Report to the Attorney-General by the Residential Tenancies Act Review Working Group

January 2022

NORTHERN TERRITORY GOVERNMENT

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Acronyms	Full form
AGD	Department of the Attorney-General and Justice
Bill	Residential Tenancies Act Amendment Bill
Consumer Affairs	Northern Territory Consumer Affairs
DCLS	Darwin Community Legal Service Incorporated
DFV	Domestic or Family Violence
DVO	Domestic Violence Order
Government	The Northern Territory Government
Housing	Department of Territory Families, Housing and Communities
NT Local Court	Local Court of the Northern Territory
Member(s)	Member(s) of the Residential Tenancies Act Review Working Group
NT / the Territory	Northern Territory of Australia
NTCAT	Northern Territory Civil and Administrative Tribunal
NT Supreme Court	Supreme Court of the Northern Territory
REINT	Real Estate Institute of the Northern Territory Incorporated
Report	Report to the Attorney-General by the Residential Tenancies Act Review Working Group
The 2019 Review	Review of the *Residential Tenancies Act 1999*
The Act	*Residential Tenancies Act 1999*
The Chair	The Chair of the Residential Tenancies Act Review Working Group
The Regulations	*Residential Tenancies Regulations 2000*
The Working Group	The Residential Tenancies Act Review Working Group
ToR	Residential Tenancies Act Review Working Group Terms of Reference

Contents

1. Overview

1.1. The Northern Territory Government (Government) has a reform agenda to ensure the *Residential Tenancies Act 1999* (the Act) provides a framework that balances the interests of tenants and landlords as identified through the 2019 Discussion Paper: Review of the *Residential Tenancies Act 1999* (the 2019 Review), released by the Department of the Attorney-General and Justice (AGD) in August 2019.

1.2. To progress the next stage of the Government's reform agenda, the then Attorney-General and Minister for Justice, the Hon Natasha Fyles, MLA, established the Residential Tenancies Act Review Working Group (the Working Group).

1.3. The purpose of the Working Group was to enable stakeholder members to engage directly and work collaboratively to develop an evidence-based Report on the Working Group's deliberations to the Attorney-General and Minister for Justice.

1.4. The Working Group's Terms of Reference (ToR) (attached at Appendix A) identifies the objective of this Report as being to document the Working Group's recommendations of possible amendments for inclusion in a possible draft exposure Residential Tenancies Act Amendment Bill (Bill) for broader public consultation. The Bill is take into consideration the unique conditions of the Territory's residential tenancy market, informed by the collective views of stakeholders as evidenced in this Report and past submissions.

1.5. The ToR provided for an initial timeframe for the Chair to deliver this Report by June 2021. The Working Group met monthly from September 2020, and increased its schedule to fortnightly meetings in March 2021 when the current Attorney-General and Minister for Justice, the Hon Selena Uibo, MLA, approved the Working Group's request to extend its deliberations and reporting timeframe to the end of December 2021.

1.6. The Working Group comprises representatives from umbrella organisations covering community legal and social services, Aboriginal legal services, landlord associations, and workers. Organisations represented on the Working Group are: Top End Women's Legal Service Incorporated, Darwin Community Legal Service Incorporated (DCLS), Domestic Violence Legal Service, North Australian Aboriginal Justice Agency Ltd, North Australian Aboriginal Family Law Service, United Workers Union, NT Shelter, Anglicare NT, Real Estate Institute of Northern Territory Inc (REINT), Law Society Northern Territory, Northern Territory Consumer Affairs (Consumer Affairs) and the Department of Territory Families, Housing and Communities (Housing). Member details are at Appendix B.

1.7. This Report provides an overview of the discussions, and where reached, the conclusions and agreed recommendations on matters considered by the Working Group during its meetings. There are, however, other issues which some Members would like to have canvased within the Working Group that, even with the revised timeframe, were not able to be discussed for this Report due to the volume of issues raised, and the depth to which those issues which were discussed were explored. Those issues are listed at Appendix C. As the ToR outlines, the Working Group's Report is one facet of an iterative process that offers multiple opportunities for stakeholder engagement and input into the reform program.

2. Summary of Recommendations for Potential Amendment of the Act

2.1. This section summarises the Working Group's recommendations on potential amendments to the Act.

2.2. Application of the Act

- amend section 6(1) of the Act to:
    - exclude retirement villages;
    - exclude on-campus primary and secondary school student accommodation provided and operated by educational institutions; and
    - provide coverage for any sort of occupancy agreement where valuable consideration is provided in exchange for the right to occupy premises, regardless of whether any actual rent was paid or not. This would include situations where occupation is provided without rent in premises as a condition or benefit associated with employment, but not boarding situations; and
- repeal regulation 4A of the Regulations so that the Act applies to all tertiary student accommodation regardless of whether it is provided on or off campus.

2.3. Condition reports

- for ingoing condition reports, amend section 25 of the Act to:
    - extend the timeframe for the tenant to return the ingoing condition report from 5 business days to 7 business days; and
    - remove the mandatory requirement for the tenant to be present during the preparation of the ingoing condition report, and replace it with a requirement that the tenant must be invited to attend, and if the tenant agrees to attend, the inspection is conducted at a mutually agreed time.;
- for ongoing tenancies:
    - where a co-tenant assigns their interest in the tenancy to a new co-tenant and none of the original co-tenants remain in that ongoing tenancy, the new co-tenants have an option of being bound by the original ingoing condition report with the ability to negotiate amendments to reflect the standard of the premises at that time, or the new co-tenants can treat it as a termination of the tenancy and once a new condition report is done, a new tenancy commences thereafter;
    - the landlord cannot require the tenant to fully vacate and physically leave the premises to do the new tenancy inspection report, rather tenants can move all their goods from where an inspection needs to be done but keep them on the premises when conducting a condition report; and
    - if an assignment of tenancy occurs, the landlord must provide the original or amended ingoing condition report to the new tenants if so requested by any of the new tenants; and
- for periodic inspection reports, amend section 70 of the Act to state that a landlord must provide a copy of the periodic inspection report on request of the tenant.

2.4. Co-tenants

- establish a process for a co-tenant to assign or terminate their interest in a tenancy either during, or at the end of, a tenancy term that involves:
    - the departing co-tenant having to request the consent of the landlord and other remaining co-tenant/s to an assignment of the tenancy to a new co-tenant or to the remaining co-tenant/s, with such consent not being able to be unreasonably withheld;
    - a period of 21 days for the landlord and remaining co-tenant/s to object to the request, with consent deemed to be provided if no objections are made in that period;
    - the remaining co-tenant(s) be required to provide 14 days' notice if they also elect to terminate effectively giving them a week to consider their position;
    - an ability for the departing co-tenant to apply to the Northern Territory Civil and Administrative Tribunal (NTCAT) for an order assigning / terminating the departing co-tenant's interest where the landlord or remaining co-tenant/s have unreasonably withheld their consent to the assignment / termination;
    - an ability for the remaining co-tenants to also apply to the NTCAT to terminate the tenancy in cases where they are unwilling / unable to remain in the tenancy without the departing co-tenant;
- clarify that a departing co-tenant's liability and obligations under the tenancy agreement ceases on the assignment or termination of their interest in that tenancy; and
- provide the NTCAT with a concurrent power to determine, as a secondary issue, the apportionment of liability between co-tenants after having firstly determined the tenancy matter between the landlord and co-tenants as joint tenants for any obligations to the landlord (eg. damage, rent liability, etc.).

2.5. Rent bidding / inaccurate advertising of rent

- prohibit rent bidding by amending the Act to stipulate that the rent as advertised is the rent to be charged, subject to:
    - an ability for the tenant and landlord to negotiate modest increases based on the inclusion of extra services / benefits, such as garden maintenance, installation of a dishwasher, etc.; and
    - an ability for a tenant to offer a lower amount of rent than that advertised and for the landlord to accept that lower level of rent.

2.6. Increases in rent

- limit rent increases to once every 12 month interval for all leases regardless of duration, with rent increases for long term leases set at 5% of current rental (for the preceding 12 month period).

2.7. Service of notices generally

- incorporate NTCAT Practice Direction No 2 into the Act to provide the option of electronic service, with the onus to be placed on the sender to prove that electronic service took place.

2.8. Minor modifications by tenant

- tenants may make minor modifications if it is to ensure safety and security and the landlord cannot unreasonably refuse. If the landlord does refuse, then the responsibility falls upon the landlord to apply to the NTCAT. Retain current 'reasonable excuse' exemption from seeking landlord permission before modification and provide examples of what might constitute reasonable excuse;

- tenants may make minor modifications which are not related to safety / security purposes if they are for picture hooks, etc., or for energy and water saving devices, provided they seek permission from the landlord, and the landlord cannot unreasonably refuse. If the landlord does refuse, then the responsibility falls upon the tenant to apply to the NTCAT. Reasonable refusal can take place if there are too many picture hooks already existing;
- include a note that indicates the *Anti-Discrimination Act 1992* applies to modifications to meet a person's special needs; and
- insert a requirement that tenants must restore the premises to the original condition at the end of the lease unless there is an agreement with the landlord that modifications made can remain.

2.9. Locks and security devices generally

- reword sections 52 and 53 of the Act in a positive frame while retaining the elements of those provisions; and
- include a proviso that states the tenant does not have to provide the landlord with a copy of the new key if the landlord has been, or is suspected of, committing domestic and family violence (DFV) against the tenant or other occupant/s.

