks before this was sorted out. Mary was stuck with making an application to NTCAT under the Act for hardship, not knowing what this would bring.

DCLS Recommendation and Model Legislation

DCLS agrees with the position that section 82(2) of the Act should be repealed and that section 82(1)(e) should be extended to recognise carers that occupy the premises.

DCLS recommends that there be inserted into the legislation, a whole section that deals with the death of a tenant and that, consistent with the law in New South Wales[73], that an application may be made to NTCAT to allow a legal personal representative or next of kin to access a property in the circumstances of the death of a sole tenant. Queensland also has legislation that allows QCAT (Queensland Civil Administrative Tribunal) to make orders to allow for the termination of a tenancy in the circumstances where a sole tenant dies.[74]

Similarly, there should be the inclusion in this specialist section as to how to go about claiming the bond. Victoria's bond authority has a special form to be completed by the legal representative or next of kin to claim the bond.[75] If the Northern Territory had a bond authority this could be attached as one of the functions of this body.

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[73] *Residential Tenancies Act 2010* (NSW) s108, 133.
[74] *Residential Tenancies and Rooming Accommodation Act 2008* (QLD) s277(7).
[75] Consumer Affairs Victoria, Factsheet 'If a tenant or landlord dies' (3 September 2018) <https://www.consumer.vic.gov.au/housing/renting/ending-a-lease-or-residency/if-a-tenant-or-landlord-dies>.

This section should be extended beyond just access and cover the eventualities highlighted by the case studies with adequate safety guards.

DCLS Recommendation 18

a. Repeal section 82(2) of the Act; and

b. Section 82(1)(e) should be extended to carers that occupy the premises prior to the death of the sole tenant; and

c. Insert a whole new section into the legislation that deals with the death of a tenant, consistent with the law in NSW and includes provisions to allow access to the property for the purpose of searching for a copy of a Will or personal papers; and

d. Insert a section about how a legal representative goes about claiming the bond from a deceased persons tenancy.

Issue 20: Enable persons under 16 to enter tenancy agreements

Recommendation 14

Consider removing the minimum age qualification of 16 years for a minor to enter into a tenancy agreement from section 8 of the Act.

DCLS RESPONSE

DCLS opposes these amendments. This position is taken from concerns about the capacity of a minor to enter into a contract.

DCLS acknowledges the concern about protecting youth, particularly young single females who may be mothers, but submit that there must be another way to protect their interests and ensuring that they have access to shelter and safe housing.

Further, whilst there is the ability currently for a lease agreement to be signed by a person between the ages of 16 and 18, DCLS submit that this should not be done without the minor receiving specific tenancy advice about the contract they are about to enter. This is raised out of concerns not just for the tenant, but also to safeguard the landlord who may be entering into the agreement through a third-party Agent.

DCLS Recommendation and Model Legislation

DCLS Recommendation 19

a. DCLS opposes the recommendation from the Paper. There should be no amendments to Section 8 of the Act or removal the minimum age for a person to enter into a tenancy.

b. DCLS recommends the insertion at section 8 to safeguard any prospective tenant over the age of 16 and under the age of 18, to require legal advice to be given to the tenant prior to entry into the lease agreement.

Issue 21: Extend period of time to vacate in sections 100A and 104(3)

Question 4

Does section 105 provide sufficient direction and discretion to the NTCAT to consider and suspend an order of possession (under sections 100A or 104) where it is likely that a tenant might appeal the order, or should the Act be amended to align the effective period of an order for possession with the appeal period (i.e. remove the five business day requirement to deliver up vacant possession).

DCLS Response

DCLS agree with the submissions made by CAALAS/NAAJA from the 2010 Issues Paper. Terminations under section 100A and 104 are a regular occurrence and DCLS raises concerns that some tenants are not aware of the proceedings (regardless of service) or are not encouraged to seek legal advice upon being served with documents. DCLS submits that every attempt should be made by the landlord or Agent to contact the tenant by phone call or text message, on top of the obligations of service.

It is clear in many of these cases that by this time the relationship between the parties has broken down, so a legislated requirement to advise the tenant of proceedings by the normal means of contact should be compulsory. In relation to section 100A and 104 of the Act, five (5) business days does not give a tenant enough time to source new accommodation and an allowance of fourteen (14) days provides that additional time to pack and process the requirement to move.

In relation to the extension of an order under section 105 of the Act, DCLS submits that the tribunal has taken a very narrow reading of the discretion that it is allowed. DCLS contends that this extension is used rarely and posits that the reason that the extension is not considered in most cases is that the tenant has not received legal advice to have knowledge that it is an option. There should be room for NTCAT to consider additional options for discretion for showing compassion for people from lower socio-economic backgrounds or have fallen on hard times. These are often the tenants that will struggle to find alternative accommodation, particularly as they will not be able to raise a bond and two weeks rent in advance, pushing them into potential homelessness. There are also the additional burdens placed on those without family or other support, or where the eviction involves those with additional vulnerabilities (such as aged, people with a disability and people with young families).

DCLS Recommendation and Model Legislation

DCLS Recommendation 20

a. **Amend section 100A (3) to read:**
   (3) An order for possession has effect on the date specified in the order, which must be no later than 14 days after the date of the order, unless the operation of the order is suspended under section 105.
b. **b) Amend section 104(3) to read:**
   (3) An order for possession has effect on the date specified in the order, being not later than 14 days after the date of the order, unless the operation of the order is suspended under section 105.
c. **Amend section 105(2)(b) to read:**
   (b) if satisfied that there are circumstances that make it likely that the tenant will be able to pay all outstanding and future rent in relation to the premises
d. That if a termination order is to be made under section 100A or 104 of the Act, then the tenant should be encouraged to obtain legal advice as soon as possible; and
e. That in the case of a termination order, NTCAT is to consider a section 105 extension in all matters.

Issue 22: Inspections by prospective tenants or purchasers

Question 5

a. Does section 74 strike a fair balance between a landlord's need to access a premises to show prospective purchasers/tenants, and the tenant's right to quiet enjoyment?

b. Would that balance be improved if section 74 was amended to specify a specific number of inspections within a certain period and/or include an indemnity for the tenant's property?

DCLS RESPONSE

Section 74 of the Act provides that a landlord may enter the premises to show it to a prospective tenant or purchaser. The landlord is to give the tenant 24 hours' notice, and viewings may only be conducted between 7am and 9pm. If a landlord is to show a premises to a prospective tenant, this may only occur in the last 28 days of the current tenancy. Section 74 limits the number of inspections to "no more than a reasonable number of occasions"[76].

Other jurisdictions have approached this matter in varying ways. In Queensland, the landlord or their agent cannot conduct an auction or open house[77] without the tenants written consent[78]. Tasmania limits inspections for prospective tenants or purchasers to entry without approval of the tenant is limited to one inspection per day, maximum of five per week with a minimum of 48 hours' notice and limited between the hours of 8am and 6pm[79] but more can be agreed only by prior written approval of the tenant[80].

New South Wales must give 14 days' notice of intent to sell, must make all reasonable effort to agree to mutually agreeable days and times, the tenant must not unreasonably refuse, and the tenant does not have to make the residence available for viewings more than twice a week[81]. Victoria has approached the matter by allowing for 48 hours' notice to the tenant however the tenant may apply to the Tribunal to limit the days, times and purposes of entry[82].

DCLS has been approached by many tenants who have been impacted by the Act's lack of clarity of what is 'reasonable'.

46 Privacy

Another area raised by tenants, that is addressed by the Victorian Act, is that the Landlord may enter the rented premises to produce advertising images and videos. This is a growing area of concern with more landlords and their Agents using the internet to show prospective tenants or purchasers properties.

Victoria has addressed these concerns by incorporating into legislation restrictions on what can be produced and shown, and the tenant can object to using images or videos that can identify the tenants or occupiers, reveals sensitive information, increases the chance of theft or shows something that would be unreasonable to expect the tenant to remove or conceal.[83] It also specifically excludes identifying a person who is at risk of family violence or personal violence. These images or videos cannot be used unless the tenant has reviewed the images or videos and has given written consent to use them[84].

[76] *Residential Tenancies Act 1999* (NT) section 74(3).
[77] Defined in Qld as "an advertised period during which the premises that are for sale or rent may be entered by prospective buyers or tenants generally"; *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s 204
[78] *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s 204(2).
[79] *Residential Tenancies Act 1997* (Tas) s 56(4) (4B).
[80] *Residential Tenancies Act 1997* (Tas) s 56(4) (4A), 56(4) (4C).
[81] *Residential Tenancies Act 2010* (NSW) s 53.
[82] *Residential Tenancies Act 1997* (Vic) s86(2).
[83] *Residential Tenancies Act 1997*(Vic) s 89A.
[84] *Residential Tenancies Act 1997*(Vic) s 89A.

The way these privacy issues are addressed in the Victorian legislation are sensible and relevant considering the widespread use of the internet by landlords and their agents.

The Act needs to mirror this to acknowledge the concerns raised by tenants with regards to privacy and consent in the use of videos and images when advertising material is made of tenanted premises. This protects both the Landlords, their agents and the tenants from potential breaches of Australian privacy laws.

47 Inspections

In the case of inspections for sale or lease, the NT should adopt a reasonable approach that balances the needs of the landlord but respects the rights of the tenant with a minimum of 48 hours' notice for inspection no more than three times per week not to be held on consecutive days and only in the last 28 days of the tenancy, regardless of whether a fixed term or periodic tenancy.

These inspections should be limited to take place between the hours of 8am and 6pm and limited to no more than three potential purchasers or tenants per day but the number, days and times may be varied with written approval of the tenant. This should strike a fair balance between the landlords need to access the property and the tenants right to peace and quiet enjoyment.

48 Inspection Photographs

A further concern raised by tenants is that of how many and what sort of photographs may be taken by landlords or Agents during regular inspections. DCLS has received reports of Agents attending properties and taking, what is perceived to be, excessive photographs, including that of personal items and belongings. Particular concern is expressed around taking photographs in bedrooms, particularly children's bedrooms.

Whilst these photographs may be for the purpose of updating landlords on the status and condition of their property, the same principles should apply with relation to updating the legislation to reflect what is appropriate.

48.1.1 Case Study 1

Adrian called the Tenants' Advice Service with a complaint that he has had to hold open house inspection on every Saturday and Sunday for multiple consecutive weekends. He explained that this was having a large impact on his "peace and quiet enjoyment" as he worked long hours during the week and his young children attend school during the week and the weekends are the only time they have free to spend together. They were constantly being required to keep the premises at inspection standard and were being denied quality family time.

On top of this, the landlord was a builder and just kept turning up to the house with prospective buyers. Adrian felt that the Agent and landlord were being over demanding on their time and expectations. Adrian wanted to get out of their lease as they had not been told at the time they entered the lease agreement that the house was for sale, but unfortunately this is not a reason to terminate a lease in the Territory.

DCLS Recommendation and Model Legislation

DCLS Recommendation 21

a. Amend section 74 to state that:
   - Landlords must give a minimum of 48 hours' notice
   - Inspections can only take place in the final 28 days of a tenancy; this applies to both fixed term and periodic tenancies
   - Inspections are limited to take place between 8 am and 6pm and should be within a set window of not more than 2 hours.
   - No more than 3 potential purchasers or potential tenants per day
   - Maximum of three inspections per week not to be held on consecutive days

b. The times, days, duration and number of prospective purchasers or tenants can be varied by agreement by the tenant in writing

c. Add a section that mirrors the Victorian Act which protects the privacy of the tenants in the production of advertising material and any advertising material that is produced can only be used after being reviewed by the tenant and the tenants have given written consent for that material to be used.

d. Section 70 of the Act is to be amended to include provisions similar in nature to what the Victorian legislation contemplates for the sale and leasing materials.[85]

Issue 23: Effect of a drug premises order

DCLS RESPONSE

DCLS share the concerns raised by CAALAS/NAAJA and TEWLS in their submissions to the 2010 Issues Paper. It is relevant to note that no other jurisdiction in Australia has a specific provision enabling termination of a tenancy agreement on the basis that the property has an alleged drug association. In a situation that would enliven termination under section 88A of the Act a landlord can apply to NTCAT for termination under section 100(1)(a) of the Act. NTCAT may terminate a tenancy if it is satisfied that the tenant has 'used the premises, or caused or permitted the premises to be used, for an illegal purpose'. A drug premises order would satisfy the Tribunal that an order could be made under this section. Section 88A is therefore not necessary and should be repealed.

Section 100(1)(a) is the preferred method of terminating tenancies that are the subject of drug premises orders, as it allows the tenant the opportunity to be heard on the issue prior to the tenancy being terminated. Under section 100(1)(a), a Tribunal member can hear both sides of the stories and use their discretion to fix a termination date that addresses the needs of both parties. In situations where the tenant is appealing the drug premises order, the Tribunal member would be able to exercise their discretion to adjourn the proceeding pending the outcome of the appeal.

Whilst section 88A does allow a tenant 14 days to vacate the premises, in some cases this may not be enough time for a tenant to secure alternative accommodation. This would be particularly the case for financially disadvantaged tenants with children and animals. In response to the Paper's comments on this point, DCLS submit that placing the obligation on the tenant to seek NTCAT orders under sections 84, 104 or 105 places an unreasonable heavy burden on the tenant. This also raises the question as to what evidence is required prior to and sufficient for issuing a drug premises order.

It is unreasonable to expect a tenant (who in many cases may belong to a vulnerable class of persons) to be able to seek legal advice, lodge an urgent NTCAT application, challenge the drug premises order, arrange alternative accommodation and, if successful in obtaining accommodation, move their family and belongings to a the new premises all within a 14 day period. It is appropriate that the legal burden rest with the landlord.

[85] Ibid.

DCLS appreciate a landlord's desire to have the order invoked as soon as possible to preserve the value of the property, however, it is submitted that the impact on the tenant in these situations far outweighs the commercial impact on the landlord.

