

2 December 2022

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Policy Managers
Policy & Strategy, Better Regulation Division
Department of Customer Service

By email: dvreview@customerservice.nsw.gov.au

Dear Policy Managers,

Statutory review of domestic violence provisions in the *Residential Tenancies Act 2010*

1. Women's Legal Service NSW (**WLS NSW**) thanks the Department of Customer Service for the opportunity to comment on the statutory review of the domestic violence provisions in the *Residential Tenancies Act 2010* (**RTA**).
2. WLS NSW is a specialist accredited women-led community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. Since 1995 WLS NSW has provided a statewide First Nations Women's Legal Program (**FNWLP**). This program delivers a culturally safe legal service to First Nations women, including regular engagement with communities across NSW. An Aboriginal Women's Consultation Network guides the FNWLP. It meets quarterly to ensure that we deliver a culturally safe service. The members include regional community representatives and the FNWLP staff. There is a representative from the Aboriginal Women's Consultation Network on the WLS NSW Board.

Use of language

4. The terms "victim," "survivor," and "victim-survivor" have been used interchangeably throughout this submission to refer to women, children and others who have experienced or are experiencing family and domestic violence and abuse. While acknowledging that anyone can experience domestic and family violence and abuse, the research and our experience over forty years clearly highlights that domestic and family violence and abuse is predominantly perpetrated by men against women and children. Our language in this submission is gendered to reflect this.
5. We note NSW is shifting away from the language of "domestic and family violence" to "domestic and family abuse". This is to better acknowledge that domestic and family violence and abuse can include physical and non-physical violence and abuse. In this submission we use the terms interchangeably.



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Introductory comments

6. We commend the introduction of provisions in the *RTA* which have strengthened protections for tenants who are survivors of domestic violence and abuse. These reforms provide important protections which seek to keep adult survivors and their children safe. Where victim-survivors of domestic violence have access to evidence of domestic violence, such as an ADVO or a competent person making a declaration, these provisions are mostly working well. However, this submission highlights instances of difficulty with access to a competent person, highlighting the need to further expand the list to ensure greater access for priority populations, including First Nations people, people with disability, culturally and linguistically diverse communities, LGBTIQ+ communities and people living in regional, rural and remote areas.
7. We also note the need for greater awareness and understanding of domestic violence and abuse and the provisions, particularly by landlords, real estates and also by Tribunal members.
8. WLS NSW, the Tenants' Union of NSW (**TUNSW**), and Domestic Violence NSW (**DVNSW**) created and promoted a survey to collect information from tenants who had ended their tenancy using a domestic violence termination notice (**DVTN**), and anyone who supported someone who did this. The survey sought information about how the domestic violence provisions in the *RTA* were working (**the survey**). The survey opened 31 October 2022 and closed on 16 November 2022.
9. 70 people responded to the survey. 68 survey respondents identified as someone who had supported a person who had ended their tenancy using a DVTN. 39% (27) of survey respondents said the tenant was living in the Sydney Metropolitan area when they used the DVTN. 59% (41) of survey respondents said the tenant was living in regional NSW when they used the DVTN.
10. This submission is based on the results of this survey and our experience assisting clients who have used the domestic violence provisions in the *RTA*. The results of the survey are discussed below.
11. We have also had the benefit of conversations with the TUNSW and DVNSW which have helped inform our recommendations. This submission is endorsed by:
 - Blue Mountains Tenants Advice and Advocacy Service
 - Central Tablelands and Blue Mountains Community Legal Centre
 - Community Legal Centres NSW
 - Immigrant Women's SpeakOut Association NSW Incorporated
 - Older Women's Network NSW
 - Senior Rights Service
 - Tenants' Union of NSW
 - Western NSW Community Legal Centre