2.10. Repairs

- standardising the reporting requirement under both section 58 of the Act (ordinary repairs) and section 63 of the Act (emergency repairs) for the request for repairs to be in writing (including electronically) 'unless it not practicable to do so' noting that the onus will be on the tenant to prove oral notification took place where they are unable to notify the landlord in writing;
- prescribe a timeframe for ordinary repairs to be 7 business days to action, and 21 days to complete, subject to the application of reasonable diligence and matters outside of the landlord's control;
- replacing tenant initiated repair provisions with an ability to apply to the NTCAT where the landlord has not made arrangements for or effected ordinary repairs with reasonable diligence, as exists with emergency repairs, noting delay may be influenced by factors outside of the landlord's control;
- landlord to either complete, or make arrangements for, emergency repairs and notify the tenant of those arrangements by the end of the next business day after the tenant has reported the need for repair. A timeframe of 7 business days in which to have emergency repairs completed before an application can be made to the NTCAT. The NTCAT to consider whether the landlord acted with reasonable diligence and if any matters existed that were outside of the landlord's control;
- provide the NTCAT with a power to make ancillary orders to give effect to any orders it makes for repairs; and
- amend section 63(2) of the Act to list water heaters, air-conditioners and household heaters as items for which the emergency repair provisions apply provided such devices are already installed on the premises by the landlord. In the absence of an air-conditioner, a fan or other 'mechanical cooling device' to be considered as an emergency repair if installed. Delays in repair caused by remote locations, unavailability of contractors or warranty parts to be excused if landlord can establish they acted with reasonable diligence in effecting the repair.

2.11. Personal privacy during inspections

- include a provision in the Act similar to section 89A of the Victorian *Residential Tenancies Act 1997* to enable a tenant to review and object to images that could identify the tenant or displayed their valuable items.

2.12. Inspections by prospective tenants or purchasers

- amend section 74 of the Act to limit the number of inspections to twice a week, with 48 hours prior notice required, with the inspection to be at a time agreed between the parties.

2.13. Long-term tenancies

- defining a long-term lease as being a minimum of 24 months in duration set at the start of a tenancy, with no limitation on the length of a long-term lease; and an option to voluntarily agree to treat multiple consecutive agreements as a long-term lease; and
- special provisions for long-term leases as follows:
    - greater notice period of 3 months to terminate a long-term lease;
    - compensation of 1 month's rent per remaining year of lease, up to a maximum of 3 months, for a tenant breaking a long-term tenancy, subject to the other party taking reasonable steps to mitigate loss;
    - a two tiered system for periodic inspections where the tenant is treated as a standard tenant for the first year of the tenancy and is subject to the option of 3 monthly inspections, with longer timeframes between inspections for subsequent years, such as 6 or 12 months. If the tenant has 'passed' inspections in the first year then they can be graded as having a lower risk profile and be treated as a long-term tenant subject to longer timeframes between inspections in the subsequent years.

2.14. Tenancy database listings

- create a prescribed form for notices under section 129 of the Act;
- revise the tenancy databases provisions in Part 14 of the Act to provide greater clarity and provide that a listing should only occur:
    - where the person to be listed is a tenant;
    - when the tenancy has ended;
    - where that person breached the agreement and owes the landlord an amount of money that exceeds the bond, as determined either through an order of the NTCAT or agreement between that person and the landlord; and
    - where a notice is issued under section 129 of the Act; and
- where the NTCAT finds in a co-tenancy that only one co-tenant is responsible for a breach, the other co-tenant will not be listed.

2.15. Mortgagee in possession

- amend the Act to provide that where an order of possession is made, the tenant has 42 days to vacate with no rent payable during that period, though the tenant may vacate earlier if they wish.

2.16. Application to tribunal after lease has concluded

- amend the Act to clarify that a tenant may bring an application before the NTCAT either during or after the lease has concluded, that the 3 years limitation period applies, and the timeframe to commence an action starts:
    - for breaches during the tenancy – from when the breaching party is notified of the breach, noting the other party's obligation to notify as soon as practicable; and
    - for claims on the bond – at the end of the tenancy.

2.17. Waiving of rights under the Act / consent to breaches of the Act and compensation:

- provide greater clarity by redrafting section 122 of the Act and the Act generally through modernising the drafting language used.

2.18. Termination – Employment related tenancies

- extend the 2 days notification period under section 91(2)(a) of the Act for employment related tenancy termination to 28 days, noting that the landlord can apply to the NTCAT for a shorter period if the premises were under threat;
- redraft section 91 of the Act to clarify that:
    - employment related tenancies have coverage even if no rent is paid and employment services are instead provided in exchange for remuneration which includes rental accommodation as part of the conditions or benefits of employment; and
    - it only applies for employment related tenancies where the employer is also the landlord and the employee the tenant; and
- remove section 91(3) of the Act.

2.19. Termination – serious breaches and unacceptable conduct of the tenant

- redraft section 100(2) of the Act in consultation with the NTCAT to require the tenant to be notified or served with the application under section 100(1) of the Act.

2.20. Termination – Suspending of order for vacant possession

- clarify that notwithstanding section 104 of the Act, the tenancy is not at an end until the suspension ordered by the NTCAT is removed or the tenant gives up possession;
- provide a process that enables a landlord to apply to the NTCAT to revoke the order of suspension if the tenant commits a further breach; and
- make it mandatory for the NTCAT to consider section 105 of the Act in all termination matters.

2.21. Absent tenant

- amend section 108 of the Act to set out what 'reasonable grounds' might entail for determining whether the premises have been abandoned, and include considerations where the landlord identifies that the premises are occupied;
- clarify the landlord's requirement under section 109 of the Act to take reasonable steps to secure the tenant's goods generally, including personal papers, after ensuring proper assessment of value for retention and storage; and
- provide a significant penalty for failure to undertake those reasonable steps or establish reasonable grounds.

2.22. Termination of a tenancy where there is DFV

- amend section 23 of the *Domestic and Family Violence Act 2007* to:
    - remove the requirement under section 23(1)(a) that the victim and perpetrator live together or previously lived together in premises; and
    - change the reference in section 23(1)(b) from 'the premises' to 'a premises' to reduce limitations that exist in relation to tenancy aspects, particularly in circumstances when there are Domestic Violence Order (DVO) proceedings and the victim and the perpetrator no longer live together but the perpetrator knows the victim's home address; and

- introduce a mechanism in the Act which enables immediate termination of the tenancy and an end to the liability of a victim tenant (whether sole tenant or co-tenant) on the basis of notice to the landlord of NT Local Court and/or Federal Circuit and Family Court of Australia processes, or on presentation of a certificate and/or letter from a list of prescribed occupations authorised to certify the presence of DFV. Members recommended that the termination be subject to:
    - an ability for the landlord or a co-tenant to challenge the termination on reasonable grounds, but only in relation to the validity of the notice (not whether DFV occurred);
    - any co-tenant or landlord having the right to apply to the NTCAT for a determination of rights and liabilities between the co-tenants at the point of termination; and
    - any remaining co-tenant having the option to consider termination if they were unable to service the tenancy without the departing co-tenant.

2.23. Immunity against vicarious liability for damage caused by a third party through an act of DFV

- amend section 12(3) of the Act to shift liability to the perpetrator by enabling the landlord to bring a small claim against the perpetrator under the *Small Claims Act 2016*, with the NTCAT having the power to determine liability between the victim tenant and the perpetrator;
- clarify that section 12 of the Act applies only to visitors;
- expand the scope of section 12(3) of the Act to include claims for cleaning and other breaches / issues;
- amend section 12(3)(c) of the Act to remove reference to the number of times that an act of domestic violence has been performed by the person in the premises to which the tenancy agreement relates; and
- provide that the notice to the landlord relating to the presence of DFV for the purpose of terminating the tenancy is sufficient to establish the presence of DFV.

2.24. Tenancy database listings and DFV

- a victim co-tenant should have an opportunity at the time a listing is proposed to:
    - either not agree to a listing, and for the matter to then proceed to the NTCAT to determine whether the listing should occur; or
    - agree to the listing and apply at a later time to the NTCAT to seek removal of the listing;
- have an information note in a standard form / prescribed notice of proposed listing that advises of the ability to challenge a listing;
- in making a decision to not list / remove a listing, the NTCAT would need to be satisfied that the perpetrator co-tenant was liable for the breach; and
- provide that the notice to the landlord relating to the presence of DFV for the purpose of terminating the tenancy is sufficient to establish the presence of DFV when considering listing.

3. Matters Considered

3.1. Application of the Act

3.1.1. The Act applies to all tenancy arrangements unless they are excluded under section 6 of the Act, or are exempted by the Residential Tenancies Regulations 2000 (the Regulations) in accordance with section 7 of the Act.

3.1.2. The Working Group discussed the following:

Holiday Accommodation

3.1.3. Pursuant to section 6(1)(a) of the Act, the Act does not apply to agreements under which a person occupies 'premises provided for the purpose of holiday accommodation'.

3.1.4. Members discussed whether a time period of continuous occupancy should be included before the Act's provisions are activated for short-term accommodation providers, however noted the difficulty associated with trying to legislatively distinguish between genuine short-term arrangements (such as hotels / motels) and those that may be on a more longer-term basis. Members did not consider this issue further.

Supported, managed or transitional accommodation

3.1.5. Section 6(1)(f) of the Act excludes 'premises provided for the use of homeless, unemployed or disadvantaged persons for charitable purposes or for the purposes of providing emergency shelter or accommodation'. Members noted that because of this provision, it was not clear whether service providers and clients of supported, managed or transitional accommodation arrangements were excluded or not from the Act's protections, and that most providers and clients operated as if the Act did not apply.

3.1.6. Members discussed that while the Act should generally regulate arrangements for residential purposes, the basis of any exclusion or exemption should be focused on the nature of the accommodation and services provided rather than the status of the service provider. Members noted that as there are a variety of different accommodation and service models, while minimum protections should be in place, the degree / level of protections should align with the nature of the accommodation and services provided.

3.1.7. Members considered this advantageous as service providers would benefit from having greater clarity as to the scope of their coverage (or not) under the Act. This would include the regulation of bonds, termination notice periods and procedural fairness where there is a breach of agreement. Some Members considered it would be preferable for equal rules to apply to everyone, however acknowledged that the various different types of accommodation and service arrangements may require flexibility.

3.1.8. Members also noted that the lack of clarity / understanding by service providers around the operation of the Act further impacted on their rights / obligations where they rented homes to provide services to their clients. Members noted that the interaction between the owner of the premises and the service provider (who has taken out a head-lease) would technically see the head-tenancy falling outside of the Act as a commercial rather than residential tenancy (even though the sub-lease to the client is residential in nature). Members noted that landlords and service providers often did not appreciate the distinction.

