



# **Real Estate Institute of Northern Territory Inc. (REINT)**

Submission to the Department of the  
Attorney-General and Justice

ISSUES PAPER:  
DEVELOPMENT OF A CENTRAL BOND  
HOLDING SCHEME IN THE NORTHERN  
TERRITORY UNDER THE  
*RESIDENTIAL TENANCIES ACT*

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## INTRODUCTION

In March 2015 The Department of Attorney-General and Justice in the Northern Territory produced an Issues Paper entitled ‘Development of a Central Bond Holding Scheme in the Northern Territory under the *Residential Tenancies Act*’.

In its preamble to the paper the Department has stated;

All other Australian jurisdictions have mandatory rental deposit systems, except for the Northern Territory. Whilst this topic has been the subject of ongoing discussion for more than a decade in the Territory, the status quo has been maintained in spite of impetus from a number of sources to move to establish a scheme.

The purpose of this paper is to seek comment from the public on a proposal to establish a rental deposit authority in the Northern Territory. This has arisen following an identified need to promote fair and equitable dealing between property owners and tenants in the disbursement of the rental deposit.

This paper addresses the likely impact that the proposal will have on the residential tenancy market.

Given that there is no single Territory-wide tenancy advisory service or a tenants or landlords association, it is difficult to obtain general views and comments as to whether a centralised bond holding scheme is required from the major stakeholders which are landlords and tenants.

This paper attempts to solicit such views.

The paper provides industry, members of the public, the regulatory authorities and the government with an overview of:

- the current legislation and its background;
- regulatory developments that have occurred elsewhere in Australia; and
- options for change and reform.

The Real Estate Institute of Northern Territory Inc, on behalf of the real estate profession and its members, who number in excess of 600 and represent the real estate profession and associated corporate entities, will seek in this response to address the matters raised in this paper and indicate to the Department, and through it to the Government, that such a scheme is not only unnecessary, unwarranted and unwanted but would not produce the outcomes suggested and, would in fact, add a further level of burden to the real estate sector.

## **BACKGROUND**

Incorporated in 1974 the Real Estate Institute of Northern Territory Inc. (REINT) is the peak body representing the Real Estate profession across the Northern Territory. The REINT is a politically non-aligned organisation that provides research and well-informed advice to the Government, Opposition, professional members of the real estate sector, media and the public on a range of issues affecting the property market.

The REINT also provides a comprehensive representative voice for the Real Estate profession in the Northern Territory when it comes to consulting Government on legislative issues and regulatory matters

The REINT represents in excess of 600 members across the Northern Territory made up of real estate firms, individual real estate practitioners and corporate members with an association to the real estate profession, such a mortgage brokers and financiers.

## **REINT SUBMISSION**

As a prelude to preparing its response to this Issues Paper, the REINT has surveyed its membership and the response has been overwhelming. The response, bar one single member firm, has been strongly against the introduction of such a proposed scheme in the Northern Territory.

Let us begin from the premise that we must ask the question, “what is broken that needs to be fixed?” In the view of the real estate profession in the Northern Territory the answer to this is quite simply that nothing is ‘broken’, therefore what is the Government seeking to repair?

The REINT feels that this paper has been written, not as a discussion paper to foster debate on the merits or otherwise of a scheme such as is proposed, but more so in a form that attempts to portray to the reader that there is no other option than the introduction of a central bond holding scheme. The paper is not a balanced view offering a range of options but rather a manifesto from the Department for the introduction of a scheme that we believe is unwarranted and would add a further level of ‘red tape’.

The REINT has a number of concerns in relation to this Issues Paper, both in the proposed modelling and also in some of the assumptions and comments that are contained within the paper, designed to shape or guide thinking, which we find incorrect and in some cases inflammatory.

One such instance appears in the Introduction, even before the readers are introduced to the proposal for the scheme, and that is the comment:

*Given that there is no single Territory-wide tenancy advisory service or a tenants or landlords association, it is difficult to obtain general views and comments as to whether a centralised bond holding scheme is required from the major stakeholders which are landlords and tenants.*

This is simply an untruth and purports to the respondents of this Issues Paper that no means for advice or redress exists for tenants in the Northern Territory. In fact tenants can and do receive a bulk of advice and guidance from a number of sources including:

- The Tenants Advisory Service – a service of the Darwin Community Legal Service
- Northern Territory Consumer Affairs
- Agents Licensing Board
- Community Justice Centre – an arm of the Department of Attorney-General and Justice, and
- The REINT.

