

2 August 2019

Ms Anna Wade
Policy Manager
Better Regulation Division, Regulatory Policy
Department of Customer Service
By email: rtreg@finance.nsw.gov.au

Dear Ms Wade

Residential Tenancies Regulation 2019

1. Women's Legal Service NSW (WLS NSW) joins People with Disability Australia; Domestic Violence NSW; Homelessness NSW; Marrickville Legal Centre; the New England and Western Tenants Advice and Advocacy Service Inc; Redfern Legal Centre; Shelter NSW; the Tenants' Union of NSW; and Wirringa Baiya Aboriginal Women's Legal Centre in thanking the Department of Customer Service for the opportunity to provide feedback on the Residential Tenancies Regulation 2019.
2. This submission has been developed in consultation with and with input from People with Disability Australia; Domestic Violence NSW; Homelessness NSW; Marrickville Legal Centre; the New England and Western Tenants Advice and Advocacy Service Inc; Redfern Legal Centre; Shelter NSW; the Tenants' Union of NSW; and Wirringa Baiya Aboriginal Women's Legal Centre.
3. We are community legal centres, including specialist women's legal services and tenancy services; peak bodies for domestic violence, people with disability, tenants, housing and homelessness. We and our respective members work with people who have experienced domestic violence.
4. We limit our comments to "competent person" and the form to be used by a competent person as evidence of domestic violence in ending a tenancy in circumstances of domestic violence (Schedule 3).

Competent person - medical practitioner

5. We commend the inclusion of medical practitioners as a "competent person" to provide evidence of domestic violence to enable a victim of domestic violence to leave their tenancy in circumstances of domestic violence.
6. Being able to rely on a declaration from a medical practitioner is important for victims-survivors of domestic violence who are reluctant to report to police, including due to fear.



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7. We are hearing that some medical practitioners feel confident in assisting their patients to end their tenancy in circumstances of domestic violence by completing the declaration form.
8. Some medical practitioners have only completed the form following contact with one of our services explaining the purpose of the form.
9. However, we are also hearing that some medical practitioners have reservations in completing the declaration. This could be for many reasons, such as:
 9. They are concerned by the excessive penalties for knowingly providing false or misleading information in connection with the declaration – a maximum penalty of 2 years imprisonment or 100 penalty units (\$11,000), or both.
 - 9.2 They misunderstand the offence of knowingly providing false or misleading information in connection with the declaration, believing they need proof of domestic violence, despite the declaration stating in bold *“You are not required to prove that an incident of domestic violence has taken place”*
 - 9.3 They may lack experience in identifying and responding to domestic violence
 - 9.4 They are limited by time
10. Further barriers to accessing medical practitioners could include a lack of bulk-billing General Practitioners. This impacts on people with limited financial resources and may also prevent victims of financial abuse from accessing a doctor.
11. Other barriers include the lack of opportunity to raise the issue of domestic violence with a medical practitioner, for example, if a person with a disability who is experiencing domestic violence is accompanied to their doctor's appointment by their carer who is perpetrating the violence.
12. Timely access to a “competent person” is another reason to expand the list of such people.
13. We support ensuring greater accessibility of these provisions especially for Aboriginal and Torres Strait Islander people, culturally and linguistically diverse people, people with disability, LGBTIQ+ communities and people in regional, rural and remote areas.
14. We are aware that medical bodies, such as the Australian Medical Association NSW, also support the need for alternative forms of evidence of domestic violence to help women escaping domestic violence end their tenancy early without penalty beyond police or court reports. They also support the expansion of the list of “competent person” beyond just medical practitioners to increase access.

Expanding list of “competent person”

15. We note that the Department of Immigration and Citizenship can make findings as to whether an applicant for permanent residency has experienced family violence based on evidence from a list of professionals, including:

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- medical practitioners
 - registered nurses
 - child protection workers
 - women's refuge workers or family violence crisis centre workers
 - social workers
 - psychologists
 - school counsellors and school principals¹
16. We submit that a victim of domestic violence should be entitled to rely on a declaration from any of those professionals if they want to end their tenancy.
17. We recommend "*women's refuge workers or family violence crisis centre workers*" be expanded to "*domestic violence specialist workers and sexual assault specialist workers*" to capture a range of services with whom those experiencing domestic violence engage.
18. Workers who we envisage would fall within this category include, for example: domestic violence refuge workers; Staying Home Leaving Violence workers; Domestic and Family Violence Integrated Service workers; Women's Domestic Violence Court Advocacy Service workers; domestic violence specialist workers within faith based organisations; domestic violence specialist worker within community organisations, including Women's Health Centres and other Women and Children's organisations; domestic violence specialist workers within homelessness services; expert family violence legal practitioners; domestic violence counsellors; sexual assault services; sexual assault counsellors. As the names of programs regularly change and pilots are regularly introduced it is important to use a term which will not require frequent updating such as "*domestic violence specialist worker*" and "*sexual assault specialist worker*".
19. Further, given the Migration Regulations have not considered Aboriginal and Torres Strait Islander people and people with disability, we recommend the list of "competent person" to complete a declaration in circumstances of domestic violence includes other workers we know from experience have contact with victims-survivors of domestic violence in the absence of any engagement with police, including:
- community access workers,
 - health workers (including GPs, Aboriginal and Torres Strait Islander specific health workers, registered nurses or midwives, dentists, drug and alcohol and mental health workers)

¹ Migration Regulations 1994 - Specification of Evidentiary Requirements - IMMI 12/116

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- Aboriginal Corporations registered by the Office of the Registrar of Indigenous organisations
 - independent disability advocacy and representative organisations
 - tenancy and homelessness/housing services workers
 - counsellors approved by Victims Services
20. We also refer to the recent amendments to the *Residential Tenancies Act 1987* in Western Australia. Evidence of family violence for the purposes of ending a tenancy early in circumstances of family violence can be provided by:
- a person in the medical profession
 - a psychologist
 - a social worker
 - a police officer
 - a person in charge of a women's refuge; or
 - a prescribed person or class of persons²
21. We would welcome the opportunity to discuss in further detail the reasons for the need to expand the list of competent persons.

Penalty for knowingly providing false and misleading information

22. We also recommend reconsideration of the excessive penalty for knowingly providing false and misleading information in connection with this declaration. In addition to the excessive penalties, there appears to be confusion around this provision which we fear may impact the safety of women seeking to leave their tenancy in circumstances of domestic violence, undermining the aims of these important reforms.

Pets

23. We also support a prohibition on "no pets" clauses in tenancy contracts unless pets are restricted by another law. We understand this to be consistent with the practice in other states. We further support additional terms in the standard form agreement which encourage responsible pet ownership.

If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator, Women's Legal Service NSW or Kellie McDonald Senior Solicitor, Women's Legal Service NSW on 02 8745 6900.

² Section 71AB(2)(d) *Residential Tenancies Act 1987 (WA)*

Women's Legal Service NSW

Yours faithfully,

Women's Legal Service NSW
People with Disability Australia
Domestic Violence NSW
Homelessness NSW
Marrickville legal Centre
New England and Western Tenants Advice and Advocacy Service Inc
Redfern Legal Centre
Shelter NSW
Tenants' Union of NSW
Warringa Baiya Aboriginal Women's Legal Centre



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