12. In summary we recommend:

12.1 The list of “*competent person*” be expanded to include:

- 12.1.1 independent advocates from a disability advocacy, information or representation organisation partially or wholly funded by state and/or Commonwealth government;
 - 12.1.2 disability support workers partially or wholly funded by state and/or Commonwealth government;
 - 12.1.3 community (access) workers from services partially or wholly funded by state and/or Commonwealth government;
 - 12.1.4 Aboriginal Corporations registered by the Office of the Registrar of Indigenous organisations that are partially or wholly government funded by state and/or Commonwealth government;
 - 12.1.5 homelessness or housing workers from services partially or wholly funded by state and/or Commonwealth government; and
 - 12.1.6 tenancy workers/advocates from services partially or wholly funded by state and/or Commonwealth government.
- 12.2 Landlords and real estate agents undergo mandatory training about domestic and family violence and abuse, including the nature and dynamics of domestic and family abuse and the domestic violence provisions in the *RTA*.
- 12.3 NSW Civil and Administrative Tribunal (**NCAT**) Tribunal Members undergo mandatory training about domestic and family violence and abuse, including the nature and dynamics of domestic and family abuse and all sections of the *RTA* relating to responding to domestic and family violence and abuse, particularly section 54A of the *RTA*.
- 12.4 To ensure the safety of adult victim-survivors and children and a quick and safe ending of a tenancy in circumstances of domestic violence, there should continue to be a prohibition on reviewing the contents of a declaration in s105F.
- 12.5 Cease requiring a tenant to serve any other co-tenants with a copy of the DVTN and instead require a landlord or their agent to advise any remaining co-tenants that a co-tenant’s tenancy has ended, and if relevant, any rights the remaining co-tenants have with respect to the amount of rent payable under section 105D(3) and (4) of the *RTA*.
- 12.6 A co-tenant who ended their tenancy using a DVTN be able to recover their portion of the bond from the Rental Bond Board.
- 12.7 Expansion of protection against blacklisting for all tenants who ended their tenancy in circumstances of domestic violence.
- 12.8 Being a victim-survivor of domestic violence be included as a protected attribute in the *Anti-Discrimination Act 1977*.
- 12.9 Where a tenant is excluded from residential premises by a final AVO, any remaining occupants should have the option of being recognised as a tenant without having to apply to NCAT.

12.10 That section 55A of the *RTA* be amended to require landlords and their agents to provide the tenant with a copy of the photos and/or visual recordings that depict the tenant's possessions within a reasonable time before they intend to publish and to make clear that they need to obtain the tenant's written consent prior to each time they want to publish the photos and/or visual recordings.

Evidence of domestic violence

13. The Fair Trading survey about ending tenancy referred to in the Issues Paper highlights that of the 56 survey responses that indicated the domestic violence provisions were used to end a tenancy, 28 people relied on an ADVO and 28 people relied upon a declaration from a competent person.
14. The joint WLS NSW, TUNSW and DVNSW survey asked, "What evidence was attached to the DVTN?" 70 people responded to this question. 51% (36) of survey respondents said that the tenant had relied on an apprehended domestic violence order (**ADVO**). 44% (31) of survey respondents relied on a declaration by a "*competent person*".
15. Of those who relied upon a competent person:
 - 15.1 on 9 occasions the competent person was a doctor, 7 of the 9 in regional areas;
 - 15.2 on 5 occasions the competent person was a social worker;
 - 15.3 on 23 occasions the competent person was a domestic violence/sexual violence worker;
 - 15.4 on 8 occasions the competent person was a refuge worker; and
 - 15.5 on 1 occasion the competent person was a Victims Services approved counsellor.
16. Most survey respondents who relied on a declaration by a "*competent person*" said that the tenant did not find it difficult to find a competent person to complete the prescribed declaration. However, 8 workers reported finding it difficult to find a competent person, with 5 of these 8 working in regional areas.
17. Further, there is still a strong desire for the list of "*competent person*" to be expanded. 37 people answered this question. Of these respondents:
 - 17.1 86% (32) wanted homelessness or housing workers added;
 - 17.2 68% (25) wanted workers from Aboriginal corporations added;
 - 17.3 62% (23) wanted tenancy advocates added;
 - 17.4 59% (22) wanted disability advocates / support workers added; and
 - 17.5 46% (17) wanted community (access) workers added.
18. We support the inclusion of people currently included as a "*competent person*". We welcomed the expansion of the list of "*competent person*" from medical practitioner to a broader list which took effect in December 2020. We acknowledge the benefits of ensuring greater accessibility of these provisions especially for First Nations people, culturally and linguistically diverse people, people with disability,

LGBTIQA+ communities and people in regional, rural and remote areas and we propose additions to this list as outlined below.

