



Submission to the Legislative Scrutiny Committee Inquiry into the *Justice Legislation Amendment (Domestic and Family Violence) Bill 2019*

Darwin Community Legal Service (DCLS)

DCLS is a multi-disciplinary service providing general legal advice and assistance, a Tenancy Advice Service (TAS), and a specialised Seniors and Disability Rights Service which offers advocacy support in the areas of ageing and disability. We create awareness and empower our community, support access to services and knowledge of rights, and advocate for change that promotes fairness and justice.

TAS provides information, advice and representation to NT tenants including those renting privately, in public housing, caravan parks, boarding and share houses. Our submission focuses our experience dealing with victims of Domestic and Family Violence and housing, and the reforms required to facilitate safety and security for tenants and their families.

Executive Summary

DCLS supports reform that assists victims of domestic violence to deal with their tenancies efficiently and effectively, minimises trauma, and ensures that their safety is paramount.

DCLS supports reform to the *Domestic and Family Violence Act* to the extent that it clarifies and streamlines the process for terminating or varying tenancies and removes the requirement of evidence of the permanent breakdown of a relationship. Relationships affected by domestic and family violence are complex, extraction often difficult, and so definitive concepts like permanent breakdown may be inappropriately applied to deny a victim relief.

The reforms are limited in some respects and enacted in isolation. We propose amendments to the Bill **and** associated amendments to the *Residential Tenancies Act* to better support the reform objectives and ensure that tenants/victims don't fall through the cracks.

Proposed Amendments to the Bill

The current legislation requires evidence of permanent breakdown of a relationship and enables termination of a tenancy by way of removing the victim and substituting a new tenancy agreement. This is not practicable in all circumstances, particularly where the perpetrator may be imprisoned, the victim is the only tenant on the tenancy agreement, or the victim seeks to have the perpetrator removed from the agreement and retain their housing.



The Bill has in part addressed this situation by removing the requirement for an assessment of permanent breakdown and allowing for the termination of a tenancy without a replacement tenancy requirement.

DCLS suggests the following further changes to the current Act:

1. Remove the current restriction in Section 23(1)(a):

This section applies if ‘the defendant and protected person live together or previously lived together in premises’. This clause does not contemplate the protection of a tenant that has never resided with the perpetrator. Protected persons in this situation need an avenue to terminate their tenancy where the defendant knows where they live and they are at risk of being stalked or harmed by the defendant. The removal of subsection 23(1)(a) would allow courts to terminate the protected person’s tenancy in these situations in order for them to move to a safe location unknown to the defendant.

2. Remove the restriction in Section 23(4):

This section requires that the landlord is consulted and an assessment of whether a landlord’s objection is ‘reasonable’ is made by the Court. This is inconsistent with the approach of other jurisdictions, such as New South Wales and Western Australia.¹ It is our submission that the safety of tenants subject to victimisation and violence should on balance be preferred to the financial interests of the landlord. The requirements in section 23(4) may also result in proceedings being adjourned, increasing the financial burden on the protected person and, if they do not have other accommodation options, putting their safety at risk.

Associated Reforms to the *Residential Tenancies Act*

The Bill is limited in application. Amendments to the *Residential Tenancies Act* (RTA) should also be pursued in order to advance the purpose of the Bill and provide appropriate relief for victims. (see Attachment ‘A’ for a summary of the comparative jurisdictions)

Currently, the only way to get an order terminating a tenancy on the basis of domestic violence is through the successful grant of a Domestic Violence Order (DVO). The current process requires a victim to apply to the Local Court for a DVO and also seek to obtain an order for the termination of their tenancy.

Clients of our service often do not wish to initiate or follow through with DVO proceedings because doing so may aggravate the perpetrator (causing further violence) in a confrontational and adversarial jurisdiction. The victim can be subject to cross-examination on the facts by a perpetrator and the victim may have a perception that taking out a DVO will make no difference to the behaviour of the perpetrator. Further, but importantly, the Local Court does not have the power to terminate a victim’s tenancy where the defendant has made an undertaking in lieu of a DVO being imposed. There is also the issue of costs of proceedings in the local court and a level of formality that may require legal assistance.

A separate process via application to the Northern Territory Civil and Administrative Tribunal is required for other tenancy issues such as damage to the property due to

¹ *Residential Tenancies Act 2010* (NSW) s 105B; *Residential Tenancies Act 1987* (WA) s 71AA – 71AF.

domestic violence, personal items left at a property, or the property not left clean due to the victim having left in a hurry.

Introducing protections for domestic violence into the RTA would give NTCAT the power to terminate a tenancy regardless of whether there is a DVO, whilst enabling all tenancy related issues to be addressed in the one jurisdiction, minimising the impact on the victim.

It is also a low cost jurisdiction, does not require legal representation and matters are not required to be dealt with in the presence of an adversary.

