

2018

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Residential Tenancies Amendment Bill 2018

SERIAL NO. 43

EXPLANATORY STATEMENT

GENERAL OUTLINE

The primary purpose of the Bill is to provide a framework for the use of residential tenancy databases, and to set out the parameters for how landlords, landlord agents (real estate agents) and database operators can use, record and access personal information about tenants and potential tenants listed on residential tenancy databases.

The Bill implements the national Residential Tenancy Database Model Provisions developed by the former Standing Committee of Attorneys-General (now the Council of Attorneys-General) and the former Ministerial Council on Consumer Affairs (now the Consumer Affairs Forum) during 2009 and 2010. The Bill sets out the nationally agreed minimum level of rights, obligations and limitations in relation to residential tenancy databases by providing:

- (a) notification requirements in relation to the use of residential tenancy databases;
- (b) restrictions on information that can be placed on residential tenancy databases;
- (c) obligations to correct information that is inaccurate, incomplete, ambiguous or out-of-date;
- (d) obligations to provide information relating to a person if the person requests it; and
- (e) time limits for keeping personal information on residential tenancy databases.

The secondary purpose of the Bill is procedural in nature, addressing a drafting oversight during conferral of jurisdiction of residential tenancy matters to the Northern Territory Civil and Administrative Tribunal (NTCAT) in the *Northern Territory Civil and Administrative Tribunal (Conferral of Jurisdiction Amendments) Act 2014* by formally providing the NTCAT with jurisdiction to hear matters arising under the former *Tenancy Act*.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Residential Tenancies Amendment Act 2018*.

Clause 2. Commencement

This is a formal clause which provides when the Act will commence. The Act will commence on a day fixed by the Administrator by Gazette notice.

Part 2 Amendment of the Residential Tenancies Act

Clause 3. Act amended

This is a formal clause which sets out Part 2 as amending the *Residential Tenancies Act*.

Clause 4. Section 4 amended

This clause amends section 4 of the *Residential Tenancies Act*, by inserting specific definitions for key words and phrases relating to residential tenancy databases and a guidance note that definitions contained in the *Interpretation Act* may also be relevant to the *Residential Tenancies Act*.

Clause 5. Section 18 amended (Commissioner is enforcement agency for purposes of TINES)

This clause omits the reference to TINES (Territory Infringement Notice Enforcement Scheme) from the heading of section 18 on the basis that it is a redundant

reference. The Territory Infringement Notice Enforcement Scheme was replaced on 1 January 2002 by the infringement notice scheme established under the *Fines and Penalties (Recovery) Act*. The reference to TINES is no longer necessary.

Clause 6. Section 42 amended (Tribunal may declare rent excessive)

This clause omits the offence under subsection 42(6) of asking for or receiving rent that exceeds the amount of rent fixed by an order of the Tribunal under subsection 42(1) as the penalty under subsection 42(6) is inconsistent with the offence of non-compliance with an order of the Tribunal under section 84B of the *Northern Territory Civil and Administrative Tribunal Act*.

Clause 7. Section 110 amended (Condition report at end of tenancy)

This clause amends subsection (7) of section 110 by replacing the word 'request' with 'direct' to better reflect the means by which the Tribunal may obtain information from the Commissioner.

Clause 8. Part 14 inserted

This clause inserts a new Part 14 into the Act, which consists of new sections 123 to 136 and deals with the implementation of tenancy databases.

A new section 123 inserts definitions specific to the new Part 14. In particular it defines 'tenancy database' to mean a database that contains personal information relating to the occupation of premises under a tenancy agreement and is intended to be used by landlords to check a person's tenancy history to decide whether to enter into a tenancy agreement with the person.

A new section 124 provides that Part IIAA of the Criminal Code applies to an offence against the new Part 14. Part IIAA of the Criminal Code sets out the principles of criminal responsibility, applicable to offences to which it applies.

A new section 125 specifies that the new Part 14 does not apply to a tenancy database kept by an entity for use by only that entity or its officers, employees or agents.

A new section 126 specifies that notice must be given to a potential tenant if a landlord usually uses one or more tenancy databases when entering into a tenancy agreement. New subsections 126(1), (2), (3), and (4) set out the required contents and circumstances of that notice.

A new subsection 126(5) specifies that a landlord commits an offence if the landlord fails to give a potential tenant notice in accordance with the new section 126. The maximum penalty for an offence against new section 126(5) is 20 penalty units and a new subsection 126(6) is inserted which specifies that the offence is one of strict liability.

A new section 127 specifies that this section applies if a landlord uses a tenancy database and there is personal information about a potential tenant on the database.

A new subsection 127(3) specifies that a landlord commits an offence if the landlord fails to give the potential tenant a written notice within seven days after using a database which states the information required in the new subsection 127(2). The maximum penalty for an offence against new section 127(3) is 20 penalty units and a new subsection 127(4) is inserted which specifies that the offence is one of strict liability.

A new section 128 prohibits a landlord or database operator listing personal information about a person in a tenancy database unless certain conditions are met. Those conditions are that:

- the personal information being listed is of a tenant in a tenancy agreement that has ended;
- the former tenant breached the agreement
- because of that breach the former tenant owes the landlord an amount that is more than the security deposit or the NTCAT has made an order terminating the tenancy agreement.

The personal information must only relate to the breach, indicate the nature of the breach, and must be clear and unambiguous.

Subsection 128(2) makes it an offence not to comply with the conditions for listing. The maximum penalty for an offence against new section 128(2) is 20 penalty units and a new subsection 128(3) is inserted which specifies that the offence is one of strict liability.

