



North Australian Aboriginal Justice Agency Ltd

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Legal Policy Division
Department of the Attorney General and Justice
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To Whom It May Concern,

Central Bond Holding Scheme

Thank you for the opportunity to respond to the Issues Paper: '*Development of a Central Bond Holding Scheme in the Northern Territory.*'

The North Australian Aboriginal Justice Agency (NAAJA) has repeatedly called for such a centralised bond authority to be established to balance the rights of tenants in fairly accessing their bonds at the end of a tenancy. It was a recommendation in NAAJA' and Central Australian Aboriginal Legal Aid joint submission to the *Residential Tenancies Act Issues Paper* of May 2010 (enclosed).

NAAJA strongly supports the recommendation of the Issues Paper: that a centralised bond authority be established in the Northern Territory.

If implemented, this entails significant change to the current system. We take this opportunity to address some of the legal and service provisions issues that are vital to the proposed scheme being effective and accessible to all members of the community and to meet the proposed objectives as listed at paragraph 7.2 of the Issues Paper. Our recommendations are:

- Any legislative change which establishes a central bond holding scheme must apply equally to tenancies managed by the Department of Housing (the Department);
- Remove unnecessary exemptions currently in the *Residential Tenancies Act 1999* (NT) (the 'RTA') regarding security deposit processes for *Housing Act* tenancies;
- The Central Bond Authority must be accessible for remote Aboriginal tenants and services provided be culturally appropriate;
- That partial bonds paid over time be accepted on a means tested basis; and
- That interest generated from bonds be used to fund independent tenancy advice services.

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About NAAJA

The North Australian Aboriginal Justice Agency (NAAJA) provides high quality and culturally appropriate legal aid services for Aboriginal people in the Northern region of the Northern Territory in the areas of criminal, civil and family law, prison support and through care services.

In addition to providing legal services, NAAJA is also active in advocacy and law reform in relation to issues impacting upon the legal rights of Aboriginal people and their ability to access justice. We travel to remote communities across the Top End to provide advice and advocacy assistance.

The tenancy work undertaken by NAAJA's civil lawyers is focussed on assisting public housing tenants and people seeking public housing in urban and remote areas. Our clients have significant vulnerabilities, including trauma, homelessness, mental illness, physical illness, experiences of domestic violence, the elderly and sole parents. We focus our casework on the following matters:

- defending evictions from public housing;
- tenancies that are at risk due to the Three Strikes Policy and non renewal of fixed term leases;
- assisting with requests for emergency repairs and compensation for the failure to repair premises in accordance with the RTA;
- addressing barriers to housing, for example cancelled or lost applications for public housing, unproven Department of Housing debts; and
- administrative review of Department of Housing decisions.

NAAJA plays a lead role in the advocating for the rights of public housing tenants in a range of forums. We identify and provide solutions to systemic issues in housing law, policy and practice.

We are the only service to provide tenancy advice to remote tenants in the region. In 2014 we provided tenancy advice and casework services in 583 matters in total. Our four welfare rights outreach lawyers ran legal clinics in remote communities, at which tenancy advice is available, on 183 days of the year. There are weekly clinics in our offices in Darwin and Katherine.

The Tasmanian experience

To inform our feedback, NAAJA sought input from stakeholders who regularly work with the central bond system in Tasmania. The system was put in place in 2009 and there are a number of factors which have impacted on its success:

- limited education targeting private landlords and tenants, which means that there are private landlords which retain bonds contrary to law six years after the scheme was established;
- limited enforcement action taken by consumer affairs bodies in Tasmania to prosecute private landlords that accept bonds linked to lack of adequate resources;
- the Residential Tenancy Commissioner, which determines bond disputes, is understaffed and is unable to cope with the increase in bond disputes - bond disputes rose by 3000 in the last financial year;
- lack of physical access to the Rental Deposit Authority (or MyBond), which means it can be difficult for tenants to lodge bonds from rural locations;
- partial bonds are not accepted by the Rental Deposit Authority, meaning that tenants cannot pay bond over time;
- complexity of the forms to lodge the bond and lodge a dispute;
- no support services established to assist tenants to lodge bonds; and
- lack of transparency regarding the amount of and use of interest on tenant's bonds

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If a Central Bond Authority is established the architects of the scheme need to take steps to ensure that the above issues are not replicated in the Northern Territory.