DCLS Recommendation and Model Legislation

DCLS Recommendation 22

a. That section 88A of the Act is repealed.

Issue 24: Excessive rents and valuations

DCLS RESPONSE

The existing legislation allows the tenants to challenge rent increases as being excessive. The ability of the Tribunal to have an independent valuation to be conducted is a sensible and measured one. If the Act is updated and includes DCLS recommendation[86] of limiting increases to 5% of current rent paid or a weighted index of 20% of the rents component of the housing group of the Consumer Price Index[87] whichever is the lesser this section would become redundant as both the current rent and the Consumer Price Index are independent of the valuation of the property.

However, if the Act does not incorporate these proposed amendments this section should stay as it provides a valuable, independent tool that assists the Tribunal to make considered, informed decisions about the rental value of a property.

DCLS Recommendation and Model Legislation

DCLS Recommendation 23

a. That section 42A of the Act should stay in its current form.

Issue 25: Presence of tenants for inspection reports

DCLS RESPONSE

As previously outlined in this submission tenants have a right to be present at all inspections of the tenanted property and should be informed clearly and unambiguously of their rights in a document that is provided to the tenant at the time of signing a tenancy agreement. This should also be stated again on the prescribed inspection report form that is recommended to be adopted. [88]

The presence of the tenant is essential in allowing the landlord or their agent and the tenant to agree on the terms used to describe the actual condition of the report that is produced. It has the potential to alleviate disputes and ambiguous terms when describing the condition of the premises and allows for the document to truly reflect, in the case of an incoming condition report, a true baseline of the premises. It also allows both parties to note or in some cases to rectify issues that are raised at the time they are identified.

Attendance by both parties allows each to identify and clearly state any goods or chattels that are included in the lease agreement and to be clearly identified on these reports to the satisfaction of both parties.

[86] As discussed at **Issue 7**.
[87] This weighted index is applied in the Australian Capital Territory for determining whether rent is excessive or not at *Residential Tenancies Act 1997* (ACT), s 68(2)(a).
[88] See Issue 5 and 13 of this Submission.

It is expected that there may be times when the tenant is not available to attend an inspection, the current legislation[89] provides for the landlord or their agent to conduct an inspection independent of the tenant. This should be the exception rather than the rule.

It should be noted that DCLS has also recommended in this submission, that the timeframes for a return of the incoming condition report be extended from three (3) days to two (2) weeks to bring it in line with other jurisdictions.

What is more important at this stage is that the tenant can respond, noting that this solely discusses the ingoing condition report as DCLS insist on the tenant attending the outgoing condition report inspection.

DCLS Recommendation and Model Legislation

DCLS Recommendation 24

a. DCLS acknowledges that there is no need for a tenant to be present at the ingoing inspection, however, if one is done it needs to be made clear to the tenant that one is being done, that they can, and should, attend but that, at the very least, the legislation is amended (both sections 25 and 110) to show how the condition report is to be given to the tenant for them to respond.

b. DCLS notes the recommendations detailed at **Issue 13**, as if the tenant is given an extended period to respond, 14 days, then the extended period should be enough for the tenant to comment and dispute the report.

c. DCLS recommends the inclusion of the ability for the tenant to be given the opportunity to rectify issues raised in the outgoing condition report unless there is a new tenant in the property at the time the rectification requirements are notified.

Issue 26: Long-term leases

DCLS RESPONSE

Long-term stable tenancies enable people to construct a home and make meaningful connections and contributions to their community. Without security of tenure, people are less inclined to make these contributions and participate in economic and social life as the cost benefit does not justify the effort.

Acknowledging the Territory's traditionally transient population, residents in the NT who seek long term re-assurance should not be dissuaded from seeing the Territory as a viable long-term home.

Whilst the current Act does not prevent the availability of long-term leases, it does not provide a legislative framework on how long-term leases would operate, both in respect to rent, terminating the lease early and bond.

Markets are often hesitant to enter into contractual arrangements without clear legislative framework providing guidance as to how such arrangements would operate. As such, many landlords and Agents do not offer long term leases as the outcome is unknown and most tenants do not realise that they can negotiate such agreements. The standard practice is for tenants to be offered multiple 12 months leases on the same contract terms.

[89] *Residential Tenancies Act 1999* (NT) s 25(3).

DCLS Recommendation and Model Legislation

DCLS submit that the following recommendations will improve tenure security and market confidence with long term leases.

DCLS Recommendation 25

a. A standard form tenancy agreement for leases over 24 months;
b. Regulation of rent increases for tenants during continuous occupation for leases over 24 months;
c. Specific allowances for reasonable modifications for leases over 24 months;
d. Regulation of the penalties a tenant is required to pay if they terminate a lease that is more than 24 months. This should be set at no more than one (1) month's rent per full unused year of the tenancy to the landlord (e.g. terminating a five (5) year lease during the second year will allow landlord to claim three (3) months' rent in compensation). The landlord would still be required to take reasonable steps to reduce their loss and must bring an action at NTCAT to recover loss for unused period within three (3) months as per current requirements under section 112 of the Act.
e. Introduce mandatory inspections every 12 or 24 months, depending on the length of the tenancy.
f. Introduce specific sections within the Act that deal with leases that are longer than 24 months and reasonable framework around rent, bond, early termination and modifications.

Issue 27: Pets

Question 6

a. Would a specific pet bond address landlord reluctance towards permitting pets? If so, how should the level of that bond be determined?
b. Alternatively, does a general rebuttable presumption in favour of keeping pets better reflect the changing rental market landscape?

DCLS RESPONSE

As noted in the Paper, the Act is silent on pets. For many people in the Northern Territory, pets are what makes a house a home. Keeping pets, such as dogs, has been found to have significant health benefits for their owners[90] and raising children around pets has been linked to higher self-esteem, cognitive developments and social skills.[91] These facts do not appear to be in dispute and generally the public appears in favour of pets in tenancies. It is just a matter of addressing the landlord concerns.

DCLS is of the view that the Act needs amending to make it easier for tenants to keep pets in residential properties and that the inclusion of a 'pet bond' is not appropriate for the reasons identified in the Paper.[92]

DCLS is in favour of question 6(b) posed by the Paper and suggests that the Northern Territory follow the approach taken by Victoria and ACT.

The tenant then has the rebuttable presumption whereby a landlord is required to apply for an order from NTCAT to refuse to consent to a pet, once they have received the request from the tenant.

[90] Steven Feldman, 'Alleviating Anxiety, Stress and Depression with the Pet Effect', Anxiety and Depression Association of America (November 2018) < https://adaa.org/learn-from-us/from-the-experts/blog-posts/consumer/alleviating-anxiety-stress-and-depression-pet>.
[91] Hal Herzog Ph.D., Psychology Today, 'Why Kids with Pets are better off', (12 July 2017) < https://www.psychologytoday.com/us/blog/animals-and-us/201707/why-kids-pets-are-better>.
[92] Northern Territory Government, 'Discussion Paper – Review of the *Residential Tenancies Act 1999*' (July 2019) P 66 - 67.

DCLS also submits that this is an important requirement for people with disabilities who may have a support/assistance animal. These are not pets, yet are often referred to as pets, which insinuates that the tenant has a choice to have them in their lives and homes. They are highly trained disability support service that enable a person with a disability to safely participate in personal and public life activities. Importantly, assistance animals are defined by the *Disability Discrimination Act* and the landlord refusing to allow these animals within a tenancy and premises could leave them open to a discrimination action.[93]

An outgoing tenant can still be required to undertake cleaning and fumigation if there is pet-related damage to the property that goes beyond fair wear and tear, but this must be consistent with their existing duty not to damage the property and to leave it in a reasonably clean condition and provides adequate protection of the landlord's interest.[94]

48.1.2 **Case Study 1**

See case study 3 on page 45. It is noted that the Honourable Paul Kirby stated during debate of the residential tenancy database legislation the issues that he had problems obtaining a tenancy with two dogs.[95]

DCLS Recommendation and Model Legislation

DCLS Recommendation 26

a. That a section be added to the legislation providing for pets to be accepted in to properties as a default (unless the premises are subject to a body corporate approval or condition preventing the keeping of pets) and that both tenants and landlords, or their Agents, have the ability to apply for an order from NTCAT to show that a landlord is, or is not, unreasonably refusing.

b. The Government should consider amending the strata title laws to insert similar provisions in relation to a default provision to allow pets and to prevent discrimination against tenants having pets.

c. The section can be modelled on the recently passed Victorian legislation.[96]

[93] *Disability Discrimination Act 1992* (Cth) s 9.
[94] *Residential Tenancies Act 1999* (NT) s 51.
[95] Northern Territory, *Parliamentary Debates*, Legislative Assembly, 10 May 2018, Page 393-3940 (Mr Paul Kirby MLA).
[96] *Residential Tenancies Amendment Act 2018* (Vic) sections 71A – 71E.

Issue 28: Picture hooks

Question 7

a. Should section 55 of the Act be amended to allow tenants to make minor alterations (limited to a certain dollar value or a list of permissible activities) without requiring the landlord's consent?

b. Should the Act be amended to qualify that a landlord's consent to alterations or additions may not be unreasonably withheld?

c. Does section 55(3) provide a landlord with sufficient safeguard and recourse in respect of tenant alterations?

DCLS RESPONSE

The Act allows tenants to make modifications to premises, provided the landlord has approved. However, it is standard practice for landlords to prohibit any modification at all, including placing picture hooks or adhesive on walls. With tenants renting for longer periods, the difficulties that tenants face with social practices associated with homemaking, such as personalising a dwelling, also increases.

DCLS submit that this discussion should be broadened to include a question as to whether the Act should be amended to make it easier for tenants to make minor alterations and improvements to their homes.

It has become increasingly common for Australians to live large portions of their lives in their rental properties, sharing memories, building relationships, contributing to their local communities and raising families. They are no longer rental properties but homes. To recognise this transition of 21st century living in Australia, Territorians need to be given the ability to make improvements and modifications to their homes.

Having a sense of ownership over rental properties is likely to lead to better outcomes for tenants and landlords alike, as the value of the property is improved, tenants stay in the property for longer and take better care of their homes over the course of their tenure.

Often landlords have little capacity to attend to the unique needs of tenants to make their properties feel more like homes. Currently, life-long tenants are not permitted to make reasonable improvements to their homes. There is also no clear process to request minor modifications and tenants are often waiting on replies from Agents or landlords who can take weeks or months to reply to a simple request such as inserting a picture frame hanger on the wall.

For major modifications to a house, whether it be security modifications or installing railing to assist with disability, no process exists and tenants who need such modifications are often denied housing as a result. The National Shelter report completed in conjunction with CHOICE in 2017 found that 62% of people in rental properties feel like they can't ask for changes to their homes.[97]

The Act is failing to provide appropriate mechanisms to facilitate this process. Good tenancy law should encourage tenants to invest in their homes where benefits can be enjoyed by both tenants and landlords.

This includes tenants being able to hang pictures on their walls, re-paint old walls and install additional security measures. Other States are leading the way in this area of reform by having no requirement for landlord approval for small improvements and implied approval for larger improvements if no response within 14 days, with a 'no unreasonable refusal' measure.

[97] CHOICE, '*Unsettled*', 2017, page 12.

DCLS submit that the NT should follow the recent amendments made in Victoria on this issue.[98] Victorian legislation allows tenants to make prescribed modifications without the landlord's consent. These changes also give an appeal option, through making an application to a tribunal and provide that a landlord cannot unreasonably refuse requests for changes. The legislation also acknowledges their equal opportunity and discrimination legislation.[99] Further, they also acknowledge required changes to allow for the safety of DFV survivors.[100]

Finally, these changes also acknowledge modifications that may be required for tenants with disabilities and aged care needs. The legislation incorporates modifications that are required for health and safety purposes and that are reasonable alterations within the meaning of the Victorian Equal Opportunity Act 2010 and that have been assessed by an occupational therapist or prescribed practitioner.[101]

48.1.3 **Case Study 1**

Rachel contacted the Tenants' Advice Service with the help of her case worker as she had experienced domestic violence. The case worker had secured funding to replace the locks and install camera's at Rachel's premises to assist protecting her. The case worker had contacted the Agent, who in turn advised that the landlord did not approve of the installation, yet also would not allow her to terminate her lease agreement. The TAS intervention assisted Rachel after some negotiation, but this should not have been the case, the landlord should not have had a choice to allow the installation given that it had a direct impact on the safety of their tenant, and reasonable in the circumstances.

DCLS Recommendation and Model Legislation

DCLS Recommendation 27

a. Section 55 should be amended to be titled 'Modifications to Rented Premises' and amended in line with recent Victorian legislative changes.

[98] *Residential Tenancies Amendment Act 2018* (VIC) s 49 citing amendments to the *Residential Tenancies Act 1997* (Vic) s 64.
[99] Ibid at section 49(1B) (c).
[100] Ibid at section 49(1B) (f).
[101] Ibid at section 49 (1B) (c).

Issue 29: Tenancy Trust Account Penalties

Recommendation 15

a) Consider amending section 116 to provide a strict liability offence, subject to a penalty of 20 penalty units, for failure to comply with the requirement to place unclaimed bond monies in the Tenancy Trust Account; and

b) Consider amending the Regulations to provide discretion for the Commissioner to issue an infringement notice of 4 penalty units for an offence against section 116.

DCLS RESPONSE

DCLS has long held concerns about the holding of bond funds and the accountability of landlords and their Agents. Therefore, it is no surprise that, particularly with the admission of the Paper that no prosecutions have occurred as a result of infringements by landlords under the Act, that DCLS supports any effort to hold landlords and Agents more accountable.

See further discussion on this point under **Issue 41**.

DCLS Recommendation and Model Legislation

DCLS Recommendation 28

a. DCLS supports Recommendation 15 of the Paper.