A new subsection 129(1) specifies that a landlord or database operator must not list personal information about a person in a tenancy database without first giving the person a copy of the personal information, or taking reasonable steps to disclose the information to the person. The landlord or database operator must also give the person at least 14 days to review the personal information and make submissions objecting to its entry or about its accuracy, completeness or clarity, and must consider any submissions made.

New subsections 129(2) and (3) set out exceptions to the requirements in subsection 129(1). Those exceptions are that the information is publicly available from court or NTCAT records or the information involves an amendment of personal information under section 130.

Subsection 129(4) makes it an offence not to comply with this section. The maximum penalty for an offence against new section 129 is 20 penalty units and a new subsection 129(5) is inserted which specifies that the offence is one of strict liability.

A new section 130 requires that a landlord must give written notice to the database operator within seven days of identifying that information listed on the database is inaccurate, incomplete, ambiguous or out-of-date, give written notice to the database operator stating the information is inaccurate, incomplete, ambiguous or out-of-date, and how it must be amended, or that it must be removed. Some non-exhaustive examples are also provided.

Subsection 130(4) provides definitions of 'inaccurate' and 'out-of-date'.

A new section 131 requires a database operator to amend personal information within 14 days of receiving a notice under section 130.

A new section 132 requires that, if requested by a person in writing, a landlord or database operator who lists personal information in a database about the person must provide a copy of the information to the person within 14 days. A new subsection 132(3) specifies that, if a fee is charged for giving personal information by a landlord or a database operator, the requirement to provide a copy of the information applies only if the fee is paid.

A new subsection 132(4) specifies that a fee charged by a landlord or database operator for giving personal information must not be excessive and must not apply to lodging a request for the information.

A new section 133 prohibits a database operator from keeping personal information about a particular person on a database for more than three years or any shorter period required under the Australian Privacy Principles.

A new subsection 133(2) qualifies the prohibition, whereby a database operator may retain a person's name in the database for a longer period if other personal information about the person is attached in the database and the other personal information is not required to be removed under new subsection (1) or another law.

A new subsection 133(3) makes it an offence to keep personal information on a database other than in accordance with new section 133. The maximum penalty for an offence against new section 133(3) is 20 penalty units and a new subsection 133(4) is inserted which specifies that the offence is one of strict liability.

A new subsection 134(1) specifies that, if personal information about a person is, or is proposed to be, listed in a database, the person may apply to the Tribunal for an order.

A new subsection 134(2) specifies that the Tribunal may make such orders as may be necessary to ensure that a landlord or database operator complies with new Part 14, including prohibiting the listing, requiring amendment of the listing, or removal of information from the listing.

A new subsection 134(3) specifies that where the Tribunal makes an order against a person who is not a party to the dispute proceedings, the Tribunal may order a party to

give a copy of the order to that person within a specific time period.

A new section 135 is included in the Bill which limits the operation of the privilege against self-incrimination with respect to the giving of evidence or producing evidentiary material in proceedings before the Tribunal under this Part, so as to enable the Tribunal to be fully informed to be able to make relevant orders under section 134. However section 135(2) also protects that person from having that evidence used against them by making it inadmissible in any subsequent criminal proceeding relating to potential violation of the database provisions.

A new section 136 clarifies the role of the Tribunal as the reviewer of the decisions of a landlord or database operator in respect of database listings, and excludes the Tribunal's internal review functions under Part 5 Division 1 of the *Northern Territory Civil and Administrative Tribunal Act* in respect of database related matters.

Clause 9 Section 159 amended (Definitions)

Clause 7 makes a minor amendment to section 159 to remove the words 'Part, unless the contrary intention appears' and replaces it with 'Division' so that the definitions in that section apply to the Division.

Clause 10. Part 18, Division 5 inserted

This clause inserts a new Part 18, Division 5 into the Act, which consists of new sections 172 to 174 and deals with transitional provisions for the *Residential Tenancies Amendment Act 2018*.

A new section 172 inserts definitions specific to the new Part 18, Division 5.

A new section 173 provides a three month transition period from commencement of this Act where during the transitional period, the new Part 14 only applies in relation to tenancy agreements entered into, and to personal information listed, on or after the commencement of this Act. Following the transition period, the new Part 14 will apply in relation to any tenancy agreement entered into, and to personal information listed, before, on or after the commencement of this Act.

A new section 174 provides jurisdiction to the NTCAT in relation to matters arising under the former *Tenancy Act*. This corrects an oversight in the *Northern Territory Civil and Administrative Tribunal (Conferral of Jurisdiction Amendments) Act 2014*, clarifying that the NTCAT has jurisdiction over any leases that were made under the former *Tenancy Act* and which have continued in existence as periodic leases.

Part 3 Amendment of Residential Tenancies Regulations

Clause 11. Regulations amended

This clause specifies that the following sections amend the *Residential Tenancies Regulations*.

Clause 12. Schedule 1 amended (Offences and penalties)

This clause amends Schedule 1 of the Regulations by adding sections 37(3), 126(5), 127(3), 128(2), 129(4) and 133(3) as prescribed sections for the purposes of the issuing of infringement notices. This means infringement notices may be issued for these offences.

The clause also sets out the prescribed penalty units for infringement notices issued in relation to offences under sections 126(5), 127(3), 128(2), 129(4) and 133(3), namely 4 penalty units.

Part 4 Repeal of Act

Clause 13. Repeal of Act

This is a standard clause which provides that the *Residential Tenancies Amendment Act 2018* is repealed on the day after it commences.