3.1.9. On the commercial/residential tenancy issue, Members considered whether the following options might address this:

- allowing landlords to enter into a residential tenancy head-lease with a service provider, rather than a commercial lease, to bring the arrangement within the purview of the Act, and

the rights / protections / remedies that the Act affords the landlord as head-tenant, with the ability for sub-leases to be managed based on the nature / requirements of the services provided to the sub-tenant; and

- providing extended timeframes for actions under the head-tenancy, acknowledging that there would be lead-times for the head-tenant / service provider discharging its obligations under the head-lease as it liaises with the sub-tenant / client.

3.1.10. The Working Group concluded the following:

- further consideration on options to deal with managed and supported accommodation was required, with NT Shelter to continue to lead discussion, and in the interim, REINT to advise its members to seek legal advice before entering into head-tenancy agreements; and
- Consumer Affairs should consider developing / revising fact sheets on:
  - the differences between boarders / lodgers and tenants and how that determines coverage under the Act; and
  - the prohibition and penalties on occupation of commercial / industrial tenancies for residential purposes.

3.1.11. NT Shelter have subsequently provided the Working Group with a position statement and outline of its preferred treatment for the scope and coverage of managed and supported accommodation (Appendix D) Further work on options is required to enable Members to develop concepts further, including issues such as what managed, supported and transitional accommodation is, and how those accommodation models might be treated within the overall regulation of tenancies.

On campus accommodation

3.1.12. Regulation 4A of the Regulations exempts tenancy agreements which grant a right to occupy North Flinders International House. Members noted the residential services provided by Charles Darwin University, now named International House, have changed since the exclusion in regulation 4A of the Regulations was first brought in and agreed the exclusion no longer appeared to be warranted.

3.1.13. Members also noted the differences between primary / secondary school student accommodation and that offered for tertiary students, and agreed that on campus primary / secondary school student accommodation should be excluded.

Exclusions where no rent is payable

3.1.14. Section 6(1)(b) of the Act excludes agreements where no rent is payable for a right to occupy the premises, while section 6(1)(c) of the Act excludes agreements where no rent is payable, however services are provided in exchange for a right to occupy.

3.1.15. While considering employment related tenancies, members discussed the operation of section 91 of the Act and whether that provision should be limited to when rents are actually exchanged, or whether it should cover a broader scope such as any sort of occupancy agreement regardless of whether any actual rent was paid or not.

3.1.16. Members noted that in accordance with the definitions, a residential tenancy existed where valuable consideration was provided in exchange for the right to occupy premises, and that outside of the Act, valuable consideration could involve situations where accommodation was provided as a condition of a person's employment (such as where it is factored into employment where a person receives a lower salary as well as being provided accommodation). Members concluded that the Act should apply to any sort of occupancy agreement where valuable consideration is provided in exchange for the right to occupy premises.

3.1.17. The Working Group agreed to recommend the following amendments:

- amend section 6(1) of the Act to:
  - exclude retirement villages;
  - exclude on-campus primary and secondary school student accommodation provided and operated by educational institutions; and
  - provide coverage for any sort of occupancy agreement where valuable consideration is provided in exchange for the right to occupy premises, regardless of whether any actual rent was paid or not. This would include situations where occupation is provided without rent in premises as a condition or benefit associated with employment, but not boarding situations; and
- repeal regulation 4A of the Regulations so that the Act applies to all tertiary student accommodation regardless of whether it is provided on or off campus.

3.2. Alternative bond products

3.2.1. Alternative bond products are marketed as a simple innovative approach to cash flow issues associated with traditional bonds. Alternative bond products effectively operate as a surety, where the tenant pays a fee to a business that then provides the equivalent of a bond or guarantee to the landlord. Although the up-front cost for alternative bond products is small when compared against the total of a bond, the end-cost for a tenant may exceed that of an actual cash bond. The tenant may end up being liable for payments to the landlord that the bond would have covered, in addition to the fee paid to the alternative bond product provider, regardless of whether the provider denies or pays a landlord's claim.

3.2.2. The Working Group discussed this matter and considered that alternative bond products did not seem to provide any tangible benefits as interest free loans were already available to low income households that cannot afford a bond.

3.2.3. The Working Group agreed that the Act should not be amended to permit or support alternative bond products because such products do not comply with the requirements and definition of a bond, and that Consumer Affairs and DCLS would provide educational material on their websites about what constitutes a 'bond'.

3.3. Bond board

3.3.1. While this topic did not feature in the Working Group's agenda, a number of Members raised the need for establishing a bond board in the Territory. While acknowledging the general support for a bond board by those Members present, against the lack of support from the real estate industry as a whole, the Chair noted that the topic of a bond board had progressed beyond conversations of whether one was needed, to one that involved detailed analysis of how a bond holding scheme might be constructed to suit Territory conditions in the setting of limited fiscal resources – both from the perspective of self-funding through interest on holdings, and that of Government. The Chair noted that the funding aspect was something that had ultimately influenced progression of a bond holding scheme in the Territory since it was recommended in the early 1990's by the Working Group Appointed to Review Tenancy Law in the Northern Territory.

3.3.2. The Chair noted the potential significant funding shortfall between possible interest revenue and operational costs when comparing interstate operational models against current levels of NTCAT applications, noting a detailed cost benefit analysis and sound business case in support of a bond board would be required for Government to consider whether to proceed.

3.3.3. Members discussed the matter, including possible outsourcing (noting that outsourcing had been explored previously and rejected by stakeholders) and funding, including reallocation of the Tenancy Trust Account. Members discussed Consumer Affairs managing the system with additional staff and resources.

3.3.4. The Chair invited contributions from Members who might be in a position to develop or assist in the development of the requisite assessments, including how regional and remote tenancies will interact with the scheme. The Chair noted that any consideration would be outside of the Working Group process due to the size and complexity of such an initiative.

3.4. Enable persons under 16 years of age to enter tenancy agreements

3.4.1. There are times when people under the age of 16 years need access to rental housing (such as a young mother and baby escaping DFV), however the Act prevents them entering into tenancy agreements.

3.4.2. The Working Group discussed whether the Act should be amended to permit minors to enter into a tenancy agreement. Though there was support for permitting minors to enter into contracts, there was concern expressed about the underlying need for them to gain legal advice and support assistance to alleviate the risk of them being exploited. Although the Working Group was unable to reach consensus on this issue, Members noted Housing's attempts to involve wrap-a-round services through its Housing for Youth program.

3.5. Condition reports

3.5.1. While completion of an ingoing or outgoing condition report is not mandatory, sections 25 and 110 of the Act set out how and when a condition report must be completed if one is undertaken.

3.5.2. The Working Group discussed the following:

- timeframes to complete and return the ingoing inspection report, noting the mandatory requirement for the tenant to be present when the report is filled out create undue pressures on both landlords and tenants, and that a degree of flexibility is required;
- the status of the initial ingoing condition report when the composition of a shared tenancy changes following an assignment of a co-tenant's interest in the tenancy to a new co-tenant, particularly where there are no 'original' tenants remaining;
- periodic inspection reports; and
- whether sections 110 and 112 of the Act should be amended so a timeframe 'overlap' is no longer there between the process for developing an outgoing condition report and claims from the security deposit, which can lead to inconsistencies in managing the inspection / bond claim process.

3.5.3. The Working Group concluded that in relation to outgoing condition reports:

- the 7 business days' timeframe is quite short and insufficient to get quotes to support claims against the bond; and
- the provisions needed to be reworded for better clarity as to their operation, though the creation of a bond board could resolve problems between the conflicting timeframes for actioning outgoing condition reports and making claims against the security deposit under sections 110 and 112 of the Act.

3.5.4. The Working Group agreed to recommend the following amendments:

- for ingoing condition reports, amend section 25 of the Act to:
    - extend the timeframe for the tenant to return the ingoing condition report from 5 business days to 7 business days; and
    - remove the mandatory requirement for the tenant to be present during the preparation of the ingoing condition report, and replace it with a requirement that the tenant must be invited to attend, and if the tenant agrees to attend, the inspection is conducted at a mutually agreed time.
- for ongoing tenancies:
    - where a co-tenant assigns their interest in the tenancy to a new co-tenant and none of the original co-tenants remain in that ongoing tenancy, the new co-tenants have an option of being bound by the original ingoing condition report with the ability to negotiate amendments to reflect the standard of the premises at that time, or the new co-tenants can treat it as a termination of the tenancy and once a new condition report is done, a new tenancy commences thereafter;
    - the landlord cannot require the tenant to fully vacate and physically leave the premises to do the new tenancy inspection report, rather tenants can move all their goods from where an inspection needs to be done but keep them on the premises when conducting a condition report; and
    - if an assignment of tenancy occurs, the landlord must provide the original or amended ingoing condition report to the new tenants if so requested by any of the new tenants.
- for periodic inspection reports, amend section 70 of the Act to state that a landlord must provide a copy of the periodic inspection report on request of the tenant.

3.6. Co-tenants

3.6.1. While the Act formally recognises co-tenants, and sets out how a bond will be divided between them, the Act does not cover processes where a co-tenant may wish to leave a tenancy without finding a replacement, transferring or refunding bonds when co-tenants change, or what happens when a co-tenant has abandoned the premises.

3.6.2. The Working Group agreed to recommend the following amendments:

- establish a process for a co-tenant to assign or terminate their interest in a tenancy either during, or at the end of, a tenancy term that involves:
    - the departing co-tenant having to request the consent of the landlord and other remaining co-tenant/s to an assignment of the tenancy to a new co-tenant or to the remaining co-tenant/s, with such consent not being able to be unreasonably withheld;
    - a period of 21 days for the landlord and remaining co-tenant/s to object to the request, with consent deemed to be provided if no objections are made in that period;
    - the remaining co-tenant(s) be required to provide 14 days' notice if they also elect to terminate effectively giving them a week to consider their position;
    - an ability for the departing co-tenant to apply to the NTCAT for an order assigning / terminating the departing co-tenant's interest where the landlord or remaining co-tenant/s have unreasonably withheld their consent to the assignment / termination; and

- an ability for the remaining co-tenants to also apply to the NTCAT to terminate the tenancy in cases where they are unwilling / unable to remain in the tenancy without the departing co-tenant;

- clarify that a departing co-tenant's liability and obligations under the tenancy agreement ceases on the assignment or termination of their interest in that tenancy; and
- provide the NTCAT with a concurrent power to determine, as a secondary issue, the apportionment of liability between co-tenants after having firstly determined the tenancy matter between the landlord and co-tenants as joint tenants for any obligations to the landlord (e.g. damage, rent liability, etc).