Each of these entities offers differing levels of assistance and guidance to tenants with none, other than the REINT offering assistance to landlords. It has long been a bone-of-contention in tenancy matters that the landlord is oft at fault and is in no need of free or supplemented assistance. The REINT takes umbrage to this assumption as it has too many examples of the tenants being at fault in disputes and causing much cost and angst for landlords.

The REINT sells Residential Tenancy Agreements (residential lease documents) to the general public. Over a 12 month period it would sell, on average, in excess of 1,250 of these documents and in every case the landlord making the purchase is apprised of the requirement to establish and maintain a bank account into which they are required to place the security deposit.

Previously the REINT, and all its members, also had access to a booklet produced by the Commissioner of Tenancies on the *Rights & Responsibilities of Landlord and Tenants*, of which 2 copies were given to each purchaser of a Residential Tenancy Agreement (one for the landlord and one for the tenant). The Commissioner, some time ago, ceased printing these in favour of an electronic version available from the Northern Territory Consumer Affairs website, and since that time the REINT has directed landlords to that site for information and advised them to do the same with their tenants.

With the exception of the REINT, each of these entities is either partly or fully funded by the Northern Territory Government, or in the case of the Tenants Advisory Service, receives substantial operational funding from the Agents Guarantee Fidelity Fund.

The REINT, by way of full disclosure, receives funding from the Agents Guarantee Fidelity Fund but not for the provision of advice to tenants or landlords, but rather for the provision of education and training.

In fact in September 2013 the REINT was rejected by the Government in its approach to establish a *Help Line* which, it was proposed, would have been established to assist all members of the public is a range of issues from renting to the sale or purchase of property, with the advice dispensed by licensed real estate agents.

Attached (Annexure A) is copy of a letter from the then Minister for Business, the Hon David Tollner, declining to fund the proposed *Help Line*. In this letter it quite clearly states that one of the main reason for him declining the funding is, *'There have also been concerns raised that the proposed service is already available through the Tenants Advisory Service, Consumer Affairs or the ALB...'* By the nature of this response, the Government has acknowledged that members of the public, particularly tenants, have numerous avenues to seek advice and gain guidance on tenancy related matters.

On its website, Northern Territory Consumer Affairs has the following notice:

Consumer Affairs an independent office within the Department of Attorney - General and Justice. We aim to promote and regulate responsible business conduct through administration of a regulatory system that protects consumer interests. Our main functions are associated with consumer protection within the purchase of goods and services, residential tenancies and residential building disputes.

The Tenancy Unit within Consumer Affairs provides services to tenants and landlords/agent of residential properties in the Northern Territory. The legislative responsibilities of tenants and landlords are outlined in the Residential Tenancies Act. The landlord/tenant relationship is usually harmonious but difficulties do arise, and sometimes landlords and tenants have different ideas of their respective rights and responsibilities.

The Darwin Community Legal Services webpage for the Tenants Advisory Services states:

The Tenants' Advice Service (TAS) is an NT wide, community-based advice and advocacy service for residential tenants.

The TAS assists people who pay rent to live in a home in the NT including:

- private residential tenants
- boarders and lodgers
- caravan park residents
- supported accommodation tenants
- Territory Housing tenants
- town camp residents

The TAS works to:

- Advise you on problems you are having with your landlord or real estate agent.
- Negotiate and advocate on your behalf with your landlord or real estate agent.
- Assist you with advice, documentation and representation before the Commissioner of Tenancies in the local court.
- Talk to your community group or organisation about tenants' rights and responsibilities.
- Lobby to improve tenancy legislation and policy.

The TAS has also produced a series of fact sheets to assist tenants to understand their rights.

Telephone or face-to-face appointments are generally available every weekday except public holidays. Please contact us on freecall 1800 812 953 to make an appointment.

If you require an interpreter (including Auslan) we will provide one for free.

*Funding for the TAS is made available by the NT Government.*

Referring back to the earlier reference to the REINT's proposed *Help Line*, the sole purpose of this was to formalise the large number of calls the REINT receives and deals with on a daily basis, at no cost to either the consumer or the Government.