DCLS recommends the following changes to the RTA specific to domestic violence:

1. Include provisions to allow for the termination at the end of a fixed term tenancy by one tenant, to allow a victim to terminate their tenancy without requiring agreement of the perpetrator co-tenant; and
2. Amend the requirement for consultation with the landlord to enable victims to urgently change locks.
3. Amend the requirement for the victim tenant to serve notices on the perpetrator, and instead make provisions for NTCAT to effect service.
4. Amend the RTA to restrict the ability for a landlord to list a domestic violence victim, who has left the property due to domestic violence, on a residential tenancy database.²

Attachment A: Provisions to support victims of domestic violence.

Attachment B: Joint Statement on making renting fair, safe and certain.

² Full recommendations are contained in the DCLS Submission to the 'Discussion Paper – Review of the Residential Tenancies Act 1999'
https://parliament.nt.gov.au/_data/assets/pdf_file/0004/759460/Submission-8-Darwin-Community-Legal-Service.pdf

PROVISIONS TO SUPPORT VICTIMS OF DOMESTIC & FAMILY VIOLENCE IN RESIDENTIAL TENANCIES ACT

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Domestic and Family Violence Act 2007 (NT)	Recommended changes to Residential Tenancies Act
Need to apply for a Domestic Violence Order	No order required
Law says 'may', so Judge has discretion	Automatic grant of protection by termination of tenancy agreement
Jurisdiction is adversarial – so the victim can be cross-examined	Unilateral application No need for contact with perpetrator – NTCAT to serve other party
The law includes a requirement to decide the impact on the landlord and whether the landlord 'reasonably refuses'	No order required, no requirement for consultation with landlord
The victim and the perpetrator must have previously lived together	Evidence of domestic violence provided, no need for domestic relationship or co-tenancy (current or historical)
Victim is not always represented, so they may not realise they can apply to have the tenancy terminated at the time the DVO is heard	Initiated by tenant / victim
Generalist jurisdiction – doesn't usually deal with housing issues	Specialist experience with housing and tenancy
	<p>NTCAT is used to dealing with tenancy and can make other decisions such as:</p> <ul style="list-style-type: none"> • Damage • Locks/Security • Residential Tenancy Database • Co-tenancy (removal from lease) • Bond Release and return • Possessions and abandoned goods

JURISDICTIONAL PROGRESS

ISSUE	NSW	VIC	SA	WA	QLD	NT
No need for ANY court application						
No need for DVO Application/order		(From 1 July 2020)	SACAT still considers Landlord view		QCAT still considers Landlord view	
Non-adversarial (no direct service requirement or appearance by perpetrator)		(From 1 July 2020)				
Bond Dealing		(From 1 July 2020 - can consider DFV)				(NTCAT app and no DFV considerations)
Residential Tenancy Database						(No exceptions for DFV)
Security/locks						
Co-tenancy issues. Severance or variation of contract						(Must have LL permission or reasonable excuse)
Damage from DVF						
Training of Real Estate Agents in identifying Domestic Violence						



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Make renting fair, safe and certain.

More than 50% of Territorians rent.

Reform of tenancy law in the Northern Territory is long overdue. Our legislation is over 20 years old and our laws lag behind those of all other Australian states and territories.

The current Territory Government committed to a comprehensive review of tenancy legislation in 2018. The CLP supported this position, and the independents in parliament have also called for reform. Now we are concerned this commitment is faltering with an approach that is piecemeal and insubstantial.

Fair tenancy laws are essential to attract and retain people in the Northern Territory. Most workers, families and students who come to the NT initially rent, as they assess our Territory lifestyle. These early experiences are crucial to their decision about longer term commitment to the Territory.

Fair tenancy laws are also central to aiding in housing homeless people that currently struggle to gain access to housing. Equitable laws also reduce the mental stress caused by packing up and moving a home.

Secure and certain tenancy arrangements guarantee a consistent return on investment in a falling housing market. Consistent laws protect both tenants and landlords. This makes renting fair, safe and certain.

We, who support the tenants of the Territory, see the impacts of unfair, uncertain and unsafe housing every day. We call on the Territory Government to honour their commitment to comprehensive reform of Tenancy Laws. We urge them to urgently commit to addressing the following issues:

- An end to evictions without good reason
- Protection for victims of domestic violence living in rental accommodation, enshrined in the *Residential Tenancies Act*
- Establishment of an Independent Authority to hold all bonds
- Legislative underpinning for reasonable rents and minimum standards of housing
- Regulation of fees and charges (such as break lease fees), so that they are not unreasonable and unfair.

Territorians expect fairness in their housing arrangements. At the very least, this means bringing rental laws in the NT into line with those that already exist in other Australian jurisdictions. This will help Territorians to live purposeful, productive lives and to contribute to the growth of our economy and our community.



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