



TOP END WOMEN'S LEGAL SERVICE INC.

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9 March 2018

c/o Mr Russell Keith
First Clerk Assistant
Economic Policy Scrutiny Committee
GPO Box 3721
DARWIN NT 0801

By email: EPSC@nt.gov.au

Dear Mr Keith,

Submission to the Residential Tenancies Amendment Bill 2018

The Top End Women's Legal Service ("TEWLS") welcomes the opportunity to make a submission to the Economic Policy Scrutiny Committee's inquiry into the Residential Tenancies Amendment Bill 2018 ("the Bill").

Our submission will be focused on our experience of assisting women in the Northern Territory ("NT"), including Aboriginal and Torres Strait Islander women, and women from culturally and linguistically diverse backgrounds. Notably, TEWLS has made previous public statement in respect of the regulation of residential tenancy databases in the NT, which we **enclose** for your records.

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. Founded in 1996, we are funded by the Commonwealth Departments of the Attorney General and Prime Minister & Cabinet to provide high quality, responsive, and culturally appropriate legal advice, casework, community legal education, and advocacy to women living in the Greater Darwin region.

We provide advice and assistance in a number of areas of law, including:

- Family law;
- Domestic and family violence;
- Housing and tenancy;
- Consumer law;
- Debts, fines and welfare rights;
- Sexual assault;
- Discrimination;
- Compensation for victims of crime; and
- Complaints about government and other services.

We provide outreach services for Aboriginal and Torres Strait Islander women in the town communities surrounding Darwin, women incarcerated in the Darwin Correctional Precinct,

women being treated at the Royal Darwin Hospital, and culturally and linguistically diverse women within the Greater Darwin region.

Our submission

A Support for amendments to the *Residential Tenancies Act* (NT)

TEWLS supports the proposed amendments to the *Residential Tenancies Act* (NT) (“RTA”) in principle as an effective and appropriate response to the use of residential tenancy databases by landlords, agents, and database operators in the NT, particularly in light of the national Residential Tenancy Database Model Provisions. We commend the Attorney-General’s introduction of the Bill as a response to recent advocacy by the community sector, as well as initiative to bring the NT into line with all other Australian jurisdictions in respect of the regulation of residential tenancy databases. TEWLS notes that we have had the opportunity to view the submission of the Darwin Community Legal Service (“DCLS”) to the Bill and have endorsed some of these submissions below.

B Comments to the Bill

TEWLS wishes to make particular comments to the Bill, as follows:

I Section 126 – Notice of usual use of database

Section 126 appears to be taken from section 3 of the national Residential Tenancy Database Model Provisions, where a landlord or their agent must give notice to a prospective tenant if they “usually” use one or more residential tenancy database to decide whether to enter into a tenancy agreement with that tenant. While comparable sections have been included in amendments to residential tenancy legislation in jurisdictions such as Queensland,¹ South Australia,² and Victoria,³ the *Residential Tenancies Act 2010* (NSW) does not include a section based upon section 3 of the national Residential Tenancy Database Model Provisions. The exclusion of this section in the NSW iteration of residential tenancy legislation is noteworthy, as while it appears the basis of the section is to provide procedural fairness to the respective tenant, the practice appears complex by reason of the term “usually” – a term open to interpretation, particularly by a layperson.

So as to provide clarity both tenants and landlords (including agents of landlords), it is our submission that the Bill would be improved by providing guidance in respect of the adverb “usually”, similar to the guidance recently drafted into the Criminal Code Amendment (Intimate Images) Bill 2017 (NT), such as “usually means uses a tenancy database for over 75 per cent of applications”. This addition would resolve issues of interpretation whilst also retaining the procedural fairness inherent in the proposed section 126 of the Bill.

II Section 132 – Providing copy of personal information listed

While TEWLS notes that section 132(4)(a) of the Bill appears to be taken from section 9(4)(a) of the national Residential Tenancy Database Model Provisions, we query the practicality of this section for tenants wishing to access their personal information from a landlord or database operator in the NT as the phrase “must not be excessive” is open to significant interpretation. As the primary purpose of the Bill, to provide a framework for the use of residential tenancy databases, denotes flexibility in respect of the practice of residential tenancy databases, it is debatable as to whether the Bill should prescribe or

¹ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s 458A.

² *Residential Tenancies Act 1995* (SA) s 99D.

³ *Residential Tenancies Act 1997* (Vic) s 439C.

provide additional guidance to the charging of any fees. However, it is our submission that the Bill would be improved by providing guidance in respect of the phrase “must not be excessive”, again similar to recent guidance drafted into the Criminal Code Amendment (Intimate Images) Bill 2017 (NT). This guidance could take the form of a range of fees to be charged by a landlord or database operator or a maximum fee able to be charged, with reference to current fees charged by database operators such as Equifax and the Tenancy Information Centre Australasia (also known as TICA), or by use of the term “reasonable”.