When the REINT first lodged its request for funding to create the *Help Line* we noted in the submission the following statistics:

In the 12 months to December 31 2012, the REINT recorded the following complaint levels it received:

- 83 owner enquiries. These are predominantly enquiries regarding Body Corporate issues.
- 179 tenant enquiries. These, and the calls in the next category, were calls related to rental properties.
- 110 landlord enquiries. These, in the main, related to issues of tenants refusing to vacate, rent defaults, condition of the property, separated couples and other matters.
- 64 complaints about agents, including poor service, communication, outgoing condition reports and other matters.
- 52 general enquiries. These ranged from questions on gazumping to when a bond can be increased, pool fencing rules, fire alarms and so on.

All of these enquiries were answered by REINT staff members or referred on to the Tenants Advisory Service or Consumer Affairs.

Given that the opening statement of this Issues Paper is misleading, and that many of the suppositions within the paper are based on the purported inability of tenants to gain advice and therefore require an education campaign funded by the proposed interest to be drawn from the scheme, we believe and strongly advocate that there is no immediate need for a scheme of this nature.

## THE SITUATION IN THE NORTHERN TERRITORY

Item 3.3 of this Issues Paper, paragraph two, states:

*Tenants' bond monies within the Northern Territory are currently held by landlords, or their agents, with the interest income generally retained by either the landlord or the agent.*

What this fails to identify is that real estate agents holding said security deposits are required to be fully qualified in the function and maintenance of Trust Funds and these same agents are highly regulated in their trust account dealings and are audited annually with reporting to the Agent's Licensing Board.

In respect to private landlords, while they are not bound to the same level of governance and scrutiny of real estate agents, the *Residential Tenancies Act* (the Act) prescribes in:

Division 2, Section 29, (3): Money, paid to a landlord as a security deposit is, subject to this section, to be held in trust for the tenant.

Division 2, Section 29, (4): The landlord must pay money paid to the landlord as a security deposit into an account established for the purposes of section 50 of the Agents Licensing Act or an account kept by the landlord at:

(a) and ADI; or [ADI being an Approved Deposit Institution]

(b) a statutory corporation of the Territory or of the Commonwealth.

Section 31 of the Act details the requirement for a receipt to be provided to the tenant in respect of security deposits held. Section 32 details that, if requested in writing, a landlord must provide a written statement containing all the relevant details of the account in which the security deposit is held.

Division 2, section 112 goes into detail of the occasion under which a landlord may keep a security deposit. As the Department has noted in the Issues Paper under Item 3.3, should there be a dispute over the bond (security deposit) the tenant is required to lodge an application, currently with the Commissioner of Tenancies, but into the future with the Northern Territory Civil and Administrative Tribunal, wherein a hearing will consider the matter and hand down a finding on the disbursement of the security deposit.

However, this Issues Paper seems less interested in the mechanisms for the handling of disputes, but rather the capture and allocation of interest gained from security deposits.

*...with the interest income generally retained by either the landlord or the agent.*

In regard to this the Act states in Section 114 that:

If interest accrues in relation to an amount paid as a security deposit held in an interest-bearing trust account, other than an account established under Section 50 of the Agents Licensing Act, the landlord must ensure the interest is paid:

- (a) to the person specified in the tenancy agreement as the person to whom the interest is to be paid; or
- (b) if a tenancy agreement does not specify to whom the interest must be paid – to the parties to the tenancy agreement who, at the end of the tenancy, are entitled under this Act to receive the greater part of the amount paid as the security deposit.

This section makes reference to “held in an interest-bearing account”, and while we can assume that many landlords may choose to hold security deposits in such an account, we can equally assume that many would place security deposits into accounts that bear no interest.

This section also makes reference to Section 50 of the Agents Licensing Act, which refers to the requirements of a licensed real estate agent to establish one or more trust accounts for the holding of clients funds and where such an account is just for the holding of bond monies, such accounts are to carry the title of Security Deposits.

While section 50 (4)&(5) of the Agents Licensing Act refer to the establishment of accounts bearing interest and the payment of such interest on agreed dates to the Fund, it also notes in subsection (6) that such requirements do not apply to accounts set up to hold Security Deposits. The interest borne from Trust Accounts is transferred by real estate agents to the Fund where it is invested and dispersed through grants to bodies such as the Tenants Advisory Service and Northern Territory Consumer Affairs to provide advice, guidance and assistance to tenants.

Any interest earned by real estate agencies through accounts established to hold security deposits is, in the main, used to pay the operational and management costs of such accounts.