3.7. Sub-tenants, boarders, lodgers and other arrangements

3.7.1. With share-housing and other informal living arrangements on the rise, some stakeholders have suggested there is a need for clarification about the rights and responsibilities that sub-tenants, boarders, lodgers and other arrangements have.

3.7.2. Members considered whether the Act should be amended to mandate that a head-tenant provide an information sheet, renters guide or standardised tenancy agreement detailing the rights and responsibilities with respect to sub-tenants. The Working Group concluded that it would be an undue impost to enforce, by penalty or otherwise, the failure of the head-tenant to provide the mandatory material to a sub-tenant, and that as this was ultimately an education / awareness issue, Consumer Affairs and community legal services should consider whether current information platforms sufficiently educate and raise awareness on the rights, responsibilities and distinctions between sub-tenants, boarders and lodgers. DCLS conducted research and informed the Working Group that all other Australian jurisdictions other than Tasmania have some form of mandatory information sheet, renters guide or standardised tenancy agreement detailing rights and responsibilities.

3.8. Rent bidding / inaccurate advertising of rent

3.8.1. Rent bidding is the practice of seeking or offering more rent for premises than the advertised rental rate. Members noted that this practice was not limited to agents / landlords, but also engaged by tenants. REINT confirmed this was not a practice it encouraged or supported and noted that any agent engaging in deceptive practices, such as advertising at a specific rate then suggesting a higher rate to secure the tenancy, could result in disciplinary proceedings under the *Agents Licencing Act 1979*.

3.8.2. In addition to rent bidding, Members also noted the issue of landlords advertising premises without a rental price or with a rent range, with NT Shelter noting the experience of a former colleague of one of its employees who applied for a rental premises at one rent level but was advised by the landlord's agent, that while the application was successful, the rental price had increased to a new amount.

3.8.3. The Working Group concluded that rent bidding should be prohibited and recommended that the Act be amended to stipulate that the rent as advertised is the rent to be charged, subject to:

- an ability for the tenant and landlord to negotiate modest increases based on the inclusion of extra services / benefits such as garden maintenance, installation of a dishwasher, etc.; and
- an ability for a tenant to offer a lower amount of rent than that advertised and for the landlord to accept that lower level of rent.

3.9. No-cost rent payment options

3.9.1. While there was broad consensus amongst the Working Group on there being at least one no cost option for paying rent, Members noted that there did not appear to be any indication of landlords charging tenants for paying rent. Members agreed to maintain a watching brief to see if any evidence of charging arises, and to report back in such an event.

3.10. Increases in rent

3.10.1. Section 41 of the Act states that rent can only be increased if the tenancy agreement provides a right to increase rent during the tenancy, and that agreement also provides the amount of the increased rent or the method of calculating it. A limit of one rent increase every 6 months is also set. A common law right may nevertheless exist for the parties to mutually agree to a rent increase (e.g. where new improvements are made to the premises) or otherwise.

3.10.2. The Working Group recommended that the Act be amended to limit rent increases to once every 12 month interval for all leases regardless of duration (i.e. 6 months, 12 months, or longer), with rent increases for long term leases set at 5% of current rental (for the preceding 12 month period).

3.10.3. Some Members requested additional time to further consider this issue.

3.11. Service of notices generally

3.11.1. The Act sets out processes and requirements when giving the other party formal notice. However, there are some technical differences with the processes under the Act and the general processes for service under the *Interpretation Act 1978*.

3.11.2. The Working Group concluded that those differences, together with increasing ease, availability and immediacy of electronic communication, and changes to the frequency of postal service delivery, have caused some confusion and raise questions about the most effective way to give notice.

3.11.3. The Working Group agreed to recommend the incorporation of NTCAT Practice Direction No 2 into the Act to provide the option of electronic service, with the onus to be placed on the sender to prove that electronic service took place. Members also agreed to give further consideration to, and provide feedback on:

- whether the Act needed amendment to clarify what constituted service;
- issues associated with postal service delivery; and
- whether extra time was required for the service of notices under section 112 of the Act.

3.11.4. Members did not provide further commentary on these issues.

3.12. Minor modifications by tenant

3.12.1. The Act allows tenants to make modifications to premises provided the landlord has given prior approval. However, it is standard practice for landlords to prohibit any modification at all including minor modifications needed for personalising a dwelling such as through placing picture hooks or adhesive on walls.

3.12.2. The Working Group concluded the following:

- tenants should generally not be permitted to renovate premises, however should be permitted to personalise premises with minor modifications with landlord consent, with that consent to be based on the nature of the modifications; and
- no additional bond be required to cover minor modifications made by a tenant.

3.12.3. The Working Group agreed to recommend the following amendments:

- tenants may make minor modifications if it is to ensure safety and security and the landlord cannot unreasonably refuse (e.g. affixing furniture to a wall for safety reasons, the changing of locks or installation of security cameras and alarm systems). If the landlord does refuse, then the responsibility falls upon the landlord to apply to the NTCAT. Retain current 'reasonable excuse' exemption from seeking landlord permission before modification and provide examples of what might constitute reasonable excuse;
- tenants may make other minor modifications which are not for safety / security purposes if they are for picture hooks, etc., or for energy and water saving devices, provided they seek permission from the landlord, and the landlord cannot unreasonably refuse. If the landlord does refuse, then the responsibility falls upon the tenant to apply to the NTCAT. Reasonable refusal can take place if there are too many picture hooks already existing;
- include a note that indicates the *Anti-Discrimination Act 1992* applies to modifications to meet a person's special needs; and
- insert a requirement that tenants must restore the premises to the original condition at the end of the lease unless there is an agreement with the landlord that modifications made can remain.

3.13. Locks and security devices generally

3.13.1. The Act currently allows a tenant to change locks without first obtaining the landlord's consent, provided they have a reasonable excuse. Under such circumstances, the Act requires the tenant to notify the landlord of the change to the locks as soon as practicable afterwards, and provide a copy of the new key within 2 business days of that change.

3.13.2. The Working Group considered that while the current provisions did not outright prohibit a tenant from changing locks, they were drafted in a negative manner which has the effect of reinforcing a perception that changing locks is prohibited regardless of the circumstances. Members noted that Queensland recently introduced amendments to their tenancy legislation that, while still maintaining the requirement to seek permission, reframes the process to change locks in a positive manner.

3.13.3. Members were also of the view that the current penalty for not providing a copy of the new key to the landlord should be retained to encourage compliance. However, there should be an exception to the requirement to provide the new keys where the landlord is the perpetrator of DFV.

3.13.4. The Working Group agreed to recommend the following amendments:

- reword sections 52 and 53 of the Act in a positive frame while retaining the elements of those provisions; and
- include a proviso that states the tenant does not have to provide the landlord with a copy of the new key if the landlord has been, or is suspected of, committing DFV against the tenant or other occupant/s.

3.14. Repairs

3.14.1. Members discussed inconsistences in the Act when it comes to the obligations placed on tenants to notify landlords of the need to undertake repairs and maintenance. For ordinary repairs, the Act allows the tenant to verbally report issues, but also says the landlord can request that report to be made in writing. However, in the case of emergency repairs, the tenant is required to notify the landlord in writing. This can create delays in actioning repairs. Additionally, water heaters, air-conditioners and household heaters are essential items, but are not listed as items considered to require emergency repair.

3.14.2. The Working Group also discussed repairs and maintenance of common property in unit complexes and concluded that there was a need to provide awareness and education of rights and responsibilities in relation to body corporate attending to repairs of common property.

3.14.3. The Working Group agreed to recommend the following amendments:

- standardising the reporting requirement under both section 58 of the Act (ordinary repairs) and section 63 of the Act (emergency repairs) for the request for repairs to be in writing (including electronically) 'unless it not practicable to do so' noting that the onus will be on the tenant to prove oral notification took place where they are unable to notify the landlord in writing;
- prescribe a timeframe for ordinary repairs to be 7 business days to action (i.e. work orders placed and repairers booked / repairs commenced) and 21 days to complete, subject to the application of reasonable diligence and matters outside of the landlord's control;
- replacing tenant initiated repair provisions with an ability to apply to the NTCAT where the landlord has not made arrangements for or effected ordinary repairs with reasonable diligence, as exists with emergency repairs, noting delay may be influenced by factors outside of the landlord's control;
- landlord to either complete, or make arrangements for, emergency repairs and notify the tenant of those arrangements by the end of the next business day after the tenant has reported the need for repair, and a timeframe of 7 business days in which to have emergency repairs completed before an application can be made to the NTCAT. The NTCAT to consider whether the landlord acted with reasonable diligence and if any matters existed that were outside of the landlord's control;
- provide the NTCAT with a power to make ancillary orders to give effect to any orders it makes for repairs; and
- amend section 63(2) of the Act to list water heaters, air-conditioners and household heaters as items for which the emergency repair provisions apply provided such devices are already installed on the premises by the landlord. In the absence of an air-conditioner, a fan or other 'mechanical cooling device' to be considered as an emergency repair if installed. Delays in repair caused by remote locations, unavailability of contractors or warranty parts to be excused if landlord can establish they acted with reasonable diligence in effecting the repair.

3.15. Personal privacy during inspections

3.15.1. The Working Group discussed the matter of potentially identifying a tenant, or displaying their goods, through advertising images and how this could impact the safety of a tenant, particularly in instances of DFV. Members noted standard industry practice is to recycle (i.e. reuse old stock) photos for each new advertising campaign, reflecting the preference of landlords to 'touch-up' the premises to present it in the best possible light, free of the presence of the tenant or their goods.

