

Continuing the reform of the *Residential Tenancies Act 1999*

Residential Tenancies Legislation Amendment Bill 2023

Background/Purpose

The *Residential Tenancies Act 1999* (the Act) has been in operation for over twenty years. While the Act continues to balance the interests of landlords and tenants in the Northern Territory, the changing landscape of housing means that we need to ensure the Act remains fit for purpose in a contemporary environment.

In 2019, the Department of the Attorney-General and Justice undertook a comprehensive root and branch review of the Act. Tranche 1 of the reform program was implemented through the Residential Tenancies Legislation Amendment Bill 2020.

The Residential Tenancies Legislation Amendment Bill 2023 delivers Tranche 2 of the reform program. The Bill implements measures to enhance protections and options for victims of domestic and family violence (DFV), and address other emerging issues facing tenants.

Changes included in the Bill

The Bill will do the following:

Enhanced protections and options for victims of DFV

- Create a process that enables a tenant to establish the presence of DFV.
- Ensure that a victim tenant does not face the risk of further harm by having to retell their story every time they seek protection.
- This process is activated by a tenant providing their landlord (or NTCAT depending on the measure being accessed) with a copy of:
 - a court DVO as defined in section 4 of the *Domestic and Family Violence Act 2007*;
 - an injunction under section 68B(1)(a) or (b) or 114(1)(a) of the *Family Law Act 1975* (Cth); or
 - a certificate in the approved form provided by a person with an occupation prescribed by regulation.

These documents do not conclusively establish that a victim survivor has experienced DFV. They are documents stating a particular order has been made by a court, or the opinion of a particular person based on the information before them.

Under section 4(A)(2), *all* of these documents are deemed to conclusively establish the person has experienced DFV. This deeming does not unequivocally prove DFV. This deeming prevents the person's experience of DFV being challenged, to protect the victim survivor from the risk of further trauma by having to retell their story every time they seek protection, which is generally viewed as further perpetuating the DVF they are seeking protection from.

The Commissioner of Residential Tenancies will have the power to approve a form for Certificates. The content of certificates will generally include:

- the name and occupation of the person completing the form;
- the name of the person who experienced the DFV; and
- a statement that the person completing the form is, based on the information they have before them, satisfied that the person they are completing the form for experienced DFV;
- Establish a streamlined process for immediate termination of a victim tenant's interest in a tenancy by giving written notice to the landlord and any co-tenants. If the tenant or a dependent of the tenant has experienced DFV. The process sees:
 - the victim tenant terminating their interest in the tenancy on the date set in the notice (either immediately, or at a later date);
 - the tenancy continuing for any remaining co-tenants, unless the remaining co-tenants elect to terminate the tenancy in full by giving the landlord separate notice;
 - the victim tenant's liability for things arising under the tenancy ceasing on the date their interest in the tenancy terminates, with the victim tenant not liable for things under the tenancy after that date;
 - the ability for the landlord and co-tenants to apply to the NTCAT for a determination of rights and liabilities between the co-tenants that arose under the tenancy agreement immediately before the victim tenant terminated their interest in the tenancy;
- Clarify that a victim tenant is not liable for DFV related acts or omissions of a non-tenant that would otherwise result in the victim tenant breaching the tenancy agreement. This amendment also confirms that the landlord may seek redress for any loss suffered as a result of the breach of tenancy directly from the perpetrator.
- Clarify that a tenant may change locks with the consent of the landlord, unless the tenant has a reasonable excuse for changing the lock before seeking the landlord's consent, for example, where the tenant has immediate safety needs;
- Establish a process for a tenant to make minor modifications to premises for safety or security purposes, where:
 - the tenant has sought the landlord's consent except where the tenant faces an immediate safety or security issue, in which case the tenant must notify the landlord within 2 business days of commencing the modification;
 - the landlord has 10 business days to consider, cannot unreasonably refuse a request to make minor modifications to premises for safety or security purposes;
 - the landlord's consent can incorporate reasonable conditions, such as agreeing to reimburse the tenant some or all of the cost of the modification at the end of the tenancy, and retain the modifications;
 - where there is no agreement between the landlord and tenant for retention of the modification, the tenant is required to return the premises to the condition it was prior to the modification; and
 - the NTCAT may review the reasonableness of a landlord's refusal to consent, or the reasonableness of any conditions the landlord has set as part of their consent;

Minor modifications include:

- installation of a security camera or alarm system;
- securing an item of furniture to a wall;
- replacing window dressings; or
- any similar modification, other than a modification covered by section 52.
- Require a landlord to obtain the tenant's permission to use images or video of the premises when advertising the premises for rent or sale where it might identify the tenant or another occupant.
- Expand the scope of undue hardship under section 99 to specifically include financial hardship and situations where the applicant faced risk to physical, psychological or mental health and safety as grounds constituting undue hardship;
- Clarify the circumstances around when a person may be listed on a breach of tenancy agreement database at the end of a tenancy, confirming:
 - the person must have been a tenant at the time of a breach;
 - and that either:
 - the person agreed to the listing; or
 - the NTCAT found that the person personally breached the tenancy agreement, and as a result of that breach, either:
 - owed the landlord an amount of money that exceeded the security deposit; or
 - resulted in the termination of the tenancy.

The amendments also make it an offence for a landlord to threaten to list a person on a tenancy database during the tenancy. This offence provision confirms that the only time a person may be listed on a tenancy database is following the conclusion of the tenancy, and then only where all the elements associated with listing have been met;

- Provide the ability for a victim tenant to apply to NTCAT and seek the removal of their personal information from a database where:
 - that person experienced DVF during the tenancy;
 - was not personally responsible for the breach that gave rise to the listing; however
 - at the time of the listing, agreed to the listing being made;
- Establish the ability for the Commissioner of Residential Tenancies to approve the form in which a landlord or database operator is required to give a person a copy of the personal information the landlord or database operator intends to list on a database;
- Provide tenants and landlords with the option to give notices required under the Act by electronic means in accordance with the *Electronic Transactions (Northern Territory) Act 2000*.