The recommendations that follow are informed by our casework practice.

Recommendation 1: Scheme to apply to bonds held by the Department of Housing

NAAJA strongly recommends that all bonds held by the Department of Housing be transferred to the proposed central holding scheme: the Department of Housing should in no way be exempt from any aspect of the new system.

The Department of Housing is the largest landlord in the Northern Territory with 12,014 dwellings, including 5096 in remote communities.¹

The Department collects and holds security deposits in trust for all its urban public housing tenancies and the majority of its remote public housing tenancies. In remote communities, tenants often pay their bond in instalments over 12 months. Housing Tasmania does not require its tenants to pay bond, nor do the majority of community housing providers.

NAAJA regularly advises former tenants of the Department who have been large maintenance and repair debts relating to urban tenancies which greatly exceed the amount of their bond.

The Department does not seek orders from the Commissioner of Tenancies to enforce these debts. Former tenants are compelled to repay debts as Departmental policy prevents them from being rehoused if there is an outstanding debt. This approach means that Department (unlike private landlords) does not have to prove the debts in the Commissioner of Tenancies before being able to enforce the payment. Further the former tenant is required to take active steps to make the application to the Commissioner of Tenancies to challenge the debt and/or respond to the allegations made

NAAJA considers that a significant proportion of debts claimed by the Department against former tenants are not legally enforceable, in whole or in part. NAAJA assists clients to appeal debts through the Department's internal appeals process. We repeatedly assist clients with debts which are not evidenced in whole or in part by the property condition reports and which contain excessive claims for some items. In addition, prior to raising debts the Department consistently fails to consider or take into account adequately or at all:

- fair wear and tear
- depreciation or the life expectancy of the item;
- whether the damage is accidental or intentional;
- whether the debt is wholly partly attributable to domestic and family violence under section 12 (3) of the RTA; and/or
- the vicarious liability provisions in section 12 of the RTA.

In the 7 years that NAAJA has assisted remote and urban tenants to seek review of these debts, we have been successful in getting the debt wholly waived or significantly reduced in every case. NAAJA's success in resolving these disputes through has meant that the Commissioner of Tenancies has been shielded from a significant number of disputes regarding bonds and vacation debts. By requiring all landlords to apply to an independent authority to obtain all or some of the bond, the Department's claims for the security deposit would be subject to external scrutiny.

¹ Northern Territory Government, Department of Housing, *Annual Report 2013-2014*, pp 24, 31.

Recommendation 2: Amendments to the *Residential Tenancies Act* to remove exemptions for the Department of Housing regarding bond

In order to increase the efficacy and fairness of the new system, we recommend the removal of section 7 (5) that exempts the Department of Housing from sections 112 (5) (b) or (c) of the RTA when seeking access to a security deposit. Those subsections exempt the Department from the requirement to provide a statutory declaration which attests to the truth of its claim against the bond the fact that the receipts, invoices or other documents attached to the declaration relate the claim.

The rationale for this exemption is unclear. The benefit of this requirement is that it forces landlords to undertake a process of evaluating and substantiating any claims regarding the retention of bond or compensation.

The Department's practice is to issue a notice under section 112(5) to the tenant. The notice is accompanied by an invoice prepared by the maintenance section of the Department, setting out the cost of all of the repairs or maintenance needed to re-tenant the property. There does not appear to be any analysis as to what costs should be borne by the Department and what costs should be borne by the tenant – all items on the invoice are levied on the tenant.

By requiring the Department of Housing to undertake a process of evaluation when it raises debts, we believe the number of bond disputes and spurious debt claims will decrease.

We recommend that this exemption be removed at the same time that amendments are made to the RTA to establish the bond authority.

Recommendation 3: Accessibility for remote public housing tenants

To achieve the objectives of the bond holding scheme, as listed at 7.2 of the *Issues Paper*, the scheme must be accessible by all members of the Northern Territory renting community, including tenants in remote communities.