3.15.2. While noting the general industry practice, the Working Group agreed to recommend including a provision in the Act similar to section 89A of the Victorian *Residential Tenancies Act 1997* to enable a tenant to review and object to images that could identify the tenant or displayed their valuable items.

3.16. Inspections by prospective tenants or purchasers

3.16.1. Section 74 of the Act currently allows a landlord to enter the premises to show it to a prospective tenant or purchaser provided they have given the tenant 24 hours' notice. Viewings may only be conducted between 7am and 9pm, and if a landlord is showing the premises to a prospective tenant, this may only occur in the last 28 days of the tenancy. The number of inspections is limited to no more than a reasonable number of occasions.

3.16.2. While the Act generally reflects the balance adopted throughout the various tenancy laws around Australia, some stakeholders have questioned what a 'reasonable number of occasions' might be. Members noted that the COVID-19 Modification Notice amends the notice period to 48 hours, and clarifies that the entry is to be at a time agreed between the parties. It further limits entries to twice per week. Members expressed general satisfaction with the modified requirements.

3.16.3. The Working Group agreed to recommend that section 74 of the Act be amended to limit the number of inspections to twice a week, with 48 hours prior notice required, with the inspection to be at a time agreed between the parties.

3.17. Long-term tenancies

3.17.1. The Working Group discussed that unlike some interstate jurisdictions (until recently), the Act never precluded long-term tenancies. Nevertheless, Members noted there has, at times, been reluctance from landlords, agents and tenants to enter long-term tenancies, in part due to the mistaken belief they were prohibited due to their interstate experiences. Members also noted that the average length of a tenancy was between 6 and 18 months, due in part to the Territory's fluid demographic.

3.17.2. The Working Group concluded the following:

- the perception against long-term tenancies could be improved by clarifying that they are already possible; and
- that a two tiered system could encourage longer term tenancies through applying special provisions to long-term tenancies.

3.17.3. The Working Group agreed to recommend the following amendments:

- defining a long-term lease as being a minimum of 24 months in duration set at the start of a tenancy, with no limitation on the length of a long-term lease; and an option to voluntarily agree to treat multiple consecutive agreements as a long-term lease; and
- special provisions for long-term leases as follows:
    - greater notice period of 3 months to terminate a long-term lease;
    - compensation of 1 month's rent per remaining year of lease, up to a maximum of 3 months, for a tenant breaking a long-term tenancy, subject to the other party taking reasonable steps to mitigate loss;
    - a two tiered system for periodic inspections where the tenant is treated as a standard tenant for the first year of the tenancy and is subject to the option of 3 monthly inspections, with longer timeframes between inspections for subsequent years, such as 6 or 12 months. If the tenant has 'passed' inspections in the first year then they can be graded as having a lower risk profile and be treated as a long-term tenant subject to longer timeframes between inspections in the subsequent years.

3.18. Tenancy database listings

3.18.1. The Working Group noted that the current tenancy databases provisions in the Act raise the prospect of being interpreted differently by different people for different purposes resulting in threats to list which may not be justified.

3.18.2. The Working Group considered that the provisions would benefit from clarifying that the intent of the provisions are that a person may only be listed where that person either agreed to the listing, or where the NTCAT found that person personally breached the tenancy agreement, and because of that breach, owed the landlord an amount of money that exceeded the bond.

3.18.3. In respect of those requirements, the Working Group noted that a co-tenant who is the victim of DFV might not wish to disclose their circumstances while the tenancy is in the process of being terminated, or otherwise not be in a position to challenge any claims of breach / compensation at the time. The Working Group were of the view that, in such situations, the victim should have the opportunity to:

- not agree to the listing, and for the matter to then proceed to the NTCAT to determine whether the listing should occur or not; or
- agree to the listing and apply at a later time to the NTCAT to seek removal of the listing.

3.18.4. This aspect is discussed further below under the topic Tenancy database listings and DFV.

3.18.5. The Working Group also considered that it would be beneficial if the notice under section 129 of the Act:

- were on a standard form either issued by Consumer Affairs, or prescribed in the Regulations;
- required the landlord to give notice on X date to the tenant with the proposed information to be listed;
- set out that the tenant has 28 days from X date to make submissions of accuracy over the proposed listing; and
- stated that the tenant could apply to the NTCAT to challenge whether a listing can or cannot be made where there is disagreement over the proposed listing.

3.18.6. The Working Group agreed to recommend the following amendments:

- create a prescribed form for notices under section 129 of the Act;
- revise the tenancy databases provisions in Part 14 of the Act to provide greater clarity and provide that a listing should only occur:
    - where the person to be listed is a tenant;
    - when the tenancy has ended;
    - where that person breached the agreement and owes the landlord an amount of money that exceeds the bond, as determined either through an order of the NTCAT or agreement between that person and the landlord; and
    - where a notice is issued under section 129 of the Act; and
- where the NTCAT finds in a co-tenancy that only one co-tenant is responsible for a breach, the other co-tenant will not be listed.

3.19. Mortgagee in possession

3.19.1. Currently, a mortgagee who wishes to take control of a defaulting landlord's property has to apply to the Supreme Court of the Northern Territory (NT Supreme Court) for an order of possession and then has to make a separate application to the NTCAT to replace the landlord in the tenancy agreement. This can be an expensive and inefficient process.

3.19.2. The Working Group discussed whether section 107 of the Act should be amended to enable the NT Supreme Court to also vest the landlord's interest under a tenancy agreement when it grants an order of possession to a mortgagee.

3.19.3. The Working Group concluded the following:

- the current separate NT Supreme Court and NTCAT processes for a mortgagee obtaining title (NT Supreme Court) and then seeking to vest the landlord's interests in the tenancy (NTCAT) should be maintained because it ensured that the tenant was made aware at some point of the replacement and could have a say in a less formal forum;
- to keep separate provisions for mortgagee in possession and for a property being sold; and
- mortgagee can seek an order for possession of the premises at the same time as seeking vesting of the landlord's interest, or at a later time.

3.19.4. The Working Group agreed to recommend that the Act be amended to provide that where an order of possession is made, the tenant has 42 days to vacate with no rent payable during that period, though the tenant may vacate earlier if they wish.

3.20. Notice periods and 'no ground' evictions

3.20.1. Some Members raised concern over a landlord's ability to terminate a tenancy without specifying a ground as it undermines a tenant's security of tenure. The notice periods for all forms of termination in the Territory are the shortest across Australia. Several jurisdictions have abolished or are in the process of abolishing 'no ground' terminations.

3.20.2. The Working Group:

- agreed the current notice period timeframes were too short and should be increased, but were unable to reach consensus with time periods of 30 days, 42 days and 60 days considered; and
- discussed establishing set grounds (other than breach of the tenancy agreement) under which termination would only be permissible, thus replacing (and prohibiting) 'no ground' terminations, however Members were not able to reach consensus on what such grounds should be. Possible grounds considered included:
    - selling premises;
    - landlord, their family member or an interested person moving in to the premises;
    - renovations, reconstruction or making major repairs where it cannot be reasonably carried out safely with the tenant living in the premises;
    - demolition of the premises;
    - landlord to use the property for a public purpose; and
    - the tenant no longer meeting eligibility criteria (e.g. affordable housing program).

3.21. 'Lease break' fees and other charges

3.21.1. Landlords who use a real estate agent often charge the tenant 'lease break' fees when the tenant ends a lease early. 'Lease break' fees tend to represent administrative costs charged by a real estate agent to a landlord for work associated with finalising a lease, locating a new tenant, and starting a new lease. 'Lease break' fees are separate to, and in addition to any rent that a tenant may be obliged to pay until a new tenancy has been established, or general expenses directly associated with arranging that new tenancy (such as advertising costs). 'Lease break' fees are an expense private landlords do not face. Compensation for 'lease break' fees is not an automatic right, and the NTCAT has found that compensation for a tenant ending a tenancy early will be dependent on the landlord actually suffering a loss directly attributable to that early termination, not necessarily any arrangement that the landlord may have with a real estate agent.

3.21.2. Section 112(8) of the Act permits a landlord to seek compensation from the NTCAT within 3 months of a lease break taking place, either from a claim against the security deposit or general compensation under section 122 of the Act. The NTCAT has the discretion of ordering lease break fees as compensation to the landlord. To do so, the NTCAT needs to determine:

- if the cost was actually incurred;
- if the landlord reasonably mitigated the loss;
- if the amount charged by the agent was reasonable; and
- what is considered to be fair on a pro-rata basis considering the remaining duration of the lease that is being broken.

3.21.3. Members discussed that landlords / agents had to spend a lot of time, expense and effort to claim 'lease break' compensation at the NTCAT, and noted that some tenants were also unsure what their liability might be if they terminated their lease early. Members also discussed examples of duplicitous practices used by some real estate agents where 'lease break' fees and other charges or unfavourable terms concerning a 'lease break' may not be in the tenancy agreement, however, when seeking to break their lease, a tenant may be required to sign a 'lease break form' agreeing to:

- the charging of a 'lease break' fee;
- continue to pay rent until the premises are re-let;
- pay an advertising fee upfront;
- a requirement to continue to retain the keys to the premises – which effectively prevents the lease breaking and the 3 months time limit to claim losses activating;
- a requirement to maintain the premises such as lawn mowing, pool and cleaning after the tenant has vacated and until the premises are re-let;
- keeping the electricity connected to the premises;
- showing the premises to prospective tenants after they have vacated (instead of the agent);
- not having the final outgoing condition report take place until a new tenant is found; and/or
- charging of additional fees – such as if the landlord has to reschedule an inspection due to the tenant.