In the alternative, TEWLS in principle endorses the submission of the DCLS that no fee should be made payable by a respective tenant to a landlord or database operator. However, acknowledging that the removal of this fee may produce inconsistencies with current operations by database operators, we propose that a fee be made payable for any information requests additional to an original request within 12 months, which is consistent with current practice in accessing information regarding credit default listings.

III Section 173 – Transitional provision for Part 14

As a matter of practicality, TEWLS queries the proposed transition provision section 173 of the Bill, where following the transition period, the new Part 14 would apply retrospectively, as well as to all current and future tenancy agreements. It is our submission that while the proposed transition period has been made with good intentions, the practical effect will likely be a point of confusion for tenants and landlords (including agents) alike. As an alternative, TEWLS proposes that the commencement of the Bill apply to all tenancy agreements made, and personal information listed, before, on or after the commencement, with a policy or legislative provision that enforcement of the penalty provisions would not occur during the first three months.

IV Endorsement of comments made in DCLS submission

TEWLS endorses the following comments made by DCLS in their submission to the Bill:

- That an independent rental bond board be established in the NT;
- That the RTA be further amended to appropriately provide for domestic and family violence considerations, where TEWLS would welcome the opportunity to make submissions to any proposed reforms in this space;
- Additional amendments to section 128(1)(a) of the Bill to capture any issues for co-tenants;
- Additional amendments to section 128(1)(c) of the Bill to ensure that there is a limit imposed in respect of listings in line with the current three year limitation period in respect of residential tenancies;
- Additional amendments to section 129(3)(a) of the Bill to ensure that a tenant is provided with notice in respect of personal information being listed, where although inconsistent with the national Residential Tenancy Database Model Provisions, would ensure procedural fairness for tenants in such a notably transient environment as the NT;
- Additional amendments to section 130 of the Bill to provide a penalty for a lister on a tenancy database, be it a landlord or agent, failing to comply with their obligations, where we note while not included in the national Residential Tenancy Database Model Provisions, such a penalty was suggested for consideration in the relevant general notes; and
- In line with our support for additional amendments to section 130 of the Bill, we endorse additional amendments to section 131 of the Bill to provide a penalty for a database operator failing to comply with their obligations. We note that similar to the above, while not included in the national Residential Tenancy Database Model

Provisions, such a penalty was suggested for consideration in the relevant general notes.

We note that section 134 of the Bill proposes broad powers for the Tribunal, where additional amendments, such as domestic and family violence situations, would be welcomed by TEWLS by way of legislative guidance, such as that recommended above in parts I and II of this submission.

V Resources to be made available following endorsement of the Bill

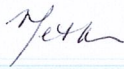
Further to the above submissions, we submit that resources should be made available to both tenants and landlords (including agents) following the endorsement of the Bill and prior to it's commencement. These education resources would ensure all parties would be aware of their updated rights and obligations, where TEWLS confirms we are in a position to assist in the promotion and use of any developed resources.

C Conclusion

We thank you for your consideration of the above and would be pleased to be contacted by phone on (08) 8982 3000 or email to admin_tewls@clc.net.au (contact person Caitlin Weatherby-Fell) should you wish to discuss this submission further.

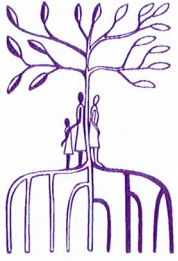
We look forward to the outcome of the Economic Policy Scrutiny Committee's inquiry.

Yours faithfully,
TOP END WOMEN'S LEGAL SERVICE INC.



Vanessa Lethlean
Managing Solicitor

Enclosed: Media statement dated 2 October 2017



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Date: 2 October 2017

FOR IMMEDIATE RELEASE

NORTHERN TERRITORY RENTAL LAW REFORM

On the occasion of International Tenants Day, the Top End Women's Legal Service (TEWLS) announces support for reform of the *Residential Tenancies Act (NT) (RTA)*.

Key issues for reform include regulation of the use of residential tenancy databases (RTD) in the Northern Territory, establishing a centralised bond holding scheme, and improved protections for tenants or occupiers who are victims of domestic and family violence.

TEWLS Managing Solicitor, Vanessa Lethlean, said, "reform of the RTA provides an opportunity to improve the experiences of both tenants and landlords and bring the Northern Territory into parity with other Australian jurisdictions".

Regulation of RTDs should be specifically provided for in the RTA, as occurs in other Australian jurisdictions. The Northern Territory Civil and Administrative Tribunal (NTCAT) should hear and determine RTD disputes. The Northern Territory is the only Australian jurisdiction without a centralised bond holding scheme.

TEWLS is particularly concerned with improved protections under the RTA for tenants or occupiers who are victims of domestic and family violence.

Ms Lethlean added, "Consultation with stakeholders and community groups is needed, leading to policy improvements and the development of relevant legislative provisions."

CONTACT:

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