People with disability

19. People with disability experience violence in a range of ways, and at much higher rates than those without disability.¹ While acknowledging that men and boys with disability experience domestic and family violence and abuse, the gendered nature of domestic and family violence and abuse must be taken into consideration.
20. Women with disability are approximately 40% more likely to experience domestic and family violence and abuse than women without disability.²
21. Despite significant issues with its data collection methodology,³ the 2016 Personal Safety Survey found that women with disability or a long-term health condition were more likely to have experienced violence than women without disability or a long-term health condition in the 12 months preceding the survey.
22. Violence against women with disability is often poorly recognised, and rarely identified or responded to as domestic and family violence and abuse.⁴ This means that often, women with disability experience violence for a longer period of time, which can result in more severe injuries for this group of women.⁵
23. Violence against people with disability must be understood within the context provided by the internationally recognised social model of disability as outlined in the Convention on the Rights of Persons with Disabilities. The social model focuses on the ways in which disabling physical, environmental, social, attitudinal and communication barriers result in unequal access, exclusion, and discrimination for people with disability. As such, it can be understood that people with disability are not more vulnerable to violence and abuse on the basis of their disability, but rather as a result of these systemic barriers and inequalities.

¹ For more information, see: Frohmader, C., & Sands, T. (2015) *Australian Cross Disability Alliance (ACDA) Submission to the Senate Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*. Australian Cross Disability Alliance (ACDA); Sydney, Australia. pp 69-70.

² Brownridge, D. (2006) *Partner violence against women with disabilities: Prevalence, risks and explanations*, Violence against Women, vol. 12, no. 9, pp. 805–22

³ For example, the PSS only recruits people in private dwellings and excludes people who might require some form of communication support, e.g. some people with intellectual disability, some Deaf people, some people with hearing impairment, people from culturally and linguistically diverse backgrounds and those using alternative communication devices.

⁴ Frohmader, C. & Cadwallader, J. (2014) *Joint Submission from National Cross-Disability Disabled People's Organisations (DPOs) to the Senate Standing Committee on Finance and Public Administration 'Inquiry into Domestic Violence in Australia'*. p11

⁵ Dowse L., Soldatic K., Didi A. & van Toorn G. (2013) *Stop the violence: addressing violence against women and girls with disabilities in Australia*. Background Paper for the National Symposium on Violence against Women and Girls with Disabilities, Sydney, 25 October. Hobart: Women With Disabilities Australia, p17.

24. Women with disability may not be aware that what they are experiencing is a crime. This is often because they have not received adequate or accessible sex and relationships education as children/young adults or adults, nor information about their rights and what constitutes a crime.⁶
25. If women with disability access a mainstream service, the service might not have information available in accessible formats such as Easy Read, Plain English, audio, Auslan video or other formats. This further reduces the opportunity for women with disability to gain information about violence, and consequently disclose or report violence.
26. Some mainstream services may also be physically inaccessible to people with disability, again limiting the ability of this cohort to seek support or disclose violence that they are experiencing.
27. Even if women with disability are aware they are experiencing domestic and family violence and abuse they may not be given the opportunity to disclose the violence. For example, their partner and/or carer who is perpetrating the violence and abuse may accompany them to all their appointments with their medical practitioner which prevents the victim-survivor disclosing to the doctor. Disability advocates raise that in such circumstances doctors may not question the close monitoring of the victim-survivor by the perpetrator. This may be because the doctor is not experienced in communicating with people with intellectual disability, for instance, or with people who use augmentative or alternative communication methods. These medical practitioners may therefore prefer the partner and/or carer to be present to assist them throughout the appointment.
28. If women with disability do disclose or report experiences of domestic and family violence and abuse and/or sexual assault they are frequently disbelieved.⁷ This is due to a range of reasons – often including discriminatory stereotypes or myths regarding the sexuality of people with disability, assumptions regarding the legal capacity of people with disability, or just general prejudicial attitudes towards people with disability. The notion of “carer sacrifice” can also be used to minimise or downplay violence against people with disability.⁸ Victim blaming of women with disability who have experienced domestic and family violence and abuse, or sexual assault is another significant barrier to women with disability reporting violence.
29. For all these reasons, it is imperative people with disability can access the protections for victims-survivors of domestic violence renting in NSW.
30. Independent individual advocates and disability support workers play a key role in supporting people with disability in a range of areas, including in accessing justice.
31. We recommend inclusion of the following in list of “*competent person*” :
 - 31.1 independent advocates from a disability advocacy, information or representation organisation partially or wholly funded by state and/or Commonwealth government’, and