3.21.4. There was general consensus that the Act would benefit from clarity around 'lease break' fees, though there was some divergence on how that clarity could be attained. Members noted a number of options, agreeing there were benefits and negatives associated with each, including:

- having a system that effectively permitted 'lease break' fees by fixing a set amount in the Act as compensation for early termination of the tenancy. Section 107 of the NSW *Residential Tenancies Act 2010* was offered as an example, where that provision fixes the level of compensation that can be claimed based on the remaining proportion of the tenancy. DCLS stated the benefit of this option is that the tenant would know exactly how much they would have to pay in compensation when considering whether to terminate their tenancy early. Members noted that this option does not factor a landlord's actual loss, which is currently dependent on how long it takes for the landlord to re-let the premises, and the landlord's obligation to mitigate their loss under section 122 of the (Territory's) Act. Members noted this option could result in the tenant paying more than they would otherwise currently be legally obliged to; or
- inserting a provision in the Act to clarify that 'lease break' clauses (and fees) are prohibited, thereby retaining the status quo of making the landlord establish what their loss is. Members noted that, as is the case currently, the tenant faces a level of uncertainty over the level of compensation they may need to pay, given that it will be subject to the time it took the landlord to re-let the premises, however that will continue to be subject to the landlord's obligation to mitigate their loss.

3.21.5. In the absence of consensus, Members noted that:

- Consumer Affairs can intervene if there are false and misleading practices;
- REINT agreed to provide greater education to its members on what the current requirements are concerning 'lease breaks'; and
- NTCAT will continue to determine compensation owed based on actual loss.

3.22. Application to tribunal after lease has concluded

3.22.1. Compensation may be sought under section 122 of the Act by a landlord or tenant who has suffered loss due to the other party's breach of the tenancy agreement or the Act. Section 122 of the Act is silent on the timeframe for when an application might be made, implying that the general limitation period of 3 years applies under the *Limitation Act 1981*.

3.22.2. A recent NTCAT decision held that claims arising from a previous tenancy would not be considered as the issues raised by the tenants were old. This decision is at odds with the usual practice of seeking compensation for loss of rent and/or damages after a tenancy has ended.

3.22.3. The Working Group agreed to recommend amendment to clarify that a tenant may bring an application before the NTCAT either during or after the lease has concluded, that the 3 years limitation period applies, and the timeframe to commence an action starts:

- for breaches during the tenancy – from when the breaching party is notified of the breach, noting the other party's obligation to notify as soon as practicable; and
- for claims on the bond – at the end of the tenancy.

3.23. Waiving of rights under the Act / consent to breaches of the Act and compensation

3.23.1. Compensation may be awarded under section 122 of the Act where a person has suffered loss due to the other party's breach of the tenancy agreement or the Act, however section 122(3)(b) of the Act requires the NTCAT to consider whether the person has waived their rights and accepted the breach.

3.23.2. A recent NTCAT case held that if a tenant does not seek to enforce their rights in the NTCAT straight away, they will have waived their rights and accepted the breach, and will not be entitled to seek compensation. This does not take into account the many reasons why a tenant may not seek to fully enforce their rights within the standard limitation period and is a departure from the ordinary approach, which is that a claim can be made by either party within 3 years of the breach.

3.23.3. The Working group considered whether an amendment to section 122(3)(b) of the Act was required to clarify that, when taking into account an applicant's consent to a breach, the NTCAT should 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.

3.23.4. Members agreed that there were a number of potential scenarios as to why a tenant may accept a breach, including where:

- the tenant has extended the tenancy on the basis of landlord promises to repair that subsequently do not occur;
- the landlord and tenant renegotiated inclusions, or exclusions, such as reducing rent in return for decommissioning a faulty spa; and
- in respect of the landlord's obligation under section 57 of the Act to repair premises, regard has been given to the age, character and prospective life of the premises and ancillary property.

3.23.5. The Working Group agreed that as presently drafted, section 122(3)(b) of the Act enabled an assessment of circumstances on a case by case basis, and so did not warrant amendment outside of providing greater clarity by redrafting section 122 of the Act and the Act generally through modernising the drafting language used.

3.24. Termination - employment related tenancies

3.24.1. Section 91 of the Act sets out a process for a landlord to terminate tenancies that are a condition or benefit of employment when the tenant's employment has been terminated. The Working Group noted that the Act does not set out a process for terminating the tenancy when the tenant resigns. Members noted that the effect of this is that where a tenant resigns and does not terminate the lease, the landlord has to rely on the general termination provisions, which may have negative implications for both the landlord and the tenant.

3.24.2. Members also noted that the 2 days notification timeframe for tenancy termination due to termination of employment under section 91(2)(a) of the Act was too short, and that the Fair Work Commission has indicated that employment related tenancies fell outside of its jurisdiction.

3.24.3. The Working Group agreed to recommend the following amendments:

- extend the 2 days notification period under section 91(2)(a) of the Act for employment related tenancy termination to 28 days, noting that the landlord can apply to the NTCAT for a shorter period if the premises were under threat;
- redraft section 91 of the Act to clarify that:
    - employment related tenancies have coverage even if no rent is paid and employment services are instead provided in exchange for remuneration which includes rental accommodation as part of the conditions or benefits of employment; and
    - it only applies for employment related tenancies where the employer is also the landlord and the employee the tenant; and
- remove section 91(3) of the Act.

3.25. Termination – serious breaches and unacceptable conduct of the tenant

3.25.1. Sections 97 and 98 of the Act provide for termination by the NTCAT for a serious breach of the tenancy agreement by the tenant or the landlord, respectively.

3.25.2. Section 100 of the Act provides for termination of a tenancy due to the unacceptable conduct of the tenant. It permits this to take place by application to the NTCAT by the landlord or an 'interested person' who is defined as a person adversely affected by the conduct of the tenant. It lists such conduct as using the premises for an illegal purpose, repeatedly causing or permitting a nuisance on or from the premises, or repeatedly causing or permitting an interference with the reasonable peace or privacy of a person residing in the immediate vicinity of the premises.

3.25.3. The Working Group considered whether to retain the current separate provisions for termination due to serious breaches (sections 97(1) and 98 of the Act) and conduct of the tenant (sections 97(2) and 100 of the Act), and agreed that they should not be merged as they covered distinct areas that necessitated separate consideration:

- serious breach termination being of such seriousness that required the NTCAT to intervene in a timely manner; whereas
- the provisions relating to tenant conduct, although serious, were not as imminent, requiring the establishing of repeated ongoing behaviour which is a lengthier process.

3.25.4. Members were also of the view that attempts to provide clarity, such as through examples, might unintentionally limit the scope of these provisions.

3.25.5. DCLS also raised issue with section 100(2) of the Act, stating it requires the 'interested person' making the application to serve the landlord with the application, but that there was no requirement that the tenant be served, or involved in the proceedings. DCLS drew an implication that because of this, the tenant (who would be most affected by the order for termination) would not be a party to the matter, citing a recent NTCAT case in support of this view.

3.25.6. Following the raising of this issue, the Chair made enquiries with the NTCAT and reported back to Members that, in regards to the case DCLS raised, the NTCAT had confirmed it had directed that the tenant be served, that the landlord undertook to do that, that the landlord had provided evidence that service of the tenant had occurred, and further, that the tenant had consented to the landlord acting on the tenant's behalf.

3.25.7. The Chair also reported to Members that section 100 of the Act was originally limited to the landlord seeking termination due to the tenant's unacceptable behaviour, and that with amendments made by the Antisocial *Behaviour (Miscellaneous Amendments) Act 2006* enabling third parties to seek termination, section 100(2) of the Act was inserted to ensure that the landlord was also served with a termination application.

3.25.8. The Chair further noted that, consistent with the NTCAT's general implied requirement, the NTCAT had confirmed that it will not proceed with a matter until it is satisfied that the other party to the tenancy had been served.

3.25.9. Members agreed that section 100(2) of the Act should be redrafted in consultation with the NTCAT to remove any doubt over whether the tenant should be notified or served with an application under section 100(1) of the Act.

3.26. Termination – suspending of order for vacant possession

3.26.1. Where the NTCAT is satisfied that a tenancy is terminated, it may make an order for vacant possession within 5 business days of the order pursuant to section 104(3) of the Act. The NTCAT can also make such an order under section 100A(3) of the Act after terminating a tenancy on the application of the landlord on grounds of the tenant's failure to remedy a breach after notice is given under section 96A of the Act (tenant's failure to pay rent) or section 96B of the Act (other breach by the tenant). Some stakeholders raised concern that the 5 business days NTCAT timeframe does not give enough time to appeal the decision.

3.26.2. Under section 105 of the Act, the NTCAT can, on application of the tenant, suspend the order for possession of the premises by up to 90 days subject to the tenant continuing to pay rent during that period. To make such an order, the NTCAT must be satisfied that the tenant would suffer severe hardship if such an order were not made.

3.26.3. The current process on the operation of a period of suspension is that if the tenant fails to pay rent within 7 days after the rent is due, the landlord may give the tenant a notice of intention to terminate at least 7 days before the date specified in the notice. If this notice is given to the tenant, the tenant must then give up possession of the premises to the landlord on the date specified in the notice. Accordingly, a minimum timeframe of 14 days exists between the tenant ceasing to pay rent and termination. This process revokes the suspension and terminates the tenancy.

3.26.4. The Working Group noted:

- there is no mechanism to deal with non-payment of rent or breach of another term of the tenancy during the suspension, resulting in the landlord being at a loss;
- the issuing of the notice is predicated on the landlord's own motion and is not open to verification;
- there exists operational confusion between section 104 of the Act presuming that the tenancy is terminated and section 105 of the Act which extends the tenancy; and
- there were some concerns that the 5 business days timeframe for vacant possession in section 104 of the Act does not provide the tenant with enough time to appeal / review an order for vacant possession, noting the tenant is technically entitled to seek a review of an NTCAT decision within 28 days.

3.26.5. Potential options considered by the Working Group included:

- automatically revoking the order for suspension if the tenant fails to pay the rent within 7 days after the rent is due, with the tenant having 5 business days to vacate; or
- the landlord notifying the tenant of a further breach, with the tenant having the option to challenge it in the NTCAT, noting it is in the landlord's interest to be proactive and go to the NTCAT instead of the tenants.