Issue 30: Agent's Authorisation of Repairs

See discussion of repairs generally in Issue 14.

Issue 31: Application to tribunal after lease has concluded

Recommendation 16

Consider amending section 122(1) to clarify that an application for compensation may be brought either during or after the end of a tenancy agreement.

DCLS RESPONSE

The current scheme in respect to breaches of a tenancy agreement and associated compensation under section 122 requires further clarity.

DCLS agrees with the general comments in the Paper, that tenants should not be disadvantaged from bringing a claim against the landlord when a landlord is permitted to bring such claims against a tenant.

49 Power imbalance

One of the biggest complications that affect many of the issues raised in the Paper and this response is that there is a power imbalance between a landlord and tenant. A common concern DCLS hears from tenants is that they do not want to rock the boat, particularly where they may be on a periodical tenancy whereby a landlord can terminate their tenancy at any time with no reason. So, a tenant will be less likely to report repair requirements or raise anything that may be their right to do so for fear that they will be evicted. Therefore, when it comes to making an application for compensation, they will often raise the issues when their tenancy is terminated.

This is particularly a problem if the landlord knows the law well and uses this against the tenant.

The very notion flies in the face of the Objectives of the Act in fairly balancing the rights of tenants and landlords. DCLS disagrees with the approach taken by Member Gearin in the case of *Christie-Johnston* in relation to this issue and does not believe a party should be barred from bringing a claim resulting from a breach of a tenancy agreement, if that claim is brought within three (3) years from the expiration of the tenancy agreement.

The approach generally been taken by DCLS in advising clients, is that they may claim compensation under s 122 from breaches arising under the tenancy agreement, in line with the Territory's general three (3) year limitation period.[102] However, there lacks clarity as to the date causes of actions for breaches under a tenancy agreement arises.

On the one hand, it could be argued that the cause of action is the day in which a party does not meet their obligations under the Act. On the other, it could be argued that the cause is the day in which the breaching party, failed to comply with a breach notice. For example, if a landlord fails to undertake their obligations in respect to emergency repairs, it is unclear whether the breach is committed at the expiration of 14 days from the date the landlord was notified of the need for repairs, or from the date specified in a breach notice by which time the landlord was required to rectify the relevant breach.

A further issue is whether a tenant or landlord can claim compensation under section 122 if they have not served a breach notice on the other party at the time the breach occurred. The process surrounding breach notices is poorly understood by landlords and tenants, and tenants often present to DCLS late in their tenancy disgruntled about repair issues which they were not aware could have been resolved using a breach notice.

Legislation should make clear that tenants should not be precluded from bringing a claim under section 122 at the end of a tenancy, if a tenant failed to issue a breach notice on the landlord during the tenancy.

Finally, there is no general provision within the Act, that allows for a tenancy dispute to be brought at the NTCAT. DCLS have identified several legal issues and situations that do not fall neatly into a defined section within the Act. There is therefore a jurisdictional question, as to whether NTCAT can hear such matters.

To account for these grey areas, a general provision should be inserted into the Act to provide the NTCAT with jurisdiction to deal with all types of residential tenancy related issues. This is particularly salient for issues such as disputes between co-tenants that at present can only be dealt with in small claims division of NTCAT despite them being tenancy related.

49.1.1 **Case Study 1**

Chelsea was a long-term tenant of a rural property. Chelsea had terminated the tenancy after 7 years and wanted to make the landlord accountable for years of neglect of the property. Chelsea had done a lot of work to the property herself, particularly to the garden, but there were many things wrong with the internal workings of the property. There were also problems towards the end of the tenancy with her being coerced into signing new agreements with promises to repair things that were wrong and statements that this couldn't be done until she signed the agreement extension.

She took the landlord to NTCAT but was not successful on many of her claims as she was outside of the limitation period.

49.1.2 **Case Study 2**

Alfie lived in a property for 40 years and never had a lease agreement. He had reported a number of problems, particularly with his air conditioning. The house itself was little more than a slum, just a group of sheds put together, with poor hygiene and a faulty toilet and shower. The landlord said they were going to fix things at the start, but then towards the end, said that if Alfie didn't like it that he could go and live somewhere else and threatened to terminate his tenancy. As he was on a periodic tenancy he just shut up as he didn't want to move as he had lived there for so long.

[102] *Limitation Act 1981* (NT) s 12.

DCLS Recommendation and Model Legislation

DCLS Recommendation 29

a. Legislation should provide that either party can bring an application for compensation during the course of the tenancy, or three (3) years from the termination of the tenancy agreement; and
b. Amend section 122 to allow either party to bring a claim for compensation despite not serving a breach notice at the time of contravention; and
c. Insert a general provision into the Act, providing NTCAT with jurisdiction to determine any matter relating to residential tenancies; and
d. Insert a term making it illegal to arbitrarily terminate on the basis of a periodic tenancy if a complaint has been made about repairs.

Issue 32: Waiving of rights under the Act/Consent to breaches of the Act and Compensation

Recommendation 17

Consider amending section 122(3)(b) to clarify that, when taking into account an applicant's consent to a breach, the NTCAT is to have regard to whether the applicant obtained tangible benefit from the waiver that the applicant would otherwise not have obtained had the Act and the tenancy agreement been complied with.

DCLS RESPONSE

DCLS fully supports the Discussion Papers analysis of *Christie-Johnston* in respect to tenants waiving their rights under the Act. It would be contrary to the objectives of the Act for the legislature to intend that a tenant can waive their rights without deriving benefit given the inferior bargaining power of tenants.

It is not unreasonable to envisage situations where landlords may persuade tenants to forgo their rights with little or no tangible benefit to the tenant (e.g. landlord forgoing their obligation to repair in exchange for a lease renewal). DCLS maintains that tenant should not be able to forgo their rights under any circumstances, due to their inherent vulnerability in the landlord tenant relationship.

In the interests of achieving the objects of the Act, and the clear legislative intention by virtue of section 20 that landlords are not permitted to contract out (or avoid) their obligations under the Act, section 122 should be amended as per Recommendation 17.

DCLS Recommendation and Model Legislation

DCLS Recommendation 30

a. DCLS agrees with Recommendation 17 and add that should NTCAT be inclined to accept that the tenant had knowledge of their rights, whether they had received legal advice to support their decision.

Issue 33: Minimum Standards

DCLS RESPONSE

DCLS submits that there are a number of issues with the Paper's analysis of minimum standards in rental properties and how Part 7 of the Act plays out in the day to day life of tenants within the NT.

It is a prudent time to remind us that shelter is a fundamental human right and that shelter underpins the essential requirements for development for children and a fair and equitable society. Article 25 of the Universal Declaration of Human Rights provides that:

> "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including……housing"[103]

Further, to ensure that the NT is an attractive proposition for new residents it is essential that the housing on offer is up to an equal standard of that of our interstate counterparts.

It is a frequent occurrence that despite the application of section 47, landlords enter into tenancy agreements where the premises or ancillary property is either not habitable or does not meet applicable health and safety requirements expected under Acts applicable to rental properties within the Territory. Despite the penalty in doing so, as the Paper indicates, there has not been a single investigation into a contravention of the Act since its inception.

Landlords therefore have nothing to fear in providing substandard residential accommodation as they are safe with the knowledge that they will not be penalised for doing so and at worse will have to repair the property following an order from NTCAT to do so. Many tenants accept these substandard conditions as a 'fact of life' of renting within the Territory and often discover such issues only after having signed the lease agreement.

DCLS frequently finds vulnerable or low-income clients in substandard residential accommodation. This is often due to several factors including lack of affordable housing for low income people, long public housing waitlists, costs associated with moving tenancies, cheaper rent and the high prevalence of homelessness in the NT. Given this housing crisis, tenants are willing to accept squalid living conditions just to avoid homelessness. The result is that landlord's lease properties, rooms or dongas that fall disgracefully short of basic living standards. Typically, these tenants have a poor understanding of their legal rights and often do not have the capacity or want to avoid bringing an action at NTCAT for fear of eviction or rent increase.

It would be naïve to assume every residential building or dwelling provided in the Northern Territory was constructed and certified in accordance with building codes and standards. Outside the urban centres of Darwin and Alice Springs, many tenants live in makeshift dongas, rooms or other dwellings on rural properties. Moreover, whilst residential properties at the time of construction (some over 40 years ago) may have met with building codes of the day, some of these properties have undergone no repairs or maintenance since construction and are in a state of absolute disrepair.

Issues particular to the NT that DCLS frequently encounters include severe mould, lack of basic locks and security, no provision of heating or cooling, vermin and pest issues and lack of basic kitchen facilities. The detrimental effect to health, wellbeing and safety caused by substandard living arrangements have been well stated.

It is not unreasonable to explicitly include in the legislation, specific provision outlining minimum living standards that are to apply to all residential tenancies within the NT. This would help tenants become more aware of basic standards they should be entitled to and provide a clear message to landlords what is expected under the law, rather than the vague standards that the legislation currently employs.

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[103] Chris Sidoti, 'Housing as a human right' (National Conference on Homelessness Council to Homeless Persons, 4 September 1996)< https://catalogue.nla.gov.au/Record/28323>.

Both Queensland and Tasmania have set prescribed minimum standards which set the bar higher than our current requirements. Tasmania defines premises as must (not a definitive list):

- be weatherproof and structurally sound;
- be clean and in good repair;
- have a flushable toilet, in a room that contains a vent or opening window;
- have a bathroom with a bath or shower, and a washbasin;
- have a functioning kitchen sink, stovetop (with a prescribed number of heating elements) and oven;
- have a functioning electricity and heating supply;
- have window coverings for privacy; and
- have adequate ventilation (ss 36I–36O).[104]

South Australia have taken additional steps to introduce minimum prescribed housing standards which provide even more detail as to the basic living standards that should be expected by tenants.

The following case studies represent clear examples where landlords feel no shame in providing substandard living conditions to tenants and still charge rent. DCLS has photos available of unsatisfactory and substandard living situations if the Department requires any more persuasion as to while it is vital that minimum standards are legislated. Many other case examples of this kind can be produced.

49.1.3 **Case Study 1**

Mark and Doris live in premises supplied by community housing. The property is an elevated shed, with no kitchen or bathroom facilities. The steps up to the shed are deteriorating and the front door is broken. Mark and Doris reported that they do not sleep in the house as it is too dangerous, but they are paying the estimated equivalent of a two-bedroom unit in a normal residential area.

49.1.4 **Case Study 2**

Fred was living in a one-bedroom bedsit 'granny flat' with a shared bathroom set up like a duplex with another 'granny flat'. There were little in the way of cooking facilities and when Fred made complaints about the air conditioner not working the landlord's representative attended the property and removed the pipe which supplied water to the toilet and, at the same time, removed the box air conditioner leaving a hole in the wall exposing the premises to vermin. The toilet was then left to overflow with an inability to be flushed.

[104] *Residential Tenancy Act 1997* (TAS) Part 3B.

DCLS Recommendation and Model Legislation

The current standard set by the Act of clean and suitable, habitable and safe, is not definitive enough to lay out for landlords what is required. In order to increase the living standards for the tenants of the NT and try to alleviate the issue of them being taken advantage of it is vital that the legislature set what they expect that standard to be.

DCLS Recommendation 31

a. DCLS strongly recommends the adoption of the *Housing Improvement Regulations 2017* (SA). There is no reasonable basis as to why Territorians should be in any way disadvantaged in respect to the provision of basic living standards. It is a minor imposition to amend the current legislation to reflect what is largely basic human rights however would have dramatic effects for low income tenants who are forced to live in inhumane conditions.

Issue 34: Tenancy Databases

DCLS RESPONSE

DCLS has had to intervene in several tenancy database listings since the changes were introduced in July 2018.

These have required discussions with Agents to point out their obligations and the landlord's obligations. DCLS would like to put these issues down as teething problems with the new legislation, but what is of bigger concern to the Tenants' Advice Service is the number of reports from tenants that landlords and Agents are still using the threat of a tenancy database listing as a stick.

It is also apparent that most of these threats are without legal justification as the situations would not support a listing. We also have tenants report that they have been told that they have been 'put on databases' or 'blacklisted' despite there being no compliance with the notice requirements.[105]

This unconscionable behaviour or scare tactics raises similar concerns to those dealt with in **Issue 41** of these submissions and should be dealt with as recommended there.

DCLS also raises concerns about the potential landlord inaction in relation to the accuracy of listings. The example given at section 130 of the Act, whereby the landlord receives payment in full for a debt and has an obligation to correct the listing, raises unease as to whether this is being done.

DCLS Recommendation and Model Legislation

DCLS Recommendation 32

a. Recommendations as suggested at **Issue 41** in relation to poor landlord or Agent behaviour.

b. At this stage without more case studies the concerns are only suspicions and no amendments can be suggested to Part 14 of the Act.

c. See recommendation at **Issue 42** in relation to restricting posting an FDV victim on a residential tenancy database.

[105] *Residential Tenancies Act 1999* (NT) Part 14.

Issue 35: Alternative Bond Products

Recommendation 18

The Act should not be amended to permit bond surety products as an alternative to the security deposit.

DCLS RESPONSE

DCLS strongly supports the analysis and discussion presented by the Paper that Bond Surety Products should not be permitted under the legislation.

As the Paper correctly identifies, often these products attract lower income tenants without the financial means to raise the bond money up front. Tenants in this position can be particularly vulnerable to marketing techniques and strategies and may lack the level of consumer and financial sophistication to identify whether these products are suitable for their circumstances.

Reports from tenants' unions and services in other states where these products are available state that the products operate in a similar way to pay-day loan contracts. Commonly, financially illiterate and/or vulnerable tenants sign up to the product not fully understanding the terms of the contract, then they will be required to pay more than the original cost of the bond or that penalty rates may be charged for late payment. These products can place tenants in further financial stress and have a flow on effect in restricting tenant's ability to secure their next rental property.