⁶ Howe, K., Atmore, C. (2011) *Submission to Parliament of Victoria Law Reform Committee Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and Their Families and Carers*, Women with Disabilities Victoria, Domestic Violence Victoria, Federation of Community Legal Centres Victoria, Maroondah Halfway House/Brenda House, Women's Legal Service Victoria and Family Law Legal Service

⁷ See: French, P. (2007) ‘Disabled Justice: The barriers to justice for persons with disability in Queensland’, Queensland Advocacy Incorporated; and Victorian Equal Opportunity and Human Rights Commission, (2014) ‘Beyond Doubt: the experiences of people with disabilities reporting crime’

⁸ Young, Stella. (2013) ‘Disability is no justification for murder’, *The Drum*, 3 September 2013

- 31.2 disability support workers partially or wholly funded by state and/or Commonwealth government

Community (access) worker

32. In many circumstances, it is necessary for a person to build a relationship of trust before feeling safe and able to disclose domestic and family violence and abuse. Community (access) workers working with at-risk communities – including First Nations community workers, culturally and linguistically diverse (CALD) community workers, LGBTIQ+ community workers and community workers in regional, rural and remote areas are often the first person to whom a victim-survivor discloses the violence. It is also important to acknowledge that Aboriginal and Torres Strait Islander peoples, people who are culturally and linguistically diverse, people who identify as LGBTIQ+ and people with disability often feel more comfortable to disclose to a person with whom they identify and who puts them at ease.

33. In rural and remote areas, community workers may be the only workers in the area available to victim-survivors. The 2015-17 *NSW Domestic Violence Death Review Team report* noted:

Victims of domestic and family violence living in rural and remote areas may experience particular barriers in respect of access to services including police, healthcare and other intervention points to address domestic and family violence.⁹

34. We note that the evidentiary requirements in NSW Housing Pathways to establish a need for a transfer in social housing in circumstances of domestic violence includes:

Letters or reports from a social worker, community worker, or neighbourhood centre.¹⁰

35. It is also important to recognise that the current list of “*competent person*” requires many of the competent persons to have a qualification, for example, health practitioner, social worker, counsellor. This can be a significant barrier to many members of at-risk groups being able to access the protections for domestic violence victims-survivors renting in NSW. This is because, for example, there may not be high numbers of Aboriginal and Torres Strait Islander people with health, social work and psychology degrees but there are a number of Aboriginal and Torres Strait Islander people who undertake essential work engaging with community and victims-survivors of domestic violence and abuse as community (access) workers. This expertise must be acknowledged.

36. To ensure the protections for victims-survivors of domestic violence renting in NSW are accessible to at-risk communities it is vital that community workers are included as a “*competent person*”.

Aboriginal Corporations

37. We also recommend inclusion of “Aboriginal Corporations registered by the Office of the Registrar of Indigenous organisations that are partially or wholly government funded by state and/or Commonwealth government”. Given the high rates of violence particularly against First Nations women and the barriers to reporting and disclosing such violence we believe it is important to provide several avenues for Aboriginal and Torres Strait Islander domestic violence victims-survivors to access the protections. The gaps this category of competent person could cover include, for example: some

⁹ NSW Government, *NSW Domestic Violence Death Review Team Report 2015-17* p104.

¹⁰ NSW Government, [Transfer Policy](#), last updated 31 March 2022

Aboriginal women's, children and family groups; some Aboriginal Corporations for Housing; some Aboriginal healing groups.

Homelessness or housing workers from services partially or wholly funded by state and/or Commonwealth government

Tenancy workers from services partially or wholly funded by state and/or Commonwealth government

38. Domestic violence and abuse is the leading cause of homelessness for women and children. Homelessness or housing workers as well as tenancy workers work with victims-survivors of domestic violence and abuse. Such workers tell us that often their clients who have experienced domestic violence are not necessarily engaged with a domestic violence specialist worker. For this reason, it is important to also include homelessness or housing workers and tenancy workers as a “*competent person*”.

General comments about competent person

39. Timely access to a competent person is another reason to expand the list of competent persons. A domestic violence victim-survivor may have to wait some time for an appointment with either a health practitioner, social worker or counsellor. In the case of ending a tenancy due to domestic violence where safety is paramount, waiting is generally not an option and is not safe.