3.26.6. The Working Group agreed to recommend the following amendments to the Act:

- clarify that notwithstanding section 104 of the Act, the tenancy is not at an end until the suspension ordered by the NTCAT is removed or the tenant gives up possession;
- provide a process that enables a landlord to apply to the NTCAT to revoke the order of suspension if the tenant commits a further breach; and
- make it mandatory for the NTCAT to consider section 105 of the Act in all termination matters.

3.27. Absent tenant

3.27.1. Members discussed the issue of abandonment of premises against the setting of an absent tenant, noting that there were times where a landlord may have activated the abandonment provisions in section 108 of the Act prematurely without proper investigation, to the detriment of the tenant.

3.27.2. The Working Group agreed to recommend the following amendments:

- section 108 of the Act should be amended to set out what 'reasonable grounds' might entail for determining whether the premises have been abandoned, and include considerations where the landlord identifies that the premises are occupied;
- section 109 of the Act would benefit from clarifying the landlord's requirement to take reasonable steps to secure the tenant's goods generally, including personal papers, after ensuring proper assessment of value for retention and storage, noting this could be undertaken through re-writing the provision; and
- provide for a significant penalty for failure to undertake those reasonable steps or establish reasonable grounds.

3.28. Termination of a tenancy where there is DFV

3.28.1. The Working Group considered the topic of terminating a tenancy where there is DFV present and noted there are different approaches undertaken in different jurisdictions.

3.28.2. Members who predominantly dealt with DFV matters noted they come across many women who may need to terminate their interest in a tenancy but do not necessarily want to go through the DVO process, or found the DVO process was not the appropriate process to use. Those Members suggested including a mechanism within the Act to allow a victim tenant to terminate a tenancy under the Act without having to first obtain a DVO from the NT Local Court.

3.28.3. Members considered a system similar to section 71AB of Western Australia's *Residential Tenancies Act 1987*, where the victim could terminate the tenancy on notice to the landlord of formal criminal / family court processes, or on presentation of a certificate that the tenant was a victim of DFV from a list of persons from prescribed occupations. Members agreed that instead of the Western Australian reference to a person in charge of a women's refuge, it would be more encompassing if the provision authorised the head (manager) of any women's support service to certify the presence of DFV, taking into account that some women who will need to leave a DFV situation may not have engaged with a women's refuge, but will be engaged with other similar specialist services.

3.28.4. The Working Group agreed to recommend the following amendments:

- amend section 23 of the *Domestic and Family Violence Act 2007* to:
    - remove the requirement under section 23(1)(a) that the victim and perpetrator live together or previously lived together in premises; and
    - change the reference in section 23(1)(b) from 'the premises' to 'a premises' to reduce limitations that exist in relation to tenancy aspects, particularly in circumstances when there are DVO proceedings and the victim and the perpetrator no longer live together but the perpetrator knows the victim's home address.
- introduce a mechanism in the Act which enables immediate termination of the tenancy and an end to the liability of a victim tenant (whether sole tenant or co-tenant) on the basis of notice to the landlord of NT Local Court and/or Federal Circuit and Family Court of Australia processes, or on presentation of a certificate and/or letter from a list of prescribed

occupations authorised to certify the presence of DFV. Members recommended that the termination be subject to:

- an ability for the landlord or a co-tenant to challenge the termination on reasonable grounds, but only in relation to the validity of the notice (not whether DFV occurred);
- any co-tenant or landlord having the right to apply to the NTCAT for a determination of rights and liabilities between the co-tenants at the point of termination; and
- any remaining co-tenant having the option to consider termination if they were unable to service the tenancy without the departing co-tenant.

3.29. Immunity against vicarious liability for damage caused by a third party through an act of DFV

3.29.1. Members discussed the operation of section 12(3) of the Act which provides immunity to a tenant against vicarious liability for damage caused through an act of DFV by a third party (non-tenant). Members noted that although section 12(3) of the Act is very rarely (if ever) utilised, the way that subsection is drafted is problematic and creates uncertainty around when it can be applied.

3.29.2. Members noted the immunity currently only extends to breaches that occurred during an act of DFV, but does not cover situations where the act of DFV caused / resulted in breaches, for example where the victim is forced to flee the premises they are renting because of actions of the perpetrator (who is visiting), and the perpetrator subsequently damages the premises or leaves the premises in an unreasonably dirty condition.

3.29.3. Members noted the section's reference to factors such as being 'reasonable in all the circumstances', and consideration of the 'number of times an act of DFV had occurred' were no longer relevant to whether it would be reasonable to protect the tenant from general liability to the landlord because of a DFV related breach. Members also questioned whether the victim tenant should have to establish the act of DFV to the NTCAT as this would require the victim to have to go through all the details again which is traumatising for the victim, and agreed it would be preferable if the notice to the landlord relating to the presence of DFV for the purpose of terminating the tenancy was also used at the NTCAT.

3.29.4. The Working Group agreed to recommend the following amendments to the Act:

- amend section 12(3) of the Act to shift liability to the perpetrator by enabling the landlord to bring a small claim against the perpetrator under the *Small Claims Act 2016*, with the NTCAT having the power to determine liability between the victim tenant and the perpetrator;
- clarify that section 12 of the Act applies only to visitors;
- expand the scope of section 12(3) of the Act to include claims for cleaning and other breaches / issues;
- amend section 12(3)(c) of the Act to remove reference to the number of times that an act of domestic violence has been performed by the person in the premises to which the tenancy agreement relates; and
- provide that the notice to the landlord relating to the presence of DFV for the purpose of terminating the tenancy is sufficient to establish the presence of DFV.

3.30. Service of documents when terminating a tenancy due to DFV

3.30.1. Members discussed the question of who should be responsible for serving a perpetrator co-tenant with a notice from the victim co-tenant terminating their interest in the tenancy.

3.30.2. Members who predominantly dealt with DFV matters noted their experience suggested that service of such a notice by the victim co-tenant risked aggravating the situation by triggering the perpetrator co-tenant, and that usually the first thing victims who are escaping DFV do is sever contact with the perpetrator for safety reasons.

3.30.3. Members noted that there were a number of potential options including service by:

- the landlord, noting:
    - this is an approach applied in some jurisdictions;
    - as per the Form 1 Initiating Application at NTCAT, the NTCAT deems it sufficient to demonstrate that the person has brought the matter to the other person's attention;
    - however some Members were of the view that this method transfers a safety risk associated with serving a perpetrator to the third party landlord, while other Members considered that given the perpetrating behaviour by definition is directed at the victim only, and may include non-violent coercive-controlling conduct, there would not necessarily be any safety risk transferred to the landlord; and
    - a possible solution could be a power for the NTCAT to make alternative service orders where the person making the application is at risk or not comfortable serving the perpetrator. Under this option, the Applicant could request an alternative service order in the NTCAT Form 1.
- The NTCAT, noting the NTCAT has previously declined to involve itself in service outside of matters before it, noting that this approach is used by some jurisdictions;
- the person who provided the DFV certificate required to trigger the termination of the co-tenant's interest, or other service providers, noting the disclosure of that service provider's identity may risk identifying the location of the victim;
- organisations such as Relationships Australia who serve notices in the Federal Circuit and Family Court of Australia for matters on behalf of vulnerable people; or
- having a general provision that enables someone else to be nominated to represent the victim co-tenant for the purpose of service.

3.30.4. The Working group was unable to reach a consensus on this topic.

3.31. Tenancy database listings and DFV

3.31.1. Members who predominantly dealt with DFV matters noted that, at times, a victim co-tenant might not seek to disclose their circumstances whilst the tenancy is in the processes of being terminated, or otherwise not be in a position to challenge any claims of breach / compensation at the time. Under those circumstances, a victim co-tenant might be listed even though they were not responsible for the breach.

3.31.2. In addition to proposed amendments that seek to clarify that a person not be listed unless they agreed or the NTCAT found they were responsible for the breach, the Working Group agreed to recommend the following DFV specific amendments:

- a victim co-tenant should have an opportunity at the time a listing is proposed to:
    - either not agree to a listing, and for the matter to then proceed to the NTCAT to determine whether the listing should occur; or

  - agree to the listing, and apply at a later time to the NTCAT to seek removal of the listing;
- have an information note in a standard form / prescribed notice of proposed listing that advises of the ability to challenge a listing;
- in making a decision to not list / remove a listing, the NTCAT would need to be satisfied that the perpetrator co-tenant was liable for the breach; and
- provide that the notice to the landlord relating to the presence of DFV for the purpose of terminating the tenancy is sufficient to establish the presence of DFV when considering a listing.

3.32. DFV training for agents / landlords

3.32.1. The Working Group discussed a number of reasons why tailored DFV training in the sector would be beneficial. One such reason is the need for an understanding of the various forms of DFV and the complexities of DFV given the proposed changes to the Act which will bring DFV into focus. Part of the training could, for example, address issues that may arise if a landlord does not understand the many different forms of DFV, or if the landlord misidentifies the primary perpetrator, the latter being particularly relevant if a co-tenant perpetrator has a strong long-standing relationship with the landlord as the primary communicator.

3.32.2. As the proposed amendments relating to DFV would address / neutralise those concerns, the issue then turns more to communicating the nature of those proposed amendments and the reasons behind them to landlords and tenants, rather than establishing specific focused training per se.

3.32.3. The Working Group concluded that communication of the proposed amendments and their rationale could be through industry professional development sessions and broader community awareness / education / information programs. Members referred to the need for any training in this area to be tailored and to be delivered by specialist DFV services with tenancy expertise. AGD also undertook to explore possible inclusion / focus of DFV in tenancy settings in the second action plan of the NT's DFV Strategy.

3.33. Abandoned documents in a DFV tenancy

3.33.1. The Working group discussed the need for a victim tenant to relocate quickly sometimes prevents prior packing of personal possessions, including personal documents, and noted that section 109 of the Act relating to abandoned goods might not extend to capture documents left behind by the victim tenant.