As the Paper identifies, not-for-profit services already assist low income tenants in raising bonds through interest free loans and other support services. There is therefore no additional benefit to tenants by allowing these products to exist in the tenancy market.

DCLS Recommendation and Model Legislation

DCLS Recommendation 33

a. DCLS recommends that Bond Surety Products should be explicitly **not** permitted under the Act. If for any reason, these products were allowed onto the market, DCLS would strongly recommend that the maximum amount that a company may charge for such products be capped by the legislation to prevent any unconscionable conduct; and

b. In advocating for no Bond Surety Products, DCLS also recognises that it is very difficult for tenants to raise the money for a bond, particularly those on income that is below the poverty line. DCLS advocates for bond to be paid off in instalments for those that can show that they are having difficulty raising the funds.

Issue 36: Mortgagee in Possession

Question 9

Should section 107 of the Act be amended to enable the Supreme Court to vest the landlord's interest under a tenancy agreement when it grants an order of possession to a mortgagee?

DCLS RESPONSE

DCLS receives enquiries from tenants whose premises is subject to re-possession on a fairly regular basis, particularly in the current difficult financial times.

DCLS acknowledges the difficulty faced with having this matter dealt with in multiple jurisdictions, particularly that it likely means that the owner of the property incurs additional legal fees.

DCLS's appreciates that it would be more efficient for the Supreme Court to deal with all aspects of a mortgagee's application for possession in the one jurisdiction but DHLS raises concerns that when the landlord owner has shut down communications with the bank, it is not unusual for the bank to be unaware of a landlord that may be self-managing their property and therefore the bank has no knowledge of the existence of a tenant. This means that there is a concern that (as noted in the case study example) the tenant will not have knowledge of the proceedings.

The issue of vacant possession is also a matter that should be raised in this context. As long as all attempts have been made to raise the issue with the tenant (for example, compulsory attendance to serve documents to a tenant or pursue appropriate investigations to find out if there is a tenancy agreement in place), then section 107 of the Act proceedings could be moved to merge with the Supreme Court proceedings.

However, if the bank is seeking vacant possession then DCLS argue that the matter needs to stay under the purview of NTCAT jurisdiction. This is to ensure that the rights of the tenant are utmost when considering their rights under the Act under the terms and conditions of their tenancy agreement.

49.1.5 **Case Study 1**

Marvin was served documents to attend the Supreme Court in a weeks' time by the Sheriff. The problem with this is that Marvin was the tenant, not the owner of the property. He returned home and found the documents on his front doorstep. DCLS assisted Marvin to contact the name of the lawyer on the documents and it became apparent that the lawyer, who was acting for the bank to repossess the property, did not know that Marvin existed. Marvin was an immigrant who was now anxious about his status in the property and, despite DCLS intervention, just wanted to move out as he thought that he was going to be kicked out in a weeks' time. This is an example of where the bank clearly had no knowledge of the tenancy and if the matter had proceeded at the Supreme Court the Sheriff would have returned in 7 days and changed the locks. In this case a two-step process was advantageous as he was able to rest in the knowledge that at least he knew that the new landlord could not kick him out immediately.

DCLS Recommendation and Model Legislation

DCLS Recommendation 34

a. DCLS raises objection to combining the jurisdiction whereby it may mean that the rights of the Supreme Court can order immediate vacant possession, forcing the tenant to attend a higher jurisdiction unrepresented and without knowledge of the process. By keeping the jurisdiction at NTCAT the tenant is provided with a safer space to raise their concerns during a possession hearing.

Issue 37: Standard form Condition Reports, Tenancy Agreements and Basic Rights Factsheet

DCLS SUBMISSION

The provision of standard form condition reports, tenancy agreements, information sheets and a basic rights factsheet would arguably mitigate many of the issues raised in the Paper and these submissions.

The standard forms have so far been discussed in Issues 4, 5, 13 and 38. This shows that the emerging theme is that tenants and landlords alike do not completely understand their rights and responsibilities before entering into a tenancy agreement and that much of this could be avoided or mitigated by supplying them with as much information up front as possible.

DCLS recognises that there are some Agents that supply varying forms of information up front. These include a broad range of information, including break lease, who to call if there are urgent repairs, and what a tenant is and isn't to do in a tenancy.

DCLS submits that there needs to be a consistent approach, with a broad range of information provided which is checked over to ensure that it is legally and factually correct.

Consumer Affairs is tasked and funded to provide education to tenants and landlords. DCLS submits that this falls directly in their brief, but the Tenants' Advice Service is happy to collaborate in a collegiate effort to ensure that tenants are well informed and understand their rights and responsibilities. It is particularly important that this information is consistent and objective.

49.1.6 **Case Study 1**

No specific case studies will be given for this issue because there are so many, but DCLS highlights that most of the tenants that approach the Tenants' Advice Service have little or no knowledge of their rights and obligations and have often been given misinformation by multiple sources.

DCLS Recommendation and Model Legislation

DCLS Recommendation 35

a. DCLS recommends the introduction of the compulsory provision of Information Sheets at the beginning and end of a tenancy.

b. DCLS recommends a consistent approach to the forms required for break lease in the same manner that there are termination forms provided by Consumer Affairs and that these include the correct information about subjects such as paying rent after a tenant has handed back the keys and how much fees should be paid in all circumstances.

c. DCLS recommends that landlords and Agents that don't supply or use the correct precedent forms should be issued a fine of penalty units and three findings against an Agent or landlord will see them added to the 'Rental Non-Compliance Register' discussed at Issue 41.

Issue 38: Interpreters and Informed Consent

DCLS SUBMISSION

The signing of a tenancy agreement is often one of the first major legal and contractual interactions Territorians experience throughout their lifetime. Unfortunately, the average lay person often fails to appreciate the contractual obligations they have agreed to perform in signing such an agreement. This can often lead to fractured relationships between Agents, landlords and tenants as misconceptions, held by both parties, can lead to conflict when issues start to emerge. This is particularly the case for non-English speakers, or where English is a second language. For non-English speakers, particularly new migrants, often, the signing of a tenancy agreement will not be by genuine informed consent and will often be heavily relied upon by the information provided by the other party (including the Agent) who has a vested interest in seeing the agreement signed.

To meet the objectives of the Act to improve the understanding of landlords and tenants' rights and obligations in relation to residential tenancies, two very simple mechanisms can be put in place. The first, is to encourage the use of free interpreter services to be used by tenants before signing a tenancy agreement so that they can understand their obligations.

It should be a legislative requirement that Agents and landlords must make a tenant aware of such a service before the tenancy agreement is signed regardless of the tenant's background or proficiency with the English language. This would help ensure tenants are aware of their obligations before signing and have an independent third party to help explain any terms that they find unclear or confusing. One of the issues identified by tenants to DCLS is that Agents and landlords often use terms that, even if English is a tenant's first language, they struggle to understand. Terms such as 'arrears', 'periodic', 'termination' and 'service'.

Arguably this may avoid any accusation that the tenant was coerced or entered into the tenancy agreement without knowing that they were signing, tempering any application that may be made about misleading conduct.

The second recommendation is that it should be a legislative requirement that a tenant must be provided with a basic rights factsheet upon signing the tenancy agreement. This should be a standardised fact sheet that clearly, unambiguously and in plain language states the basic rights, responsibilities, obligations of both the tenant and the landlord under a tenancy agreement.

Such a provision exists in NSW, known as the 'New Tenant checklist'. Section 26 of the *Residential Tenancies Act 2010* requires landlords and agents to provide an information statement and disclose certain material facts to a tenant before entering into a residential tenancy agreement.[106] Such facts include anything that is likely to have a significant bearing on a household's enjoyment of the property when they take up occupation.

It is not unreasonable to require such a factsheet and information statement to be provided when the tenant takes on a huge social and financial risk by moving into a new rental property. Failure to provide such a factsheet and information statement should have enforceable penalties and the absence of such information should be able to be as evidence at a tribunal hearing in favour of the tenant for termination of the tenancy. Any penalties applied should be allocated to the fidelity fund that currently funds education for both landlords and tenants, along with funding the tenants' advice service.

Finally, a basic rights factsheet will benefit both landlords and tenants which should include directing them to appropriate services where they can find answers to questions or information if they are uncertain about their rights and obligations under a tenancy agreement. Importantly, this is a matter of respect. If a prospective tenant has an Agent or landlord that uses an interpreter, they are more likely to engage in a positive way. They will see that the Agent respects them, and their future interactions are more likely to be productive.

[106] *Residential Tenancies Act 2010* (NSW) s 26.

DCLS notes that the DoH have advised that they endeavour to use the Aboriginal Interpreter Service when they engage with their tenants. DCLS strongly endorses that this should be compulsory for indigenous tenants generally for all tenancies where English is not the tenants first language.

49.1.7 **Case Study 1**

Albert is from a country in Africa and has recently moved to Australia with his family. His English skills are minimal, and he is still learning many of the ways Australia operates and how to live in this new country. He has moved into a rental property. At the beginning of his tenancy, nothing was explained to him and he was just told to sign a document if he wanted to live in the house. Albert cannot read or write English. Without understanding the contract, he signed the agreement as he was eager to move into a house. He was also given an ingoing condition report but left it blank as he did not understand what the document was or what he was supposed to do with it.

Albert immediately noticed several issues with the property. He would call the Agent to report the issues and they told him they would come around to fix them. After fixing only one or two of the issues, the Agent stopped replying to Albert's calls. He would continue to call the Agent anyway and often went into the office to complain but each time he was told his Agent was not available or busy.

At the end of the fixed term lease Albert decided to move out of the property because of ongoing issues he was having with the Agent. When he left, the Agent informed him that they were keeping his bond for repair issues at the property. Albert told them these were the issues he reported to them, but they never answered. The Agent responded that they have no record of his calls.

Albert now has to apply to NTCAT to recover his bond. He has nothing in writing of the times he reported the repair issues to the Agent because he cannot read or write English. Moreover, he is having great difficulty finding a new rental property as the Agent will not provide him with a good reference and he has no other rental history in Australia.

What is significant in this case is that the Agent stated in writing to a tenancy support worker once the tenancy had finished that they felt that the tenant did not need an interpreter, so they did not make any arrangements for one.

49.1.8 **Case study 2**

Hassan is from a country that does not have tenant rights and obligations. He wanted the landlord to fix things that were wrong with the property, but no-one had explained to him that in order to do this he needed to allow tradespeople or repairers access to the property. He was unsure of what they were attending for, so wasn't allowing them in the gate. This would have been solved with an Information Sheet or the Agent using an interpreter to explain that the repairs could not be done without him allowing access and that he had an obligation to let them in.

DCLS Recommendation and Model Legislation

DCLS Recommendation 36

a. The Information Sheet previously recommended at Issues 13 and 37 be used as a compulsory tool, along with the use of interpreters. If a prospective tenant indicates that they speak another language an interpreter should be used in all cases; and

b. Interpreters should also be compulsory when the tenant is entering into the lease agreement to ensure that they understand the agreement before signing and when completing the condition reports; and

c. The Aboriginal Interpreter Service may not be funded to provide free legal advice for Real Estate Agents. As such the Government should absorb the cost of the use of interpreters; or

d. The Government should raise the issue with the Department of Social Services (Cth) who currently fund the Australian Interpreter Service to provide this service and, therefore, should also fund the Aboriginal Interpreter Service for the same service.

Issue 39: Protection of Tenants Against Discrimination

DCLS SUBMISSION

'Half of all tenant's report to having experienced some form of discrimination when looking for a rental property in the last five years' according to the report '*Unsettled: Life in Australia's private rental market'*[107].

The range of discrimination was broad, but tenants who have low incomes were much more likely to have faced discrimination for receiving a Centrelink payment, for being a single parent or based on their race or disability.

In the NT, DCLS have received reports of the difficulty that our clients face when applying for a rental property whereby they believe that they have been discriminated against because of race. This has impacted both on Indigenous peoples and people from CALD backgrounds, especially where English was their second language.

The reports include comments such as 'the agents just look at my last name and then I am refused' and 'I have reported a problem with my property, but the Agent just doesn't understand me and I don't understand what they are saying to me either'. Agents now can use the Translating and Interpreting Service for free, so cost is not an excuse.[108]

For those who have managed to secure rental accommodation they report that the language barrier is an impediment to them reporting repairs required or having the reasons for refusal on some things explained satisfactorily. They report this leading to unexplained debt or repairs and maintenance not being affected.

Division 4 of the Northern Territory *Anti-Discrimination Act* prohibits discrimination against persons who apply for accommodation, request reasonable alternations with few exemptions.[109]

[107] CHOICE, 'UNSETTLED, Life in Australia's private rental market', (online, February 2017)< file:///C:/Users/tamara.DCLS.001/Downloads/The%20Australian%20Rental%20Market%20Report%202017%20(1).pdf> page 20.
[108] Department of Social Services, 'Free Interpreting Service for Real Estate Agencies',(unknown) < https://www.dss.gov.au/sites/default/files/documents/12_2017/d17_1164660_free_interpreting_service_-_real_estate_agencies.pdf>.
[109] *Anti-Discrimination Act 1992* (NT) Division 4.

We urge the inclusion of the same legislation to be included in the Act. With the inclusion of this in the Act, it will NTCAT to consider all matters relating to the tenancy as stated previously in this submission. A tenant then could identify in their application to NTCAT that they wish for this to be heard as an urgent application, increasing the potential that the premises is not leased whilst they are awaiting an outcome.

Any legislation should allow for a form of penalties to be imposed against landlords and/or Agents for unreasonably refusing a tenant the compulsory use of interpreters for support in explaining the lease agreement and for discussion of ongoing issues related to the tenancy.

