

26 August 2019

Director Legal Policy
Department of Attorney-General and Justice
GPO Box 1722
Darwin NT 0801

Dear Minister Fyles,

RE: Submission to Review of the Residential Tenancies Act 1999

Anglicare NT welcomes the opportunity submit to the review of the Residential Tenancies Act 1999. An important piece of legislation that governs the interactions between tenants and landlords.

Anglicare NT is one of the largest providers of community services in the Northern Territory. Our organisation manages over 100 Transitional and Community Houses and runs tenancy support services in Darwin, Katherine, Alice Springs and Nhulunbuy. Each year, Anglicare NT assists over 1200 individuals through our housing and homelessness programs. These people are some of the most vulnerable in our community and are often at greatest risk of falling through the cracks.

Our submission therefore focusses on what we deem to be the most pressing issues to make the residential housing system fair, transparent and fit for purpose. Ensuring that there are protections for all Territorians embedded in the legislation.

While the Discussion Paper touches on some important reforms, it remains silent on some key challenges in the Territory. These challenges make it difficult for people to be treated fairly and equitably when navigating the housing system and include issues like discrimination, accessibility and education and family and domestic violence.

This submission will address these key points as well as some issues raised in the Discussion Paper.

Part A: Issues Raised in the Discussion Paper

Issue 1: Application of the Act

Anglicare NT is a provider of transitional accommodation which supports homeless people or those at risk of homelessness. We will also be opening community housing operations shortly. Anglicare NT agrees that the current terminology used in Section 6 should be amended to more clearly articulate exactly which forms of accommodation the Act applies to.

As suggested in the Discussion Paper, the reference to no application 'on the basis of homelessness, unemployment or disadvantage for charitable purposes' should be removed. In favour of adding clearer exclusions such as the suggested 'excluding managed and supported accommodation'.

Listing specific examples of social housing to be excluded (such as crisis and transitional housing) and included such as (community and public housing) would further help to define the parameters.

Recommendation: Clearly define the types of residencies to be governed by the Act excluding supported accommodation such as transitional and crisis accommodation.

Issue 15: Bond Holding Authority

The Discussion Paper acknowledges wide-spread calls for a Bond Holding Authority for the Northern Territory over many years. Anglicare NT supports the creation of a Bond Authority to bring us in-line with other jurisdictions and to add greater accountability and transparency to the process.

A Bond Authority would ensure timely returns of bond, if a legitimate and legal claim has not been made against all or part of it. This would greatly assist the people that we work with, who often cannot afford a second bond to secure an alternative property when they are vacating. Not having enough money for bond and two weeks rent in advance is a major contributor to homelessness.

A Bond Authority must also have the capability to internally transfer the bond to a new rental property, if there are no claims on the bond and at the tenant's request. This provides convenience for the tenant and assists with the smooth transition between rental properties.

Recommendation: Establish a Bond Authority in the Northern Territory to hold bonds, return bonds and internally transfer bonds between rental properties.

Issue 17: No grounds evictions

Reforms to 'no grounds evictions' for landlord-initiated terminations would allow for greater transparency and protect the notion of security of tenure. The current 'no ground evictions' provisions in the Act does not compel landlords to provide a reason to terminate, thus preventing the tenant from having a right of reply.

Vulnerable people, who do not believe they can easily find alternative accommodation, are particularly susceptible to not speaking up for fear of reprisal. For example, they may not request essential repairs. No grounds evictions also opens the door to discrimination, as no reason has to be given for the eviction.

Adding additional reasons for termination, in a similar manner to new Victorian legislation¹, would safeguard tenants against discrimination and build more trust in the system.

Recommendation: Anglicare NT recommends that 'no grounds' evictions be abolished for landlord-initiated terminations.

¹ Victorian Consumer Affairs <https://www.consumer.vic.gov.au/housing/renting/ending-a-lease-or-residency/if-the-landlord-or-owner-wants-the-tenant-to-leave/landlord-giving-notice-to-vacate>

Part B Other Issues for Consideration

Issue 1: Accessibility and Understanding

Many of the people Anglicare NT works with do not speak English as a first language and some cannot read or write. Consequently, many do not understand their rights and responsibilities under the Act. This can lead to them being taken advantage of by unscrupulous landlords or to eviction, sometimes into homelessness.

This is an opportunity to legislate greater diligence in this area. This type of reform would benefit both landlord and tenants alike as many of the issues we see can easily be prevented with better understanding at the outset.

Landlords and their agents should be compelled to ask if potential tenants, where English is a second language, if they require an interpreter or assistance to understand their lease agreement.

Clear fact sheets using pictures and basic English should be provided at the beginning and end of all tenancies. These factsheets should cover areas such as condition reports, repairs and maintenance, bond and bond return and contact details for tenant advice services.