The number of tenancies in remote communities in the Northern Territory has increased significantly over the past 7 years, due to the changes in the management of remote housing under the *National Partnership Agreement on Remote Indigenous Housing* and the Northern Territory National Emergency Response legislation. Under NPARIH the Department of Housing is obliged to make houses in remote communities compliant with the habitability standards of the RTA and enter tenancy agreements. We understand that the Department has entered into over 5000 tenancy agreements with remote tenants since 2008².

It is vital that the design of any Central Bond Authority take into consideration the particular issues that will be faced by remote tenants subject to the scheme. These include:

² This figure includes occupancy agreements. The Department of Housing has created a hierarchy of tenants' rights in remote communities. Tenants of new and refurbished houses pay rent and enter into tenancy agreements. Tenants of 'legacy dwellings', houses deemed by the Department to not meet the standards of the *Residential Tenancies Act*, that is they are not safe or habitable, pay rent, which the Department terms 'maintenance levy' and into occupancy agreements, which the Department considers are not covered by the RTA. The Department does not publish statistics of how many 'legacy dwellings' there are in remote communities. On 30 September 2012 there were approximately 1,300 legacy dwellings (Hansard Senate Community Affairs Committee Answers To Estimates Questions On Notice Families, Housing, Community Services And Indigenous Affairs Portfolio, 2012-13 Supplementary Estimates Hearings, Question No: 511). The Department does not appear to collect bond from tenants of 'legacy dwellings'.

- difficulties complying with time limits, because of a lack of reliable access to tools of communication in remote communities, such as telephone, internet and facsimile, which will have a negative impact on tenant's pursuing their rights, in particular disputing bond claims;
- physical remoteness from the offices of Consumer Affairs, the Department of Housing, the Northern Territory Civil and Administrative Tribunal, which will impact on remote tenants' ability to apply to the NTCAT, for example to seek the return of the bond;
- lack of advocacy support: currently, there are very limited legal advice or advocacy services funded to provide independent, culturally appropriate advice and legal assistance to tenants in remote communities in the Northern Territory;
- the lack of literacy and numeracy skills experienced by a large proportion of Aboriginal people living in the Northern Territory will adversely impact on their ability to understand the new system and to enforce their rights as tenants; and
- social problems, such as mental and physical health issues, substance abuse, overcrowding, and domestic and family violence, which may compromise the ability of some tenants in remote communities to pursue their rights and comply with their obligations under the RTA without assistance.

In NAAJA's experience many remote tenants are confused about their bond – they don't know why it has been collected, how much it is or how they can access it.

Currently remote tenants are unable to access accurate statements of their rent accounts because of deficiencies with the electronic rent accounting system. We have been advised by the Department of Housing that a rent account must be 'reconciled' before it is accurate. The Department has advised that it is in the process of reconciling all the remote tenancy accounts and the process will take several years. This has caused further confusion and concern to remote tenants, particularly those who have mistakenly been advised that they have large debts.

NAAJA is concerned that if the bond authority is not accessible to remote tenants, these tenants will either not engage with the system or may be forced to rely on the Department of Housing to lodge their bond, make claims or seek information about their bond. This would undermine the objects of the system in achieving a fairer system for accessing bonds.

The system needs to be designed to take into account the difficulties that remote tenants in particular will have in lodging their bond, because of lack of access to communication services including computers, telephone and facsimile.

Working with remote communities requires extra effort and resources. Physical access to communities can be difficult due to distance, road conditions or seasonal flooding. Telephone and internet access can be limited. Language and literacy differences can create barriers to effective communication. There are strong reasons for why this effort is needed.

Effective communication with remote tenants

It is NAAJA's experience that the Department struggles to effectively communicate and disseminate information to tenants in remote communities. For example, we often find that information from remote tenants, such as repair requests, is not accurately or adequately recorded by the Department. Any new scheme must engage directly with remote tenants.

Further issues include the lack of literacy, including financial literacy and lack of familiarity with forms for many people in remote communities. Accessing forms and completing them correctly is very difficult for people with low skills in these areas. Without special servicing to remote communities there is a high likelihood of forms being incorrectly completed or worse still, not completed at all and bonds not accessed.