3.33.2. Members concluded that the issue is not limited to the landlord retaining / disposing of personal documents following an abandonment of premises, but also extends to co-tenancies where the perpetrator co-tenant remains in the tenancy and refuses to hand over documents left behind by the victim co-tenant.

3.33.3. While documents could be retrieved as part of a DVO, the Working Group was unable to identify any particular amendments or processes outside of a DVO process that may address the retrieval of abandoned documents if the perpetrator co-tenant did not wish to cooperate.

3.33.4. The Working Group agreed to note the issue to draw attention to it. AGD will also explore the possible inclusion / focus of this issue in the second action plan of the NT's DFV Strategy.

APPENDIX A – Terms of Reference

NORTHERN TERRITORY GOVERNMENT

DEPARTMENT OF THE ATTORNEY-GENERAL AND JUSTICE

Residential Tenancies Act 1999
Review Working Group
Terms of Reference

Purpose

The Northern Territory Government has a reform agenda to ensure the *Residential Tenancies Act 1999* (the Act) provides a framework that balances the interests of tenants and landlords as identified through the 2019 Discussion Paper: Review of the *Residential Tenancies Act 1999* (the 2019 Review), released by the Department of the Attorney-General and Justice (AGD) in August 2019.

To achieve the government's reform agenda, the Attorney-General and Minister for Justice is establishing a working group (the Working Group) to enable stakeholder members to directly engage with AGD on potential reform of the Act by facilitating the canvassing of reform options identified through the 2019 Review, and enabling recommendation of amendments for inclusion in a possible draft exposure Bill for broader public consultation.

Functions and Scope

The role of the Working Group is to:

- canvass issues for reform identified through the 2019 Review; and
- work collaboratively to develop an evidence-based report on the Working Group's deliberations to the Attorney-General and Minister for Justice that will inform the development of potential amendments for inclusion in a possible draft exposure Bill, that takes into account the unique conditions of the Territory's residential tenancy market.

Membership

Chair:

The Working Group is chaired by a representative from Legal Policy in AGD.

Members:

The other members of the Working Group include one representative from each of the following stakeholder groups/organisations:

- community legal services;
- Aboriginal legal services;
- community social services;
- landlord associations;

- domestic violence legal services;
- real estate agent associations;
- Law Society Northern Territory;
- Northern Territory Consumer Affairs;
- the Department of Local Government, Housing and Community Development;
- unions; and
- employer representative organisations.

The Chair may from time to time invite any other person or organisation with relevant expertise to attend meetings.

Meetings

Meetings are chaired by AGD.

Each meeting will have a quorum of five member representatives, including the Chair or the Chair's representative. Member representatives may attend the meeting in person, or by teleconference with prior approval of the Chair.

The Working Group will be convened as determined by the Chair but at least on a monthly basis, and may also approve or review materials out of session.

Meetings will be attended by one representative of each of the members participating in the Working Group.

Guests may be invited by the Chair to attend meetings to contribute information on specific agenda items.

All members may nominate any issues for consideration or discussion to the Chair; however, agenda items will be determined by the Chair and confined to matters relating to the purpose of the Working Group.

Agenda items, together with discussion papers, are to be submitted to the Chair by members not less than five working days prior to each meeting. Additional agenda items may be accepted outside this timeframe with approval of the Chair.

Agenda and other meeting papers are to be circulated to members by the Chair at least three working days prior to the next scheduled meeting.

Draft minutes will be circulated within five working days of each meeting to all members for review.

Confidentiality

To facilitate open and candid discussion of potential topics, all information provided and discussions held as part of Working Group meetings shall remain confidential unless agreed otherwise.

Support and Minutes

Secretariat and technical support for the meetings including venue, agenda and minutes will be provided by AGD.

Report to Attorney-General and Minister for Justice

The Chair is to deliver a report by end of June 2021 to the Attorney-General and Minister for Justice outlining issues canvassed by the Working Group and recommendations for potential amendments for inclusion in a possible draft exposure Bill that takes into account the unique conditions of the Territory's residential tenancy market.

APPENDIX B – List of Members

1. Department of the Attorney-General and Justice (AGD), represented / assisted by:
    a. Mr Doug Burns (Senior Policy Lawyer) (Chair)
    b. Mr Abhi Jain (Policy Lawyer) (Secretariat)
    c. Ms Penny Drysdale (Senior Policy Lawyer)
    d. Ms Emma Boeck (Graduate)
    e. Ms Monica Thompson (Graduate)
    f. Ms Gramenni Alakiotis (Administration Assistant)
    g. Ms Jordina Grieve (Administration Assistant)
2. Darwin Community Legal Service Incorporated (DCLS) – Tenants' Advice Service (TAS), represented by:
    a. Ms Caroline Deane (TAS Team Leader & Solicitor)
    b. Mr Matthew Gardiner (TAS Solicitor)
3. Real Estate Institute of the Northern Territory (REINT), represented by:
    a. Ms Allison O'Neill (Real Estate Agent)
4. NT Shelter, represented by:
    a. Ms Alex Gibson (RTA Review Project Lead)
    b. Mr Peter McMillan (Executive Officer)
5. Department of Local Government, Housing and Communities (Housing), represented by:
    a. Ms Stephanie Hawkins (Acting Director Law Reform and Strategic Policy)
    b. Mr Anthony Burridge (Senior Strategic Planning Officer)
    c. Ms Tanya Salabay (Senior Policy Officer, Housing Policy)
    d. Ms Tanya Hancock (Director of Housing Policy)
    e. Mr Mark Bagshaw (Policy Officer)
6. Commissioner of Consumer Affairs, represented by:
    a. Ms Danielle Wilks (Manager Fair Trading)
7. United Workers Union, represented by:
    a. Ms Erina Early (Branch Secretary)
8. Law Society Northern Territory, represented by:
    a. Ms Marian Wilson (Senior Policy Lawyer)
    b. Mr Kelvin Strange (Chief Executive Officer)

9. Anglicare NT, represented by:
    a. Ms Elissa Shuey (Social Policy Officer)
    b. Mr Dave Pugh (Chief Executive Officer)
10. North Australian Aboriginal Justice Agency (NAAJA), represented by:
    a. Mr Matthew Derrig (Civil Solicitor)
11. North Australian Aboriginal Family Legal Service (NAAFLS), represented by:
    a. Ms Melissa Coveney (Principal Legal Officer)
12. Top End Women's Legal Service (TEWLS), represented by:
    a. Ms Vanessa Lethlean (Managing Solicitor to April 2021)
    b. Ms Caitlin Weatherby-Fell (Acting Managing Solicitor from April 2021)
    c. Ms Georgia Hagias (Senior Solicitor)
    d. Ms Kathryn Baumeister (Senior Solicitor)
13. Domestic Violence Legal Service (DVLS), represented by:
    a. Ms Zara O'Sullivan (Solicitor)
    b. Mr Myles Brown (Locum Solicitor)
    c. Mr Hugh Bond (Barrister & Solicitor)
    d. Ms Hannah Daych (Barrister & Solicitor)
    e. Ms Corinah Batt (Acting Managing Solicitor)

APPENDIX C – List of Member Issues Not Formally Discussed

- Minimum standards
- Termination of periodic tenancy effective despite inadequate notice
- Effect of a drug premises order
- Interpreters and informed consent
- Time limit for utility bills
- Accountability for landlords and agents / enforcement of infringements of the Act
- Clarifying what constitutes service
- Sub-tenancy fact sheet and standard form tenancy agreement
- Rent increases - notice periods
- Factors for NTCAT to consider in excessive rent declaration orders
- Occupant remains as tenant when tenant has died
- Scope and coverage of managed and supported accommodation

APPENDIX D – NT Shelter Position Statement

1. The *Residential Tenancies Act 1999* (RTA) as it currently stands applies to tenant/landlord scenarios and includes long term rentals provided by registered Community Housing Providers where they are the same arrangements as that which is termed 'public housing' and those provided by the NTG Department of Housing.
2. Other forms of managed / supported accommodation are generally not covered by the RTA and are, for the most part, arrangements that would not be suited to being regulated by the current RTA.
3. Managed / supported accommodation (with some exceptions discussed below) would be more appropriately regulated by adopting a regime similar to the ACT's Occupancy Principles, which would form a separate section of the RTA like they do under the ACT's legislation.
4. The following types of managed and supported accommodation are not appropriately covered by either a residential tenancy agreement or by an occupancy agreement and should therefore remain outside the application of the RTA (as currently drafted and as proposed to be amended following the current review):
    a. Very short-term accommodation such as emergency or crisis accommodation, which is only intended to be a temporary arrangement
    b. Safe houses (such as those provided for the purposes of sheltering victims of domestic and family violence)
    c. Mental health accommodation
    d. Specialist disability accommodation or Supported Living accommodation
    e. Hostels where there is a high turnover of occupants and no intention of any security of tenure for those residing there.
5. Further, it should be acknowledged there are some specific programs that fall within the scope of managed / supported accommodation which, whilst not falling within any of the exceptions listed above, might also relevantly be excluded where they are of such a specific arrangement that they cannot operate within the scope of an occupancy agreement. It may be difficult to articulate a catch-all exemption for such arrangements. In that instance, the provider of the accommodation may need to apply for a specific exemption from being considered covered by the legislation.
6. Occupancy Principles should form the basis of the legislation that articulates the rules around occupancy agreements in the NT.
7. Where dispute resolution between an occupant and a grantor is required, there should be an option to refer that dispute to an independent officer, who has specialist knowledge of managed and supported accommodation, to assist with resolution in the first instance, rather than NTCAT (the Tribunal). This will allow the parties to seek to resolve the dispute without the need for a hearing at the Tribunal. Where the dispute cannot be resolved by that officer, the dispute can be referred to the Tribunal for a determination.
8. If the Occupancy Principles approach is to be adopted in the NT, as part of moving to that system, resources should be allocated to:
    a. Education and training – predominantly for service providers, but also for other parties such as NTCAT, Consumer Affairs, etc who will need to develop a greater understanding of managed and supported accommodation;
    b. Guidelines and other written resources that assist to explain how to apply the occupancy principles or develop occupancy agreements.