Case study

A family were evicted into homelessness. The family had been paying rent. When the family spoke with our service about their situation, we discovered that they had not been given any written notices as to the reason for their eviction. They also did not have a lease agreement for the property. The family had been moved from another property years before and had not been given a new lease or a condition report for the new home. The family reported that the landlord would conduct house inspections without prior warning and that these would sometimes happen more than once a week.

Case study

Joe* was being supported by Anglicare NT when he was offered a rental home by a private landlord. Joe had been told by the Landlord that he would receive one week rent-free in return for receiving the unit without an exit clean and no ingoing condition report. The cost of the rent was around \$200. Joe would have saved this money but lost the advantage of having a clean unit to move into and an accurate reflection of the state of the property. Joe did not want to upset the Landlord by refusing his offer. He did not understand that he had a right to move into a clean unit, nor was he aware of the importance and legal requirement to have a record of the state of the property at the beginning of his lease.

Recommendation: Legislate that before signing a lease, potential tenants must be offered an interpreter if English is their second language. They must also be provided with clear fact sheets about condition reports, repairs and maintenance and bond return.

Issue 2: Discrimination

The issue of discrimination in the private rental market must be addressed in the Northern Territory. This is one of the major barriers preventing people in social housing moving into mainstream. Actively trying to prevent discrimination would not only be the 'right' thing to do, it would also free up public and other social housing for those with no alternatives or who need additional support.

We have heard many reports from prospective tenants perceiving that they have been unfairly treated due to personal characteristics unrelated to their capacity to maintain a tenancy. This may include their race, age, family or household size or their previous tenancy in social housing.

Discrimination should be directly addressed in the Act. While the NT Anti-Discrimination Act does prohibit discrimination, vulnerable people are also often unwilling to take the matter further. Addressing the discrimination in the Act may compel landlords and their agents to take the issue of discrimination more seriously, particularly if there is a financial penalty attached.

Case study

Jenny* is retired. She was a professional for much of her working life and rented the same home for 17 years. On Christmas Eve she was given a Notice to Vacate; the owners were selling the house. She came to Anglicare NT as she had been unsuccessful in securing a private rental and was facing homelessness if she did not find somewhere to live. Anglicare NT assisted Jenny to apply for around 20 private rentals over a 2-month period. None of which were accepted. Jenny openly suspected age discrimination as she had excellent references and the capacity to pay to pay rent and bond. Jenny did eventually manage to secure a rental but not before she was evicted from her property.

Recommendation: The Act must specifically address discrimination, making it unlawful for a landlord to discriminate or instruct someone else such as an agent to discriminate against potential or current tenants.

Issue 3: Domestic and Family Violence

The Act must be an instrument of protection for victims/survivors of family and domestic violence. Providing them with the choice to stay or leave without penalty. Family and domestic violence is one of the main reasons' people, often women with children, seek our housing and homelessness services.

While there are some provisions for family and domestic violence under the Act, they are not enough and not best practice.

The Act must enshrine that victims/survivors can:

- terminate their tenancy without penalty;
- not be held liable for unpaid rent or damages caused by the perpetrator;
- access their share of the bond and
- change the locks or make the property secure if they are under threat.

Security

Security is vital to enable a victim/survivor to feel safe in their home. They should not be unduly penalised or put their safety at risk because of slow approval processes for simple measures such as changing the locks.

Issue 8: Explicit wording must be added, granting survivors/victims of family and domestic violence the ability to change the locks if they feel at risk without prior consent from the landlord or body corporate.

Terminations

In-line with NSW² and WA³, the Act should be amended to make it easier for a victim/survivor to terminate their tenancy. Provisions to enable this include:

- Deeming a letter from one of a prescribed group such as doctor, nurse or police officer as acceptable evidence of family and domestic violence.
- Enabling victims/survivors to immediately terminate their tenancy by serving the landlord and any co-tenants a Termination Notice, along with acceptable evidence as above.
- Adopting protocols at NTCAT that safeguards the victims/survivors and their privacy should the landlord choose to appeal the Notice.

Recommendations: Make explicit the right of a tenant to change the locks due to family and domestic violence. Legislate to enable victims of domestic violence to provide evidence from a prescribed person, serve a notice to terminate on the landlord directly and safeguard their privacy at NTCAT.

The Residential Tenancies Act is a key piece of legislation. Its purpose is to manage the relationships between landlord and tenant in a transparent, fair and equitable way. If it is not achieving this outcome, then it is not fulfilling its purpose.

Anglicare NT welcomes the opportunity to have input into the review process. Addressing the issues and principles outlined above, we believe, will help to make the Act more fit for purpose. And in doing so, protect the most vulnerable people in our community.

Yours sincerely,



Dave Pugh
CEO
Anglicare NT

² NCAT NSW Civil and Administrative Tribunal

https://www.ncat.nsw.gov.au/Pages/cc/Divisions/Tenancy/domestic_violence_tenancy_laws.aspx

³ WA Department of Mines, Industry, Regulation and Safety <https://www.commerce.wa.gov.au/consumer-protection/family-and-domestic-violence-and-tenancy-laws>