Recommendation 1

The list of “*competent person*” be expanded to include:

- independent advocates from a disability advocacy, information or representation organisation partially or wholly funded by state and/or Commonwealth government;
- disability support workers partially or wholly funded by state and/or Commonwealth government;
- community (access) workers from services partially or wholly funded by state and/or Commonwealth government;
- Aboriginal Corporations registered by the Office of the Registrar of Indigenous organisations that are partially or wholly government funded by state and/or Commonwealth government;
- homelessness or housing workers from services partially or wholly funded by state and/or Commonwealth government; and
- tenancy workers/advocates from services partially or wholly funded by state and/or Commonwealth government.

Domestic violence termination notice and process of ending tenancy in circumstances of domestic violence

Serving a real estate agent with a DVTN

40. The survey asked, "Was the real estate agent and/or landlord cooperative/supportive when the DVTN was given?". 70 people answered this question. 61% (43) of survey respondents said yes but 33% (23) answered no.
41. The survey found that real estate agents and landlords in regional NSW were less cooperative and supportive (44%) than they were in the Sydney metropolitan area (18%).
42. The survey asked people "What were some of the difficulties experienced in relation to the landlord or agent's response to the termination notice". Below is a sample of the responses we received:
 - *"Not recognising the effect of the DV notice of termination is able to take immediate effect, with no notice period"*
 - *"Asked for a break fee"*
 - *"The agent made threats about the tenant needing to pay break lease costs and that she would still be responsible for any damage or arrears accrued by the perpetrator who stay behind, even after the tenant had issued the termination notice and returned her keys."*
 - *"Agent told the tenant she had to give 21 days notice and would be liable for rent for that period (which the tenant could not afford). Made threats about making a claim on the bond."*
 - *"I have had several clients where the real estate have chosen not to recognise the domestic violence evidence and have told the client they are unable to break the lease. I have had other agents elongate the process despite considerable evidence that the client was leaving a dangerous domestic violence situation. No action taken by the real estate until intervention by our service or tenancy service support."*
 - *"Questioned the validity of the Notice and initially wanted proof of the incident"*
43. Division 3A of Part 5 of the *RTA* allows survivors of domestic violence to end their tenancy immediately without liability. This provision was introduced to improve the safety and lives of adult survivors of domestic violence and their children. However, the provisions are only effective if landlords, and their agents, know the provisions exist and what they mean.
44. It is crucial to the effectiveness of the domestic violence provisions in the *RTA* that landlords and their agents have information and training to ensure they understand their meaning and purpose.
45. The survey shows that some landlords and their agents are querying DVTNs and likely the validity of declarations by competent people. It is important to recognise the trauma victim-survivors experience in having to repeatedly share their experience of domestic violence and abuse and the trauma in having to engage unnecessarily in proceedings. The prohibition on reviewing the contents of a declaration by a competent person in section 105F recognises this. Survivors would be less likely to rely on a declaration by a competent person if the contents of the declaration could be challenged and they had to go through Tribunal proceedings. This undermines the purpose in seeking to ensure the safety of women and children experiencing domestic violence and abuse and streamlining processes

to end a tenancy early in circumstances of domestic violence without paying a penalty fee. It is therefore important to maintain the prohibition in section 105F.

Recommendation 2

Landlords and real estate agents undergo mandatory training about domestic violence, including the nature and dynamics of domestic and family abuse and the domestic violence provisions in the *RTA*.

Recommendation 3

To ensure the safety of adult victim-survivors and children and a quick and safe ending of a tenancy in circumstances of domestic violence, there should continue to be a prohibition on reviewing the contents of a declaration.

