

PROPOSED TENANCY REFORMS

IMPROVE RIGHTS FOR DV VICTIMS

By Kellie McDonald



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Domestic violence ('DV') is one of the leading causes of women's and children's homelessness. Victims often need to flee their homes quickly in order to keep themselves and their children safe. However, if victims simply abandon their rental property, they can accrue a debt as a result of outstanding rent and damage done to the property and be blacklisted on a residential tenancy database, making it very difficult for them to rent in the future.

There are currently two main avenues open to DV victims living in a residential tenancy:

- The *Residential Tenancies Act 2010* (NSW) ('**the Act**') gives victims of domestic violence the right to end their fixed term tenancy without liability where they have a final apprehended violence order ('**AVO**') which excludes the perpetrator from the rental property, provided they give their landlord and any other co-tenants 14 days written notice; and
- The NSW Civil and Administrative Tribunal ('**NCAT**') is also empowered to end a victim or perpetrator's tenancy due to the special circumstances of the victim's case. However, NCAT can still order the victim to compensate the landlord.

Practical considerations & hurdles

It can take up to 12 months to get a final AVO with an exclusion order, particularly if the AVO is attached to criminal charges. Further, a court is unlikely to make an AVO excluding the perpetrator from the rental property if the victim intends to move out or if the exclusion will lead to the perpetrator being made homeless. Victims are also often reluctant to seek an order ending their own or the perpetrator's tenancy when advised that NCAT will require them to attempt to resolve their matter through conciliation with the perpetrator.

Co-tenants are also jointly and severally liable for rent and any damage done to the property, which means that under the current law, victims are liable to pay for damage done to a rental property by a perpetrator.

Snapshot

- Victims of domestic violence often need to flee their rental properties quickly in order to keep themselves & their children safe.
- Under the current tenancy laws, victims need a final apprehended violence order with an exclusion order to leave without penalty. This can take up to 12 months to obtain.
- The proposed reforms to the *Residential Tenancies Act 2010*, expected to be introduced in 2017, will make it easier for victims to end their tenancies immediately without liability.

Review and reform of *Residential Tenancies Act*

The recent statutory review of the *Residential Tenancies Act* by NSW Fair Trading, provided Women's Legal Service NSW ('**WLS**') with the opportunity to argue it is crucial that domestic violence victims have more accessible options to end their tenancy quickly and without liability. WLS welcomed the tabling of the report on 23 June 2016 as well as the announcement on 5 July by Ministers Dominello and Goward that the government intends to reform the Act in the first half of 2017 in order to improve the rights of DV victims living in rental properties.

The proposed reforms will enable victims of domestic violence to end their tenancy immediately without liability by attaching a provisional, interim or final AVO or a family law injunction, to a notice of termination. Police can issue provisional AVOs to victims when they are called to attend a victim's home. This means that once notice is provided, victims can leave their tenancy without liability after the police have attended the domestic violence incident. If the victim and perpetrator are co-tenants, the landlord could still pursue

the perpetrator for rent and any damage done to the property if the victim ends their tenancy under these reforms.

The proposed reforms also call for NCAT to be empowered to order that one of the co-tenants be responsible to compensate the landlord for damage done to the property, for example the perpetrator who caused the damage. This would allow the perpetrator of the violence to be held solely responsible for any damage they caused to the property.

Proposals for further safeguards

WLS welcomes these reforms, however we believe they could go further to protect the rights of DV victims. Many victims are reluctant to report violence to the police because they are ashamed or afraid the violence will escalate. They are often also worried about the effect an AVO or a criminal charge will have on the perpetrator's job. For this reason, WLS believes that a victim should also be able to end their tenancy without liability by relying on a statutory declaration from a professional with sufficient experience to form an opinion as to whether a person has been a victim of a domestic violence offence. The WLS proposal is based on the *Migration Regulations 1994* (Cth) which enables the Department of Immigration and Citizenship to make findings as to whether an applicant for permanent residency has experienced family violence based on a statutory declaration from a list of prescribed professionals. Being able to rely on such a statutory declaration would balance a victim's right to end their tenancy quickly without needing a court order, as well as assuring landlords that ending their tenancy was justified in the circumstances.

WLS also supports the proposal to prohibit listing a person on a residential tenancy database if a landlord or their agent has knowledge the person experienced domestic violence. However, it is important that the reforms make clear that residential tenancy database operators should be required to remove a person's personal information if they have evidence that the person experienced domestic violence, without the need for a victim to apply to NCAT for orders. **LSJ**