The legislation should also provide that if a person applies for a tenancy and is knocked back that there is some evidence that an alternative tenant has been accepted or reasons given for the refusal. Discrimination happens for a multitude of reasons, but level of income is also a common report heard.[110]

49.1.9 **Case Study 1**

Michael is a person from another country that arrived in Australia on a student visa some years ago. He is now living here on a 457 visa which transfers to another visa allowing him to stay in Australia indefinitely. He was advised in writing that due to his 457-visa expiring in 6 months that he was being refused a tenancy agreement, leaving him and his family homeless.

49.1.10 **Case Study 2**

Deon is an Indigenous man that was forced to live in an Aboriginal Hostel despite having employment and adequate funds to pay for a tenancy. He had made numerous applications for a private tenancy but was told he was not successful in his applications. Deon suspected that he was being discriminated against because of his race, but he could not prove it.

DCLS Recommendation and Model Legislation

DCLS Recommendation 37

a. DCLS recommend inserting into the legislation a section that allows prospective tenants to make an application to NTCAT if they believe that they have been unreasonably refused a tenancy for NTCAT to make an order that the tenant is accepted for the specified tenancy, or alternatively, they can apply for compensation;

b. DCLS also urge the Government to proceed with recommendations made to a review of the ***Anti-Discrimination Act 1992*** (NT) commenced in 2017 which included recommendations specifically about tenants;

c. DCLS recommends that the insertion of a section on discrimination also extends to dealings during the tenancy, not just refusal of an application for tenancy.

[110] CHOICE, 'UNSETTLED, Life in Australia's private rental market', (online, February 2017)< file:///C:/Users/tamara.DCLS.001/Downloads/The%20Australian%20Rental%20Market%20Report%202017%20(1).pdf> page 21.

Issue 40: Time limit for utility bills

DCLS SUBMISSION

50 Time limits and copies of bills

Under current legislation there is no obligation on the part of the landlord to provide tenants with a copy of the utility bills which the tenant is required to pay under the terms of a tenancy agreement and no explicit timeframe with which to provide the tenant notification of the requirement to pay these bills, other than that of the limitation period which is not expressly stated within the Act.[111]

The standard amongst tenancy relationships is that the electricity and gas will be in the tenant's name and the water will remain in the landlord's name. This generally presents no issue for electricity and gas as tenants receive direct from the supplier bills pertaining to the utility used.

However, in the case of water, it is not uncommon for a landlord to present to a tenant several bills related to water or excess water at the end of a tenancy. This is problematic for many reasons:

- Low income tenants or tenants in tight financial situations can often not wear the cost of numerous bills being presented at the one time that can be the accumulation of months or sometimes years' worth of bills (sometimes amounting to thousands of dollars).

- Bills are often taken directly from the bond by the landlord at the end of a tenancy. This disadvantages tenants that rely on their bond to secure their tenancy for their next tenancy.

- Tenants are often not shown the bill or provided evidence of the actual cost incurred meaning they are sometimes made to pay bills that they are not liable for under the Act or tenancy agreement.

- If excess water bills have occurred as a result of a leak or other breakdown in water services that has gone undetected, it hinders tenant's ability to identify the issue at the time and resolve it.

Whilst it is less common in most jurisdictions for electricity bills to be in the landlord's name, it is still a relatively common occurrence in the NT. All the above four points apply equally lead to problems tenants face when they are not given electricity bills in a timely manner, particularly in terms of cutting down their usage and budgeting for everyday living. This impacts a tenant's ability to proactively reduce their usage and budget appropriately as required.

Despite the NTCAT's initial approach in *Hendy v Tshibongu* [112] that a landlord had an "implied duty to provide [utility] accounts to the tenants and demand payment as the bills were received" [113] the Tribunal reverse their approach in the latter case of *Chamberlain v Willis & Willis* [114] , stating:

> *It is not reasonable and equitable insofar as the landlord is concerned, it is not necessary to give business efficacy to the agreement, it is not so obvious that it goes without saying, it is difficult to give it clear expression, and it contradicts an express term of the agreement, that is, that the tenant will pay the water or excess water charges. The failure to render bills promptly may have caused prejudice to the tenant, as is alleged, but that does not justify such a radical departure from the terms of the agreement.*[115]

Given that tenants generally are less able than landlords to wear the cost of sudden or multiple bills, it is only fair that tenants should be able to budget for bills as they accrue and not be disadvantaged merely by virtue of being a tenant.

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[111] *Limitation Act 1981* (NT) s 12.
[112] *Hendy v Tshibongu* [2015] NTRTCmr 24.
[113] At [64], following the reasoning provided in the New South Wales case of *Taranellos and McCann v Ward* (2005) NSWCTTT 176. See also *Stapledon v Ramsay & Nicholson* [2015] NTRTCmr 17.
[114] *[2016]* NTCAT 095 (Unreported).
[115] Ibid at [8].

To alleviate the issues around utility charges legislation should stipulate a timeframe in which landlords are to supply tenants with a copy of the original invoices for utility bills. This will allow for greater accountability and the opportunity for tenants to reasonably budget and track their costs in order to reduce usage.

51 Calculations on rural properties

DCLS has been contacted on many occasions recently about properties with number of other premises on the property. Often the primary or main premise has the bore on their electrical meter, with no option to split the costs of the use of the bore. In this instance as the standard REINT contract allows that the tenant must pay the electricity bill, there are no options to apportion any of the electricity costs to other users on the property, meaning that the tenant of the 'main house' often is then required to pay for the electricity and water usage of the other tenants.

51.1.1 Case Study 1

David contacted DCLS as he had terminated his tenancy in October of 2018. He had been in the tenancy since 2013. In December 2018 he received an invoice from the Agent purporting to charge him for water bills incurred since the beginning of his tenancy. He felt that giving him the bills after his tenancy had been terminated was unconscionable but, apart from any limitation period issue, contractually he was obligated to pay these costs.

51.1.2 Case Study 2

Kylie was living on a rural property that had an additional 'donga' on the property. The tenants of the donga had a large market garden growing and Kylie had minimised the garden attached to the main house. There were the equivalent number of occupants in the properties, but Kylie was paying for the entire use of the power and bore. Kylie took issue with the excessive use of water that she was expected to pay in additional to the power bill as there were not two meters to the bore.

DCLS Recommendation and Model Legislation

DCLS Recommendation 38

a. DCLS recommends the NT adopt for all utility charges the legislative scheme as provided at section 39 under the NSW *Residential Tenancies Act*.[116]

b. That the same model should include all utility charges imposed by the landlord where bills are not in the tenant's name.

c. That the legislation should make it mandatory when the bill is not in the name of the tenant, that a copy be made available to the tenant, following the redaction of the landlord's postal address on the bill.

d. That there be compulsory concessions made by way of a standard clause inserted into multi dwelling rural property to allow additional concession for the main electricity payer for the use of a bore, where appropriate.

[116] *Residential Tenancies Act 1997* (NSW) s 39.

Issue 41: Accountability for Landlords and Agents/Enforcement of Infringements of the Act

DCLS SUBMISSION

In order to achieve the objectives of the Act in fairly in balancing the rights and obligations of tenants and landlords, both parties must be held accountable for breaches of the tenancy agreement. Without such accountability the rights and obligations as set out in the scheme is completely undermined as little deterrence exists for failure of non-compliance.

Such accountability can take on different forms; penalties imposed within the legislation, compensation awarded at tribunal hearings, information published on online databases, poor rental references and bad industry reputation. The key is to get a balance of these different tools of accountability so that everyone receives a fair go in the Territory's rental market.

While there currently exists accountability measures in place against tenants, the legislation lacks a regulatory scheme in holding landlords and their Agents accountable for their actions in relation to tenancy matters. This seems extraordinary given the inherent imbalance of power in the landlord/tenant relationship.

It is not unreasonable, that if tenants are held accountable for misdeeds under the Act, then landlords and their agents should similarly be held to the same standard. Given that not a single contravention has been pursued against a landlord or agent, is clear that the balance of fairness is yet to be struck.

The following represents key areas where DCLS frequently sees landlords and Agents contradict what would generally be expected of people engaging in commercial conduct.

52 Breaches of the Act

Breaches of the Act are common. The rule rather than the exception has been that tenants have their security deposit returned outside the seven (7) business day requirement and it is rare that the tenant will be provided all the documentation as stipulated under sections 110 and 112 of the Act. When landlords and agents face no penalty for such breaches, compliance with the Act becomes unnecessary in the course of business dealings.

Moreover, under the current legislative scheme, landlords and Agents stand more to gain for non-compliance with the Act. Taking the example again in respect to bonds, tenants frequently concede the unlawful loss of their bond as 'part of renting' rather than seeking to enforce their rights at NTCAT given the time and expense in doing so. Even if a tenant is successful at NTCAT the most they can hope to achieve is receiving the amount of bond that should have been returned to them as a course of law. They don't even get the application fee returned. In light of this, it could be argued that many landlords and their Agents withhold the bond as a common business practice, often not justifying the reasons why or making spurious claims as to the state and cleanliness of the property concerned.

Other breaches of the Act with respect to undertaking repairs in a timely manner or breaching the tenant's peace and quiet enjoyment are seldom met with cases at NTCAT. Even if a tenant is successful, they are offered little in the way of pecuniary reward for their efforts in ensuring the landlord complies with their obligations under the Act.

If the Territory is ever able to remove its reputation as having the worst tenancy laws in the country, landlords and Agents need to be held more accountable for such attitudes towards their obligations under the Act.

Tenants are not seeking financial compensation for when a landlord or Agent breaches their obligations under the Act. Tenants frequently report that they do not want to cause trouble, and 'do not want any money' however just want to make sure what happened to them 'does not happen to the next person'. It is often reported that one of the most frustrating behaviours from Agents is in regard to not answering emails or phone calls.

Strict liability offences within the Act that can be investigated and are enforceable, would ensure tenants are being treated fairly and can have their rights protected under the Act. The establishment of a landlord and Agent database would ensure landlords and Agents who disregard the law are called out and tenants can make informed decisions about where they choose to live. Given Agents are professionals in tenancy, NTCAT should be guided to take special consideration where a breach of the Act was conducted by an agent and an appropriate penalty to be given. This is particularly important where the Agent has appeared before the NTCAT for numerous similar related complaints or claims.

53 Misleading and Deceptive Conduct

Before a prospective tenant signs a lease, it is not unknown for representations to be made as to the condition of the property, a service that will be provided, or repairs that will occur. Unfortunately, all too often those promises turn out to be false once the tenant signs the agreement and takes possession.

Following the common law, such representations in pre-contractual negotiations would be ruled as misleading and deceptive conduct, with the potential to terminate the contract or at the very least seek compensation as to damages. Currently, the same does not seem to apply for residential tenancies and it is not clear within the current scheme that such accountability is present.

Tenancies typically last for 6 to 12 months. This means that the decision to choose a certain tenancy over another is considerable, given the emotional and financial costs of moving. Once a lease is signed, a tenant has little recourse or negotiating power and, in a sense, are 'locked in' to the contract. To allow tenants to make informed decisions, and ensure they are treated fairly, the Act should be amended to explicitly include prohibitions against landlords or their Agents making false or misleading representations to tenants during pre-contractual negotiations and as inducements to enter into tenancies. Having such rules specifically stated in the legislation will increase tenant's awareness as to their rights and send a clear message that unconscionable behaviour is not tolerated.

DCLS proposes that a tenant that enters into a tenancy agreement that is subject to misleading information by an Agent, have the ability to make an application to NTCAT to terminate their tenancy agreement.

Currently, Agents are bound by Code of Conduct Rules and must not publish, or cause to be published, any advertisement or other statement that is false, misleading or likely to deceive a person.[117] This prohibition should be included with the *Residential Tenancies Act* and apply to both landlords and Agents. It should also be extended to include prohibition from engaging in false or misleading pre-contractual negotiations and provide NTCAT with jurisdiction to hear such matters in their residential tenancies' jurisdiction.

54 Knowingly or Recklessly misrepresenting rights and obligations under the Act

Tenants generally have very little awareness of their rights and obligations under a tenancy agreement or the law. Their primary sources of knowledge come from Agents who manage the properties and from the agreement itself. Tenants are therefore incredibly dependent on information provided to them by Agents and they rely on its accuracy in informing their decisions.

Agents are professionals, working daily in the tenancy space. They should be the best and most accurate source of information relating to the rights and obligations of tenants as well as their own rights and obligations as Agents to landlords. Agents who deliberately misrepresent the law, withhold information they know would benefit a tenant or assert rights on tenants above what is stipulated in the legislation should be held accountable for their actions, given the vulnerability and dependence tenants have on their agents.

A list of common (but by no means exhaustive) examples DCLS sees includes:

- Agents pressuring tenants to sign "Break Lease forms or agreements";
- tenants told that professional cleaning, steam cleaning, flea and tick spray or pest control must be carried out at the tenants own cost as a prerequisite to vacating a property;
- monthly property inspections are permitted;

[117] *Agents Licensing Act* 1979 (NT) s 65.

- landlords do not have to repair something if they don't want to;
- tenants are only able to break lease in order to terminate a lease early; tenants must continue to pay for electricity until a new tenant moves in;
- tenants cannot attend condition reports;
- tenant must move out if a property is being repossessed;
- tenants can be blacklisted if they take a matter to NTCAT; and
- landlords are not responsible for issues with common property.

If, during a tenancy, a tenant is supplied information by an agent as to either parties' rights, obligations responsibilities under the law and that information is false or misleading, agents should be accountable for the spread of false information and if necessary penalised for doing so.

55 General Complaints

One of the most common frustrations received by tenants are complaints as to the general nature of their interactions with Agents. These complaints arise not necessarily by an Agent's breach of the Act, rather the manner and professionalism in which tenants have been dealt with. Tenants will commonly report that they are made to feel inferior or have "done something wrong" merely by virtue of being a tenant.