Serving a co-tenant with a DVTN

46. The survey asked, "Was the domestic violence perpetrator a co-tenant?". 69 people answered the question. 82% (57) of survey respondent answered yes to this question.
47. We asked people to "Describe any difficulties there was giving it [the DVTN] or why it wasn't given." Below is a sample of the responses we received:
 - *"The client was terrified of what the perpetrator would do to her once he received the notice"*
 - *"Fear, trauma"*
 - *"The timing was crucial, as it was felt the issuing of that notice would cause risk, as every arrangement to remove goods etc had to be in place prior."*
 - *"Concern by the tenant about how to have it served on the perpetrator and without contact"*
 - *"It put the women's safety more at risk for talking"*
48. In our experience, some tenants became reluctant to use a DVTN to end their tenancy when they became aware that they would need to serve the co-tenant perpetrator with the DVTN.
49. We are aware of a case where a landlord challenged the validity of a DVTN that was not served on the remaining co-tenants.
50. Having to serve a perpetrator co-tenant with a DVTN can be traumatic for survivors of domestic violence and abuse and can place them at an increased risk of violence. However, it is also important that any remaining tenants are aware that a co-tenant's tenancy has ended.
51. A way to resolve this problem may be to cease requiring tenants to serve any other co-tenants with the DVTN and instead to require a landlord or their agent who has received a DVTN to make any remaining co-tenants aware that their co-tenant's tenancy has ended, and if relevant, any rights any of the remaining co-tenants may have with respect to the amount of rent payable under section 105D(3) and (4) of the *RTA*.

Recommendation 4

Cease requiring a tenant to serve any other co-tenants with a copy of the DVTN and instead require a landlord or their agent to advise any remaining co-tenants that a co-tenant's tenancy has ended, and if relevant, any rights any the remaining co-tenants they have with respect to the amount of rent payable under section 105D(3) and (4) of the RTA.

Recovering bond

52. The survey asked, "Did the victim-survivor of domestic violence contribute to the bond?". 70 people responded to this question. 79% (55) of survey respondents answered yes.
53. The survey asked, "Did the victim-survivor of domestic violence try to recover their portion of the bond from the domestic violence perpetrator?" 60 people answered this question. 30% (18) of the survey respondents answered yes and 50% (30) said no.
54. The survey asked, "Describe any difficulties there was in recovering the victim's portion of the bond." Below is a sample of responses we received:
- *"Any process available to attempt to recover the bond was uncertain and would involve further interaction with the perpetrator."*
 - *"The victim wasn't able to obtain any of the bond, due to the POI [perpetrator] being incarcerated."*
 - *"The tenant wrote to the co-tenant to request her share of the bond back. That request was not complied with. The tenant did not feel safe in applying to NCAT to get an order her part of the bond be returned to her."*
 - *"Due to the victim's fear for her safety, she could not approach her ex-partner for the portion of the bond."*
 - *"Their portion of the bond was not refunded as the perpetrator was in the house and they were not able to prove that half of the bond was paid by the victim because they were in a relationship at the time and one person paid the full amount."*
 - *"Wasn't even considered as an option."*
55. The survey asked those who said that the tenant did not attempt to recover the bond to explain why they did not do this. Below is a sample of responses we received:
- *"Fear of the perpetrator co-tenant"*
 - *"Fear, did not want to face the perpetrator in NCAT"*
 - *"She went into hiding"*
 - *"Fear of violence escalating"*
 - *"Victim intimidated by the perpetrator and the real estate and in housing crisis with children"*

- *“Fear”*
 - *“It was easier to leave it”*
 - *“Risk”*
 - *“Safety issues”*
 - *“In fear of the perp”*
 - *“It was thought that it would cause further problems to the client and that it wasn’t worth it.”*
 - *“She chose not to so the perpetrator had less to come at her about”*
 - *“Did not want to have any further contact with the perp”*
 - *“Too hard”*
 - *“Not wanting to anger the perp, client too overwhelmed”*
56. The current process of recovering a tenant’s portion of bond from a former co-tenant is not working. It is very concerning that 50% of survey respondents said the tenant did not even attempt to try to recover their portion of the bond. Survivors of domestic violence are clearly too scared to try to recover their portion of the bond from the perpetrator co-tenant.
57. While the provisions allowing victim-survivors of domestic violence to end their tenancy immediately without liability are making it easier for victim-survivors to leave violent relationships, victim-survivors looking to move into another rental property need funds to pay a new bond to do this. Difficulty recovering their portion of the bond may be a barrier to victim-survivors of domestic violence leaving violent relationships, undermining the success of these reforms and is likely a barrier to finding new and safe accommodation.
58. Improving the process for victim-survivors of domestic violence to recover their portion of the bond will make it easier for them to leave violent relationships and improve their safety and the safety of their children.
59. We believe that it would be easier and safer for co-tenants who have ended their tenancy using a DVTN to recover their portion of the bond from the Rental Bond Board.

Recommendation 5

A co-tenant who ended their tenancy using a DVTN be able to recover their portion of the bond directly from the Rental Bond Board.