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There is also great potential for identity theft and fraud if remote tenants are reliant on a paper based remote access system. Signature verification could be very difficult to ensure as many people with low literacy do not have complicated signatures. Identity security is already a significant issue in remote communities and the bond scheme should be aware of it from the outset.

Ideally, tenants would be able to fairly access the bond authority without the assistance of a lawyer. Without the bond authority working to ensure it is accessible, this will not be possible. To facilitate access from remote communities we recommend:

- Appointing and training point of contact staff on making sure that the bond authority is accessible in remote communities. For example a worker at the shire office who is trained in bond authority processes;
- Cultural awareness training for bond authority and agent staff;
- Toll free telephone access to the bond authority and its agents;
- Plain English forms and information brochures located in all communities; and
- Remote access to bond dispute resolution procedures.

Education and awareness campaign

The Issues Paper refers to the need for an education and public awareness campaign to promote the bond authority. We recommend that this be carried out in remote communities.

Remote tenants comprise a significant cohort of the tenant population of the Northern Territory. Most remote tenants have had minimal experience with formalised rental arrangements, including tenancy agreements, bond or the concepts in the *Residential Tenancies Act (NT)* as until 2008 almost all remote tenancies were not subject to tenancy agreements under the RTA.

Any education and awareness campaign will need to start with the recognition that remote tenants have limited experience in tenancy matters. It will also need to take adequate steps to inform tenants and service providers in remote communities about the bond authority's role, processes and its independence from the Department of Housing.

NAAJA is experienced in visiting remote communities and have a team who specialise in delivering community legal education. NAAJA would be happy to discuss our experience of effective legal education principles and approaches with any future bond authority.

Recommendation 4: Accepting partial bond payments

NAAJA recommends that a system for accepting partial bond payments over time be included so that low income prospective tenants can still access the rental market, both through social/public housing and the private market.

Saving four weeks rent as bond and two weeks or one month's advance rent payment is a barrier to the rental market faced by many. A Central Bond Authority would be able to assist to reduce this barrier by collecting bonds over a discreet period of time. We recommend that this option be available on a means tested basis, such by showing of evidence of a Government Concession Card. Such a system is a specific recommendation of the Tenants

Recommendation 5: Interest used to fund independent tenancy advice services

There is significant need for independent tenancy advice services in the Northern Territory; tenancy and housing were described as the 'predominant' unmet civil legal needs in the Northern Territory by the *Indigenous Legal Needs Survey*.³

Currently there is no tenancy advice service which can provide an effective level of service to tenants across the Territory. A number of legal services provide tenancy services and gaps remain. Funding for these services comes from a range of sources which each become insecure with the differing funding cycles.

Access to free, independent legal advice is one of the best ways to ensure a fair rental system. This applies to not only the issue of bonds, but all tenancy disputes such as evictions, increases in rent and responsibility for repairs and maintenance. Legal advice on the rights and responsibilities contained in tenancy law addresses the fundamental power imbalance between the property holding landlord and the dependant tenant. Funding tenancy advice services would enable tenants to 'obtain equity and fairness in landlord tenant relationships' as is the objective of this proposed legislation and increase access to suitable mechanisms for enforcing rights their rights, which is an object of the RTA.

NAAJA receives no funding from the Northern Territory Government despite being the leading provider of legal services to tenants and former tenants of the Department of Housing in the Northern Territory. NAAJA is unable to meet the demand for tenancy legal services both in remote and urban areas. To address this issue, we recommend that interest generated by tenants' bonds be used to provide ongoing funding for the expansion of tenancy advice services in the Northern Territory. These funds would not be subject to political whims and using them in this way would ensure free tenancy legal advice as part of the Northern Territory's tenancy system.

Please find enclosed NAAJA's correspondence to the then Minister for Housing, The Honourable Matt Conlan, dated 4 March 2014 setting out our proposal for the use of these funds.

Thank you for your consideration of the above. Should you have any questions, please do not hesitate to contact Harley Dannatt on (08) 8972 5000.

Yours sincerely

Priscilla Collins
CEO



³ Allison et al, *Indigenous Legal Need Project: NT Report*, 2012, p 8.