Tenants also report that they find it difficult to contact their Agents or receive a prompt response in relation to a certain issue. It is not uncommon for tenants to pursue their Agents for weeks or months in order to get a response. In some cases, DCLS identify that it may be that the Agent is awaiting a response from the landlord, but there must be some accountability for that and some of the complaints may be alleviated by just communicating that to the tenant, rather than just ignoring calls.

Currently there is no genuine avenue for complaint against the conduct of Agents or landlords. While Agents are bound by the Code of Conduct Rules both the scope of these rules and the avenue for pursuing such claims against agents is insufficient, unclear and often does not lead to any result.

To date, DLCS has not heard a single complaint made to the real estate licensing board or REINT achieving a result or outcome for a tenant.

Tenants should be provided proper recourse to make complaints against Agents and know that their complaints will be heard and investigated.

55.1.1 Case Study 1

Functioning pools and broken air conditioners are amongst a number of common issues raised at the beginning of tenancies seen by the Tenants' Advice Service, and Freda's was no exception. When Freda viewed an executive property with a lovely pool, she noticed that the pool was slightly green. The Agent explained that this was just because no-one had been living in the property for a couple of weeks and that the landlord would have it serviced prior to a new tenant moving in. Freda was happy as she had told the Agent that the pool was very important to her and her husband and this is one of the main features they were looking for.

The service happened and when Freda moved in the pool looked okay, but they soon realised the waterfall at the back of the pool wasn't working and that the pool water levels were dropping concerning rate.

The Agent stalled Freda for a while until it became apparent that there were major issues with the pool. Upon making enquiries with the neighbours, they were told that the landlord was aware that this was a major failure of the property, and that the landlord knew about it but hadn't done anything about it and were unlikely to do so.

In fact, the pool did not function and was unusable. It also became apparent that the landlord was related to the Agent.

The Agent had clearly misrepresented the pool, admitting that they had knowledge of the problem and would not allow Freda to do a mutual termination, instead insisting they had to break lease and threatened to blacklist them as they would be breaking lease quite early and it was also apparent that the executive property had been vacant for some time. The Agent became quite nasty when Freda threatened to take legal action against both the landlord and the Agent.

55.1.2 **Case Study 2**

David's mother had been diagnosed with a progressive cancer and David and his family needed to move interstate to care for her. David contacted the Agent and told them about his circumstances and that they needed to leave fairly quickly. The Agent immediately told David that he would be required to break lease and that, because it was fairly early in their lease, they would need to pay for the rent or they would be blacklisted.

55.1.3 **Case Study 3**

A property was advertised online as 'pet-friendly'. Shirley applied for the property, having moved from interstate, on the basis of the pet-friendly advertisement. When she picked up the keys, she told the landlord that she was on the way to the airport to pick up her family dog as they had just organised for it to be flown up as they could not bring it in the car. The Agent told Shirley immediately that she wasn't allowed to have the dog at the premises because it wasn't approved. Shirley was devastated and told the Agent that she had applied for the property on the basis of the advertisement. The Agent told Shirley that she could not do anything about that and that she either had to get rid of the dog or break the lease, with no other options presented.

DCLS Recommendation and Model Legislation

There has been growing recognition around Australia for Agents and landlords to be held more accountable for their actions under a tenancy agreement.

As part of Victoria's reforms, a Rental Non-compliance Register for Landlords and Agents is set to be established enabling tenants to identify landlords and Agents who have previously breached their obligations under the Act in the same way that landlord can identify problem tenants.[118] Landlords and agents will be prohibited from engaging in misleading and deceptive conduct,[119] and it will be an offence for landlords to include detrimental additional terms in tenancy agreements.[120]

NT tenancy law should also adopt regulations of landlords and agents mirroring the Victorian legislation in respect to false or misleading statements.[121] The NT should also adopt provisions set out in ACT's *Agents Regulations Act 2003*[122] which mandates that agents:

- Act with honesty, fairness and professionalism;[123]
- Must not engage in high pressure tactics, harassment or harsh or unconscionable conduct;[124]

[118] Residential Tenancies Amendment Act 2018 (Vic) Part 14; Reform 7. A new Rental Non-compliance Register for RRPs and agents will be established and maintained by the Director of Consumer Affairs Victoria. This will enable enters to identify those who have previously breached their obligations under the Residential Tenancies Act. A listing for the RRP or the agent will be made if VCAT has made a compliance or compensation order in respect of a breach of duty under the Act, or if the RRP or agent has been convicted of an offence under the Act.

[119] **Reform 12.** RRPs and their agents will be prohibited from inducing someone to enter a residential rental agreement by misleading or deceptive conduct (for example, if the agent tells a prospective renter that the house has a high-speed internet connection, when the agent knows this is not the case).

[120] **Reform 19.** To prevent residential rental agreements from including particular detrimental additional terms, those terms will be prescribed in regulations as prohibited terms. It will be an offence to include a prohibited term in a residential rental agreement. This reform also applies to agreements for rooming houses, caravan parks and residential parks.

[121] *Residential Tenancies Act 1997* (ACT) s 46.

[122] *Agents Regulation 2003* (ACT) Schedule 8.

[123] *Agents Regulation 2003*(ACT), Schedule 8, s 8.4.

[124] Ibid, s 8.6.

- Must not, at any time, use or disclose any confidential information obtained while acting on behalf of a client or dealing with a customer unless they receive consent or are permitted by law;[125]
- Must not falsely represent to a person the nature or effect of a provision of the Act;[126]
- Must promptly respond to and, subject to the principal's instructions, attend to all requests by a tenant, for maintenance of, or repairs to, the property and that such failure to take action on the repairs by the principal would constitute a breach of the tenancy agreement; [127] (in this example, the principal referred to is the landlord) and
- Must take all reasonable steps to ensure that any final inspection of the property, on vacation of the property, is conducted in the presence of the tenant, unless otherwise authorised by the tenant.[128]

NTCAT should be given jurisdiction to preside over such breaches of agents Code of Conduct rules as they relate to tenancies and impose appropriate penalties where necessary.

DCLS Recommendation 39

a. The Act be amended to provide for:
    a. Landlords and Agents be prohibited in engaging in false or misleading conduct;
    b. A section detailing establishment and rules concerning 'Rental Non-compliance Register for Landlords and Agents', like a Residential Tenancy Database, mirroring the Victorian legislation;
    c. An offence for Landlords and agents to including additional terms in the tenancy agreements that adversely affect the tenant;
    d. NTCAT to have provided jurisdiction to hear matters where Landlord or agent has contravened the Act and impose penalties;
    e. NTCAT to have jurisdiction where agents have contravened *Agents Licensing Act*.

b. *Agents Licensing Act* or specific provision for Conduct Rules of Agents in residential tenancies inserted to include those matters listed above.

c. DCLS proposes that a tenant that enters into a tenancy agreement that is subject to misleading information by an Agent, can make an application to NTCAT to terminate their tenancy agreement. This would require an amendment to the Act to recognise that this could be considered a 'serious breach' under the tenancy agreement and examples could include serious problems with the description of a property in an advertisement.

Issue 42: Treatment of Family and Domestic Violence within the Act

DCLS SUBMISSION

Incidences of Family and Domestic Violence ("FDV") are often highly stressful, emotional and chaotic for the victim and their family involved. Given this backdrop, it is imperative that laws support victims and outline a clear process to prevent them from experiencing further harm.

Any ambiguity or cause for pause in statutory interpretation can result in detrimental outcomes for victims if there is pushback from landlords or Agents.

DCLS experience is that the vast majority of landlords feel empathy and compassion towards victims of FDV but often struggle to balance their desire for a humane outcome with that of their own personal financial hardship, particularly in today's rental market. Equally, Agents feel like the only option they have when faced with difficult landlords is to force tenants towards a tribunal process that is often fruitless.

[125] Ibid, s 8.8.
[126] Ibid, s 8.18.
[127] Ibid, s 8.34.
[128] Ibid, s 8.37.

The current state of our law fails to adequately provide protections for tenants who have been or are subject to domestic and family violence in their lives. Given the high incidence of domestic and family violence in the Territory, our laws must reflect best practise to ensure that appropriate support is provided to renter's subject to the stress and turmoil of domestic and family violence. Many other jurisdictions across Australia, including NSW and SA, have taken the lead in providing consideration for these circumstances such as removing the perpetrator or the victim from the lease agreement and separating liability for damage.

Our laws must reflect best practice and create stronger protections to assist tenants to terminate and alter tenancy agreements, without financial penalty, where they have had to leave their home because of domestic and family violence. Additionally, provisions should be included to relieve victims from liabilities such as unpaid rent or damage, or listing on a database, as a result of breaches by the perpetrator; and allow victims to access their share of the security deposit and ability to make premises more secure where they feel at risk. In making such amendments it is important to acknowledge an ability to terminate a tenancy agreement that contemplates the victim being the sole tenant. This is not an uncommon situation whereby a victim enters into a tenancy agreement but then is subject to FDV if the perpetrator locates them. The current law does not allow for this circumstance.[129]

56 Termination

The Act does not provide any specific FDV related circumstances to allow for termination of a tenant. DCLS was anticipating that the review and proposed reforms to the Act would include provisions for improved protections of persons experiencing FDV, which was key to our submissions in 2017.

The Paper suggests that where early termination of joint tenancy is required, parties should first endeavour to resolve this by agreement amongst themselves and Agent/landlord. It needs to be noted that whilst preferable, that this will not be possible in every case. In particular, where a full non-contact domestic violence order is in place, it will not be possible for the perpetrator to communicate directly or indirectly with the victim in relation to the tenancy.

There are not adequate or certain remedies under the current Act and or DFVA in respect of victims who are sole tenants seeking termination of a tenancy, and/or where the victim and perpetrator have not resided together in the property.

Our laws need to account for the circumstance where a victim is forced to terminate a tenancy in their name due to domestic violence (such that they are no longer safe in the premises because the perpetrator is aware of their location or they are no longer able to afford the tenancy due to change in circumstances bought about by domestic violence.

The remedy is a combination of amendments. The first is that there needs to be the insertion of a clear power in the DFVA to allow for termination of a tenancy, including where the victim and defendant have not resided together in the property.

Section 23 of the DFVA gives discretion under the Local Court jurisdiction to make an order to create a tenancy agreement 'for the benefit of the protected person and anyone else who was a party to the terminated agreement other than the defendant; or with the agreement of the protected person, for the benefit of the defendant and anyone else who was a party to the terminated agreement'.[130]

The inclusion of such a power will save a victim from having to seek relief in two jurisdictions (Local Court for a domestic violence order and NTCAT for a hardship termination) in relation to the same circumstances.

Such a change is necessary both because the current provisions in the DVFA require the parties to have resided together and because the power to terminate within section 23(2)(a) may be read as only facilitative of the power to make a replacement tenancy agreement per section 23(2)(b), i.e. that as current drafted the power to terminate is not a standalone power.

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[129] *Domestic and Family Violence Act 2007* (NT) s 23.
[130] Ibid.

A power to terminate only is also required for those circumstances where the Court cannot be satisfied that a defendant to an application for a domestic violence order can or will abide by the terms of a replacement tenancy agreement (per section 23(3)(a)(iii), or where the defendant does not wish to be the beneficiary of a replacement tenancy agreement and so it could not be considered that the defendant would comply with the replacement agreement.

To account for circumstances where a victim, for safety or other reasons, is unable to obtain a domestic violence order but requires a tenancy termination because of domestic violence, NTCAT should be empowered to terminate a victim or perpetrator's interest in a tenancy. This jurisdiction should be an addition due to the concerns that a person subject to FDV may have which is that taking action for a domestic violence order may inflame the perpetrator and escalate the situation.

Additionally, as mentioned above, the DFVA only contemplates the circumstance whereby both parties are co-tenants on the lease agreement or at the very least have lived at the same property. Finally, section 23(3)(a)(i) also imposes a high bar on the Local Court in that the Court must be satisfied that the relationship breakdown is 'permanent.[131]

The other options that a victim has available to them under the Act are:

1. A section 99 of the Act, hardship application to terminate their tenancy; or
2. Mutual termination under section 82 (1)(f) of the Act, which means the landlord must agree to the termination; or
3. An assignment of their rights under the tenancy agreement to a new party under sections 78 to 81 of the Act.

None of the above options provide certainty to a victim tenant and, in DCLS's experience, landlords are rarely agreeable to a mutual termination and will object to a hardship application, causing NTCAT to consider their rights as well.

Other jurisdictions have now taken the steps to recognise these difficulties and amended their own legislation to provide safety and options to victims of FDV.[132]

DCLS recommend the adoption of Western Australian law to allow that a tenant can issue a notice of termination, with the prescribed supporting evidence, to terminate their lease agreement. There is a protection if the landlord wishes to appeal the termination in that they can make an application to the Magistrates Court (in Western Australia) to appeal the validity of the notice, but that court cannot examine whether the terminating tenant, or dependant, has been or might be subject to the violence.[133]

This legislation also makes provisions for any co-tenants under the agreement.[134]

57 Ending tenancy – fixed term

Another issue for victims of domestic violence is where they may have been waiting for the expiry of a fixed term tenancy agreement in order to leave the relationship. Given the joint liability, there is no option for one tenant to end the tenancy, both would be required to leave.

This is a clear example of where the perpetrator can control the victim by way of continuing the tenancy.

If one co-tenant notifies of the end of a tenancy using the correct notice process, then the other co-tenant's lease also ends, and they must negotiate with the landlord or Agent if they wish to enter into a new agreement.

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[131] Ibid at 23(3)(a)(i).
[132] *Residential Tenancies Act 1997*(Vic) s 234; *Residential Tenancies Act 1987* (WA) Division 2A, s 71AB; *Residential Tenancies Act 2010 No 42* (NSW) Division 3A.
[133] *Residential Tenancies Act 1987* (WA) Division 2A, s 71AB, 71AC.
[134] Ibid at section 71AD.