Liability for damage and restricting listing on data base due to domestic violence

60. The survey asked, "Was the rental property damaged during a domestic violence incident?". 70 people answered this question. 50% (35) of survey respondents answered yes.
61. The survey asked, "Was the victim-survivor of domestic violence able to persuade the landlord or the Tribunal that they should not be responsible for the cost of the repairs?". 33% (15) of the survey respondents answered yes. 36% (16) of the survey respondents answered no.
62. The survey asked, "What evidence was relied upon?" The 11 survey respondents who said the tenant was not able to persuade the landlord or the Tribunal that they were not liable for damage caused during a domestic violence incident, said the tenant relied upon the tenant's own statement, AVOs, police records, photos, and support letters.
63. We are aware of a case where the perpetrator of domestic violence was charged with damaging the rental property and yet the Tribunal made an order that the victim-survivor was liable for the damage.
64. Prior to the introduction of section 54A limiting the liability for damage caused by a domestic violence offender during a domestic violence offence, victim-survivors of domestic violence were often listed on a bad tenant database because of debts arising from damage done to their rental property during domestic violence incidents.
65. It is crucial to the effectiveness of section 54A that landlords, their agents and Tribunal Members have information and training to understand it and its purpose.
66. There are significant consequences that flow from listing a domestic violence victim-survivor on a residential tenancy database. This can include homelessness due to an inability to access another tenancy and the removal of children where adequate housing is not available.
67. The restriction in section 213A is an important protection, but limited to tenancies that end by way of a DVTN. A tenancy may also end in circumstances of domestic violence, for example, through s102 of the *RTA*.
68. We recommend expansion of protection against blacklisting for all tenants who end their tenancy in circumstances of domestic violence.

Recommendation 6

NCAT Tribunal Members undergo mandatory training about domestic and family violence and abuse, including the nature and dynamics of domestic and family abuse and all sections of the *RTA* relating to responding to domestic and family violence and abuse, particularly section 54A of the *RTA*.

Recommendation 7

Expansion of protection against blacklisting for all tenants who end their tenancy in circumstances of domestic violence.

Discrimination

69. The survey asked people for any other comments they had. One of the survey respondents said:

“Some real estates are less inclined to rent to women if they are aware there has been any DV – Start safely can now be a disincentive”

70. This comment reflects anecdotal evidence we are aware of, particularly in regional NSW.

71. It is important to prevent landlords and their agents from discriminating against survivors of domestic violence. One way to do this would be to include being a victim-survivor of domestic violence as a protected attribute in the *Anti-Discrimination Act 1977*.

Recommendation 8

Being a victim-survivor of domestic violence be included as a protected attribute in the *Anti-Discrimination Act 1977*.

Recognising occupants

72. In our experience, many women live in rental properties with their partners, but are not named on the lease. If their partner is a sole tenant and is excluded from a rental property by a final apprehended violence order (**AVO**), their tenancy automatically ends. This can leave the survivor of domestic violence vulnerable to homelessness. While they have the option to apply to NCAT to be recognised as the tenant, the process of doing this can be daunting.

73. We believe that victim-survivors of domestic violence should have the option of being recognised as a tenant without having to make an application to NCAT. This should not however be an automatic recognition because the victim-survivor might not be able to, or want to stay in the rental property. If the occupant elects for this to occur there should be a presumption this occurs.

Recommendation 9

Where a tenant is excluded from residential premises by a final AVO, any remaining occupants should have the option of being recognised as a tenant without having to apply to NCAT.

Publishing photos

74. The safety of a victim-survivor of domestic violence can be compromised if photos or videos are published that identify where they are living.

75. Circumstances in a tenant's life can change over time, meaning that they may be willing to consent to photos depicting their possessions at one time, but not at another time.

76. It is important that landlords and their agents provide the tenant with a copy of the photos and/or videos that depict the tenant's possessions within a reasonable time before they intend to publish and obtain the tenant's written consent prior to each time they want to publish the photos and/or videos.

Recommendation 10

Section 55A of the *RTA* be amended to require landlords and their agents to provide tenants with a copy of the photos and/or visual recordings that depict the tenant's possessions within a reasonable time before they intend to publish and to make clear that they need to obtain the tenant's written consent prior to each time they want to publish the photos and/or visual recordings.

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

Yours faithfully,

Women's Legal Service NSW

Philippa Davis
Principal Solicitor