The NT should adopt the NSW legislation, which allows that allows that where a co-tenant gives a termination notice that the tribunal then may terminate the agreement.[135]

58 Repairs

Section 12 of the Act deals with the vicarious liability of tenants for damage done by approved guests. However, it also provides for an exemption to liability for damage caused as a result of a domestic violence act, caused by a person that the tenant is in a domestic relationship with.[136]

DCLS do not see a need to change this legislation, but the discussion on education for Agents on how to assist them in dealing with domestic violence in tenants will be a positive outcome.

59 Changing Locks

This issue is discussed at **Issue 8**. There must be provision to allow for the emergency replacement of locks. This is often funded by external organisations that support victims of domestic violence, therefore can be done at no cost to the landlord. However, there is a requirement for approval from the landlord in order to change locks. DCLS submits that in an emergency event such as where there are concerns for safety as a result of FDV, ensuring the reasonable security of a property should not require landlord approval. This includes the situation whereby approval is required by a body corporate.

60 Service

Pursuant to the discussion above on termination (1.130) there is the further issue of service to the co-tenant perpetrator. Needless to say, it would be inappropriate for the victim tenant to be expected to fulfil this requirement. It is also inappropriate whereby there may be domestic violence orders precluding contact and service may cause a breach of these orders.

NTCAT rules must be amended to allow for service to be conducted by NTCAT in these instances, where the matter involves the requirement for service to the perpetrator, but in the instance that it not require contact with the perpetrator, the landlord will be required to serve all remaining co-tenants to the property.[137]

61 Education

One of the key factors in assisting victims and families FDV relationships is to understand the impacts of FDV and how to appropriately deal with those issues. Arguably one of the difficulties that may be faced by often inexperienced Agents is how to assist tenants in these situations.

DCLS recommends that all Agents incorporate in their training, compulsory training on responding to family and domestic violence situations.

62 Residential Tenancy Database

Part 14 of the Act sets out the steps whereby a tenant may be listed on a residential tenancy database. The NSW legislation has now enacted clauses restricting the listing of a person to be listed if they have terminated their tenancy due to domestic violence.[138] This provides some peace of mind for a tenant in this situation, by enabling them to secure alternate accommodation without fear that they would be prevented from doing so due to a blacklisting and start to rebuild their lives. It also recognises the appropriate shift in responsibility away from the victim.

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[135] *Residential Tenancies Act 2010 No 42* (NSW) s 101.
[136] *Residential Tenancies Act 1999* (NT) s 12(3).
[137] Mirroring the requirement of *Residential Tenancies Act 1987* (WA) section 71AD(2).
[138] *Residential Tenancies Act 2010 No 42* (NSW) s 213A.

DCLS strongly recommends the introduction of this to strengthen the NT legislation, which was recommended by DCLS, TEWLS and Anglicare in their submissions last year and at the time of the first lot of amendments to the Act were passed. It is noted that Ms Lia Finocchiaro MLA, in her debate speech of the Bill in Parliament, raised that these amendments should have been considered at the time of the drafting of the legislation last year. [139] Therefore, DCLS submit that this should be considered now and without further delay This would also be consistent with the NT Government's Domestic, Family and Sexual Violence Reduction Framework 2018-2028 - *safe, respected and free from violence*.[140]

62.1.1 Case Study 1

Judy shared a tenancy agreement as a co-tenant with her husband, Joe who was a perpetrator of domestic violence against her. Fearing for her safety, Judy relocated interstate. Joe would not co-operate in signing her name off the lease. Joe fell behind in rent then abandoned the premises. As both tenants were jointly and severally liable and Judy was unable to pay any more rent, both tenants were placed on a residential tenancy database. When Judy returned to the NT to seek rental accommodation, she was refused accommodation on the basis of the listing.

62.1.2 Case Study 2

Laura was renting in Darwin with her partner. The police were called to Laura's house after an incident of domestic violence. The police issued an interim domestic violence order ('DVO') against Laura's partner. Laura could not afford the rent on her own and fell into rental arrears. Despite multiple requests explaining her current circumstances, the Agent and landlord refused to let Laura out of her lease. Laura decided she had no choice but to break the lease. The break lease resulted in Laura having to pay in excess of $1,000 in fees (fees including rent). Stronger protections for victims of domestic and family violence would have allowed Laura to terminate the lease earlier, not have fallen into arrears, and not risk an adverse listing on a Residential Tenancies Database and potential homelessness.

DCLS Recommendation and Model Legislation

DCLS Recommendation 40

a. If one co-tenant notifies the end of a tenancy using the correct notice process, then the other co-tenant's lease also ends, and they must negotiate with the landlord or Agent if they wish to enter into a new agreement. Section 95 of the Act should be changed to reflect this. This can be done by the inclusion of legislation to mirror section 101 of the NSW legislation.[141]
b. Recommend the amendment of the provision for landlord and body corporate approval be not required to change locks in emergency situations as discussed in Issue 8.
c. DCLS recommends that all Agents include in their compulsory training on responding to situations involving family and domestic violence.
d. DCLS strongly recommends the introduction of legislation mirroring Division 2A of the Residential Tenancies Act 1987 (WA). This should be supplemented by jurisdictional power to NTCAT for any appeals process. DCLS also notes the strength of other jurisdictions law in this area, including Victoria and NSW.
e. DCLS recommends the further amendment of section 154 (on top of recommendations made at Issue 12) of the Act to allow for the intervention of NTCAT and the lessor to serve documents to the perpetrator co-tenant in FDV matters.
f. DCLS recommends the insertion of section 213A from the NSW legislation into our section 129, eliminating the ability for a landlord or Agent to list a tenant on a residential tenancy database where they have terminated their tenancy due to domestic violence.

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[139] Northern Territory, *Parliamentary Debates*, Legislative Assembly, 10 May 2018, Page 3932 (Ms Lia Finnochiaro MLA).
[140] Northern Territory Government, Territory Families, 'Family and Sexual Violence Framework 2018-2028' (15 August 2019) < https://territoryfamilies.nt.gov.au/dfv/domestic-and-family-violence-reduction-strategy>.
[141] *Residential Tenancies Act 2010 No 42* (NSW) s 101.

Issue 43: Break Lease

DCLS SUBMISSION

Section 95 is clear that it only applies to a fixed term tenancy 'that is due under the tenancy agreement to terminate on a particular day'. The Act does not explicitly deal with situations where a tenant terminates a tenancy agreement prior to the expiry of the date specified in the lease. This is commonly referred to as a 'break lease' arrangement.

As there is no section in the Act that deals with break leases, it has been commonly accepted that break lease situations are dealt with as though the tenant had abandoned the property.[142]

This means a landlord can apply under sections 112 and 122 to NTCAT for compensation for:

(a) the loss of rent the tenant would have been liable to pay under the agreement if he or she had not abandoned the premises; and
(b) loss caused to the landlord in securing new tenants.[143]

The loss referred to in (b) relates to break lease fees and advertising costs.

Section 112 (8) is clear that in order to recover these costs, a landlord must apply to NTCAT for compensation under section 122 'as soon as practical after the loss can be calculated and in any case within three months from the date on which the tenant apparently abandoned the premises.'

Practically, this means that a tenant can be found liable to pay compensation including rent, up to the end of the lease agreement or until a new tenant is found, whichever is the earlier (if the landlord shows that they have mitigated their loss). They may also be found liable for a 'break lease fee' and reasonable advertising costs (see Issue 4: break lease fees).

This issue is a source of great confusion to both tenants and landlords. DCLS commonly sees situations where tenants have been advised by landlords that they are required to continue to pay rent until a new tenant is secured. This is not what the Act states and is indicative of a lack of understanding of both the landlord and the tenant.

Once a tenant has terminated a tenancy agreement by breaking the lease (or 'abandoning' the premises), the tenant is no longer bound by the terms of the tenancy agreement, including the requirement to pay rent.

The onus is on the landlord to apply to NTCAT for compensation within three months. It is not uncommon for tenants to continue to pay rent after their tenancy agreement has been terminated until they are advised by the landlord that new tenants have been secured or the fixed term tenancy expires (often for periods exceeding three months).

DCLS submit that the Act should be amended to reflect the language commonly used by landlords in these situations to make it clear to both tenants and landlords what their rights and responsibilities are in 'lease break' situations. It is also important to draw the distinction between a tenant who articulates their intention to terminate their lease early as opposed to simply abandoning premises.

Additionally, this will clarify the process that a tenant must follow to provide notice to vacate the premises should be in a similar manner to that in Victoria.[144]

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[142] *Forrest v Perkins* [2018] NTCAT 114; *Gatty & Darcey v Nou* [2016] NTCAT 249; *Herbert v Padovan* [2015] NTRTCmr 10.
[143] *Residential Tenancies Act 1999* (NT) ss 112(3)(e), 112(6) – (8), 122.
[144] *Residential Tenancies Act 1997* (Vic) ss 235 - 236.

63 Hardship

DCLS submits that the current legislation dealing with a hardship application to NTCAT seeking an order for a tenant to terminate a tenancy due to hardship is inadequate. Many tenants contact DCLS indicating that they are going to make this application, not realising that the bar is very high when the tribunal assesses what constitutes 'undue hardship'.[145]

In order to make it clearer for the tenant and NTCAT we recommend amending the Act to reflect section 104 of the NSW legislation.[146] This also allows for a full compensation order to be made at the time of the hearing (speeding up the process that may otherwise currently have to wait until the loss can be measured) and imposes that the landlord must 'take all reasonable steps to mitigate their loss and is not entitled to compensation for any loss that could have been reasonably avoided by the landlord.[147]

63.1.1 Case Study

Daily the Tenants' Advice Service receive calls from people that need to terminate their lease for varying reasons, many not by choice and often they relate to financial hardship (tenants losing their jobs or having to leave the NT for a variety of reasons). In each case they are given varying advice by their landlords or Agents, none of them ever completely accurate. Most are told that they have to continue paying their rent and some are even told that they need to continue to maintain the property.

Many of the stories are harrowing, with tenants often at the end of their tether and obviously psychologically affected by the ordeal. Many expected a different life in the NT or were angry at the way they had been treated by their landlords or Agents. There are too many stories to list here (many case studies already have these themes), which is why these laws must be changed.

DCLS Recommendation and Model Legislation

DCLS Recommendation 41

a. The legislation amended to correctly reflect, in simpler terms, the requirements for a tenant in a break lease situation by inserting legislation like sections 235 – 236 of the Victorian legislation.

b. That section 99 of the Act be amended to reflect section 104 of the NSW legislation.

c. A form developed, in a similar format to a RT06 notice[148], for a tenant to complete to notify that they are terminating their agreement, which can incorporate their obligations.

[145] *Residential Tenancies Act 1999* (NT) s 99.
[146] *Residential Tenancies Act 1997* (Vic) ss 233 – 234.
[147] *Residential Tenancies Act 2010 No 42* (NSW) s 104.
[148] Consumer Affairs, 'Notice to Terminate Tenancy Agreement' < https://consumeraffairs.nt.gov.au/__data/assets/pdf_file/0007/668158/tenant_terminate.pdf>.

Issue 44: Miscellaneous

DCLS SUBMISSIONS

There are a number of miscellaneous matters that don't neatly fit into the other sections that DCLS would like to see dealt with in this review. These are raised due to regular enquiries and grievances from tenants whereby the legislation does not adequately deal with matters of difficulty.

64 Compensation – relocate due to repairs

In some cases, DCLS receive reports from tenants of serious incidents at their properties which require them to relocate for a period of time whilst repairs are being done.

The law is unclear on the landlord's obligations in this case and tenants would benefit from some clarity about what they can claim under compensation for the loss of access to the property. Information should be provided to the tenant at least to advise that they can request compensation, but that the landlord should make attempts to assist with alternative accommodation and advise that the tenant will not be obliged to pay their rent whilst they do not have access to the premises.

65 Tenants forced/coerced to re-sign tenancy agreements too early

More often DCLS receives enquiries from tenants that have been contacted by landlords or their Agents to enter into a new fixed term tenancy agreement well before the expiry of their old agreement. In one case for a 12-month fixed term the tenant was contacted at 6 months to sign a new agreement.

DCLS submit that this is unconscionable, particularly in the case where we hear that the tenant has been told that 'there are other tenants lined up for the property', pressuring them to sign a new agreement.

The tenant then finds that their circumstances change prior to the expiry of the old agreement and they can no longer afford the tenancy, or they are required to move, and they cannot escape a break lease because they signed the new agreement. DCLS submit that the Act be amended to require that the tenant is not contacted, unless the contact is at their prompting, to sign a new lease agreement until at least 28 days prior to the expiry of their old fixed term tenancy.

66 Peace and quiet enjoyment

Another common complaint received from tenants is where a landlord may have another person acting as their Agent, not a professional property manager, but someone like a 'caretaker'. This is common in sham boarding arrangements and where the landlord may live interstate. These people may randomly visit the property, yet arguably may fall outside of the section 66 of the Act requirements to ensure that the 'landlord must not cause interference with the reasonable peace and privacy of the tenant'.

Section 9 deals with the vicarious liability of the landlord for their Agent or the Agent's employees. This implies that the Agent is engaged and paid to act for the landlord but does not necessarily contemplate the 'free or cheap rent' caretaker.

In order to ensure that these people are accountable for their actions DCLS suggest amending section 4 of the Act to include a definition for 'Agent'.

Additionally, section 66 of the Act should be amended to contemplate harassment by a landlord or Agent by way of alternate means. Many tenants, particularly in a self-managed arrangement, complain of constant text messages and emails. Section 66 details peace and privacy of a tenant in the 'tenant's use of the premises'.

This should be amended to broaden 'peace and privacy' in their tenancy, with the addition of a 'reasonableness' clause. This can also include activities such as the landlord turning off the power to frustrate a tenant to force them to leave the property.

This should allow that an excessively harassing landlord may have a breach notice issued against them with the contemplation of termination due to a serious breach of the tenancy.

67 Tenant offered Public Housing or a place in an Aged Care Facility.

Section 96 of the Act allows that a tenant can terminate a tenancy agreement if they have been offered public housing, which is obviously a more affordable housing option. The difficulty with this section of the Act is that the tenant must have, before signing the tenancy agreement, advised the landlord of the housing application.

This penalises the average tenant who may not have known that they need to do this which again reinforces the need for an information sheet. Regardless, why should a tenant be put in financial hardship or have to turn down an offer of public housing simply because they cannot afford to 'break lease' on their private property.

DCLS recommends that the Act is amended to allow a tenant to terminate a lease without penalty if they are offered social or public housing, or an Aged Care Facility. In this regard it is recommended adopting the terms contained in the NSW legislation.[149]

68 Landlord decides to sell the premises

In NSW if a landlord decides, during the term of a fixed term tenancy, to sell the premises they are obligated to advise the tenant. At this stage the tenant has the option of terminating the tenancy without penalty.

DCLS often receives complaints and concerns from tenants who do not want the disruption of excessive interference that comes from ongoing inspections by new purchasers. Arguably in the current market this may not be an issue, but it still causes angst for tenants.

DCLS recommends the insertion of a section such as section 100 of the NSW legislation that allows a tenant to terminate without penalty if advised a property is being listed for sale.[150]

This should also include the activities that are undertaken with the intention of frustrating a tenant out of their tenancy as described in the following case studies.

68.1.1 Case Study 1

The landlord started turning off the power to frustrate a tenant to force them to leave the property. Trudy dropped in to DCLS one day as she was 'looking after' a property for a landlord. This arrangement sounded similar to a share or rooming house. Trudy said that the landlord was trying to get one of the tenants out of the property and she wanted to know what to do as the landlord was saying that they were going to turn off the power to the whole property to force one tenant to move out.

68.1.2 Case Study 2

Frankie had a major water leak after a pipe burst in his property. The property was fully functional and would not have been considered uninhabitable however he needed to relocate for a week whilst the carpets were replaced. He was on Centrelink payments and could not afford alternative rent, however the Agent informed him that he had no remedy under the law. As a result, Frankie was homeless for the week out of the home whereby he had to live out of his car.

[149] *Residential Tenancies Act 2010 No 42* (NSW) s 100.
[150] Ibid.

68.1.3 **Case study 3**

Andrea was in a fixed term tenancy managed privately by her landlord. Her landlord was contacting her daily via text comprising of abusive messages about her premises and rental arrears (which was unsubstantiated). Andrea had no remedy available to her apart from attempting to make an application to NTCAT claiming that the ongoing contact was a serious breach of the tenancy agreement and her right to peace and quiet enjoyment.

DCLS Recommendation and Model Legislation

DCLS Recommendation 42

a. Amend section 4 of the Act to include a definition of 'agent'.

b. Amend section 66 of the Act to read 'peace and privacy of a tenant in the tenant's use of the premises and in their tenancy'.

c. Recommend amending the Act to explicitly detail the landlord's obligations if a tenant has to relocate due to a major repair required on the premises.

d. DCLS submit that the Act be amended to require that the tenant is not contacted for the purposes of extending the lease agreement, unless the contact is at their prompting, until at least 28 days prior to the expiry of their old fixed term tenancy.

e. DCLS recommends the adoption of section 100 of the NSW legislation to allow that a tenant can terminate a lease without compensation to the landlord, if they have been offered social or public housing or an aged care facility. This section allows for a notice that is not earlier than 14 days' notice to the landlord.

f. DCLS recommends the insertion of the same NSW clause (section 100) which also includes the ability for a tenant to terminate a tenancy if the property is offered for sale.

REVIEW OF THE RESIDENTIAL TENANCIES ACT 1999

Darwin Community Legal Service

Submission to support an independent bond board

August 2019

Structure and Financing of Independent Bond Holding Authority

An independent bond board is essential to ensure that there is an objective custodian of rental bonds. This submission outlines potential ways to finance and structure a future Northern Territory Independent Bond Board.[151]

The arguments for a bond board are well known, including reducing the risk of the misuse of bond funds and to oversee disputes regarding the return of security deposits. For tenants with self-managed landlords they have comfort in the knowledge that the funds are being held by an independent third party and not being spent by the landlord.

This document has been formed as a guide to justifying an independent bond board, managed by Consumer Affairs or another third party.

Structure

In many other jurisdictions the bond authority is an arm of Consumer Affairs. The Northern Territory has the infrastructure in place, so this could mirror other jurisdictions.

Finance

One of the principal arguments against a bond authority is that of how to finance the body. DCLS have examined the 2016 census and adjusted for the current market. At the time of the census the median weekly rent was $315, which tallies to a median bond being $1260. According to the March quarter of 2019 this is around the average Darwin unit price,[152] the house price is closer to $454.50 per week.

Adjusting for a 10% drop in the market, this reduces to $1134.00.

At the time of the 2016 census there were 32,737 rented properties.

If you allow for a 10% vacancy rate (which is above the statistical data for March 2019)[153] then this indicates that there are around 29463 properties rented. This leaves a theoretical amount of money that could be held on trust, available for establishing the Bond Authority = **$33,411,042.00.**

Quick guide table based off 2016 census

Jurisdiction	Median Rent	Population Renting	Money for Bond Board
Northern Territory	315	32,737	41,248,620
Victoria	325	607,354	789,560,200
Queensland	330	566,478	747,750,960
NSW	380	826,922	1,256,921,440
South Australia	260	182,180	189,467,200
Tasmania	230	54,034	49,711,280
WA	347	245,705	341,038,540

Below is a brief summary of how other states and territories across Australia structure their own Bond Boards.

[151]Economic Policy Scrutiny Committee, Legislative Assembly of the Northern Territory, '*Inquiry into the Residential Tenancies Amendment Bill 2018*' Page 18, point 3.20

[152] Northern Territory, Department of Treasury and Finance, Northern Territory Economy (March 2019) <https://nteconomy.nt.gov.au/housing>.

[153] Ibid.

Victoria

Structure

The Residential Tenancies Bond Authority (RTBA)[154] is a statutory authority of the Government of Victoria, administered within the Department of Justice.

Section 429 of the *Residential Tenancies Act 1997* (Vic) establishes the RTBA as a body corporate constituted by the Director of Consumer Affairs Victoria (CAV). The RTBA has no other members and employs no staff. The RTBA is managed and supported by staff from the Department of Justice and CAV. Processing of bond transactions and maintenance of the RTBA Register is outsourced to an external provider of registry services. These costs are met by the RTBA.

Funding

At 30 June 2014, the RTBA held 542,209 bonds, valued at $806 million. Bond money received by the RTBA is invested in the Residential Bonds Account. Interest earned on the bonds is paid to the Residential Bonds Investment Income Account, where it is applied to the costs of administering the RTBA and to making contributions to the Residential Tenancies Fund. Transfers to the Residential Tenancies Fund during 2013-14 totalled $12.3 million.

RESIDENTIAL TENANCIES BOND AUTHORITY

Comprehensive Operating Statement
for the financial year ended 30 June 2014

	Note	2014 $	2013 $
Income from transactions			
Interest income		20,734,607	23,302,459
Other income		1,024	1,099
Total Income from transactions		**20,735,631**	**23,303,558**
Expenses from transactions			
Operating expenses			
Employee expenses	3 (a)	1,433,653	938,880
Supplies and services	3 (b)	6,071,237	6,020,423
Finance costs	3 (c)	33,751	34,546
Other expenses	3 (d)	152,472	139,952
Total Operating expenses		7,691,113	7,133,801
Payment to the Residential Tenancies Fund		12,300,000	16,100,000
Total Expenses from transactions		**19,991,113**	**23,233,801**
Net result from transactions (net operating balance)		**744,518**	**69,757**
Other economic flows included in net result		-	-
Net Result		**744,518**	**69,757**
Other economic flows - other non-owner changes in equity		-	-
Comprehensive result		**744,518**	**69,757**

[154] Residential Tenancies Bond Authority (Victoria) < https://www.consumer.vic.gov.au/bondauthority>.

The annual report from 2017 – 2018 year show an exponential increase on these figures for the Fund.[155]

Balance Sheet
as at 30 June 2014

	Note	2014 $	2013 $
Assets			
Financial assets			
Cash and deposits	11	806,452,059	748,619,444
Receivables	5	5,286,419	5,755,040
Total financial assets		**811,738,478**	**754,374,484**
Non Financial assets			
Other assets	6	-	52,252
Total assets		**811,738,478**	**754,426,736**
Liabilities			
Payables	7	753,749	3,368,101
Bonds held on trust	12	806,412,803	747,231,227
Total liabilities		**807,166,552**	**750,599,328**
Net assets		**4,571,926**	**3,827,408**
Equity			
Accumulated surplus		4,571,926	3,827,408
Net Worth		**4,571,926**	**3,827,408**
Commitments for expenditure	8		
Contingent liabilities	9		
Contingent assets	10		

Statement of Changes in Equity
for the financial year ended 30 June 2014

	Accumulated Surplus	Total
Balance at 1 July 2012	3,757,651	3,757,651
Net Result for the Year	69,757	69,757
Balance at 30 June 2013	**3,827,408**	**3,827,408**
Net Result for the Year	744,518	744,518
Balance at 30 June 2014	**4,571,926**	**4,571,926**

[155] Residential Tenancies Bond Authority (Victoria), Annual Report 2017-2018, < file:///C:/Users/tamara.DCLS.001/Downloads/201718%20RTBA%20Annual%20Report%20final%20for%20web.pdf>.

Tasmania

Structure
The Rental Deposit Authority (RDA) is a statutory authority of the Government of Tasmania, administered by Consumer Building and Occupational Standards within the Department of Justice.[156]

Finance
2016-2017 financial report stated that the RDA processed an average of 1,498 bond lodgements and 1,671 bond claims per month, totalling 17,971 lodgements and 20,056 claims. At 30 June, the amount held by the RDA was $42,577,170.13. This year, just over $17.5 million of bonds were paid out, and $20.2 million of bonds were paid into the RDA.

New South Wales

Structure
The Board in New South Wales (Rental Bond Board or RBB) is subject to the control and direction of the Minister responsible for Fair Trading. NSW Fair Trading administers the day to day functions on behalf of the Board, providing rental bond lodgement, custody, refund and information services.

The Board is a self-funding corporation, deriving its income from the investment of rental bond trust funds and from retained earnings prior to distribution

A vital secondary role for the Board in NSW is the financial support it provides to other programs which encourage a fair tenancy marketplace in NSW. Funding for the community-based Tenants' Advice and Advocacy Program (TAAP), the Aged-Care Supported Accommodation Program and the Government's own tenancy information and dispute resolution services and for the tenancy functions of the Tribunal, was at a record level this year. The Board also contributes to the funding of NSW Fair Trading's grants programs for credit counselling and the No Interest Loan Scheme (NILS).

Finance
2016-2017 financial report stated that as at 30 June 2017 the Board held 823,901 residential rental bonds in trust. These were valued at valued at $1.420 billion. During the year, 313,668 new rental bond lodgements and 13,004 additional bonds (where a bond is paid by instalments) were received by the Board. The total value of bonds receipted was $626.8 million.

The Board provided $5.03 million to the Tenants' Advice and Advocacy Program (TAAP). This program is jointly funded by the Board and Fair Trading, with the RBB contributing 50% of the funding.

Queensland

Structure
The Residential Tenancies Authority is responsible to the Minister for Housing and Public Works and Minister for Sport and is governed by a board of directors who are appointed by the Governor in Council.

Finance
The income earned from the investment of rental bonds pays for our operating costs. The Residential Tenancies Authority does not receive any funding from Queensland Government consolidated revenue.

The 2017-2018 annual report stated that the Residential Tenancies Authority aims to get 3.2% return on investment to achieve financial sustainability and achieved 3.0% that financial year. 607,053 bonds held with a value of $855.58 million.[157]

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[156] Tasmanian Government, Consumer, Building and Occupational Standards < https://www.cbos.tas.gov.au/topics/housing/renting/bonds/bond-lodgement-and-paying-a-bond-contribution>.
[157] Residential Tenancies Authority (QLD), Annual Report 2017-2018 <file:///C:/Users/tamara.DCLS.001/Downloads/RTA%20Annual%20Report%202017%2018%20Full.pdf>.

South Australia

Structure

The Residential Tenancies Fund (the Fund) is kept and administered by the Commissioner for Consumer Affairs. The Fund consists of amounts received by the Commissioner by way of security bonds and other amounts paid into the Fund under the Act. Income derived from investment of the Fund is applied towards the costs of administering the Fund and enforcing the Act, education of landlords and tenants about their statutory and contractual rights and obligations, and operations of the Residential Tenancies Tribunal. The Fund's main source of income is from interest derived from the investment of Fund assets.

Finance

Total bonds held for 2015-2016 = 221,397. Value of total bonds held $323 496 169

DCLS Recommendation for the Northern Territory

A bond authority is vital for the continued confidence of tenants in the Northern Territory. With DCLS constantly hearing that they are leaving the Northern Territory as they are not being supported within the tenancy space, with reports of harsh conduct by landlords and Agents, not having bonds returned fairly often seals the deal and means that tenants are leaving the Northern Territory with a sour taste in their mouths.

An independent and fair board that makes impartial decisions can be a cost-effective proposition. At even a one percent return on investment, say on a conservative figure of $33,411,042.00, would generate a return of $334,110.42 per annum. This could be implemented within the existing infrastructure, where NT Consumer Affairs is the most appropriate agency, similar to other jurisdictions, with the appointment of additional staff to manage the workload.

With a similar jurisdiction size of Tasmania, a bond authority is a viable, cost neutral alternative to removing some of the current workload of NTCAT to adjudicate unnecessary bond disputes.