### **Item 3.5 – Other Countries.**

The REINT notes that while this section seems to bear little relevance to the overall proposal, it does note the inequities in both the United States where only 27 of the 51 US states have some form of bond control and in Canada where throughout the entire country there are no official bond repositories.

The REINT would suggest that if a country the size and complexity of Canada, with its racial mix and diversity of living standards, is able to successfully operate its rental market sans the interference of the government in the control of bonds, then a jurisdiction the size of the Northern Territory should have no difficulty doing the same.

### **Item 3.6 – The Northern Territory Residential Rental Market**

We began reviewing this section and took note of the statistical data quoted in regard to the number of rental properties plus the split between agency rented and privately rented properties. The REINT does not dispute these numbers, reportedly provided by the ABS, albeit that they appear to be quite out of date in regard the overall numbers and the current ratios of agency to private management.

That being said, there is no dispute that the Northern Territory, and in particular Darwin, has been and continues to be a city with a high percentage of its population renting property. This is the very nature of the transient population of the Territory.

Further in this item the Department notes the average earnings in the Northern Territory and then equates this to a rental affordability index and goes on to calculate that the average bond, being legislated at a maximum of 4 weeks rent, would be over double the weekly wage.

The paper refers to the average bond being \$2,652, which the REINT disputes. Based on its March 2015 Quarterly results the average weekly rent for a 3 bedroom house in Darwin is \$595 and when averaging across the Northern Territory it is \$555. The average rent on a 2 bedroom unit in Darwin is \$468 and averaged across the Northern Territory it is \$441. Based on 4 weeks rent a bond, this would average the required bond for a house at around \$2,220 and for a unit it would average at around \$1,764.

The Department refers in its statement on the correlation between rent, bond and average earnings as ‘influencing the discussion over the establishment of a central bond holding scheme’. The REINT fails to make the nexus between the amount of the average bond and this influencing the need for a central bond holding scheme.

That is unless the Department is planning to advocate for a change in legislation to reduce the total amount of bond that can be sought, which the REINT would strenuously object to as such a move would remove any and all real protections for a landlord against damages to their property by errant tenants, or tenants who refuse to pay rent.

This section also makes reference to the *‘growing population base, a shortage of housing stock and constant demand for rental properties can place upward pressure on rental prices and reduce the comparative bargaining power of tenants, as more tenants compete for rental properties’*.

According to the Australian Financial Review of 12 March 2015, *“House rents in Darwin over the past 12 months have plunged by 16 per cent”*. The REINT has published its quarterly data for the March 2015 Quarter and it notes that vacancy rates across the Northern Territory are reaching some of the highest levels on record. Darwin recorded a 6.7 percent vacancy rate on houses and 6.3 percent on units; Palmerston recorded a 7.8 percent vacancy rate on houses and 7.9 percent vacancy rate on units; Katherine recorded one of its highest vacancy rates at 6 percent and in Alice Springs the vacancy rate for houses was 6.4 percent and units 7.8 percent.

According to the ABS March 2015 statement it noted that the trend estimates of the number of total dwelling commencements in the Northern Territory rose in the March Quarter and is showing rises now for 3 quarters. The ABS also noted that from September to December 2014 the weighted average of residential property prices showed Darwin was the only capital city in Australia to decline, recording a reduction of -0.6 percent, whereas Sydney rose by 3.4 percent.

In its 2015/2016 Budget Statement the Northern Territory Government has predicted a lower than expected population growth into the next 5 years with 2015/16 predicted to be 1.8 percent, dropping to 1 percent or less over the future years.

At present there are over 1,000 vacant properties advertised for rent in Darwin alone. Add to that at least 2,600 units under development and due to come to market in next 12 months, plus land releases in Bellamack, Johnston and Berrimah Farm and we have a picture forming of a substantial oversupply in the housing market for a number of years to come.

All of this is contrary to the statements made by the Department in this paper, which we feel are written in such a manner that they may lead one to consider the premise that tenants are placed under pressure and forced into making decisions that are not in their favour.

No guidance is given to the reader of the issues facing landlords and investors who hold property that they are unable to tenant without reducing their asking rent to below a level that allows them to sustain their mortgage repayments. Nor is the reader informed of the substantial costs that face a landlord in maintaining a rental property such as maintenance, body corporate fees, water costs, rates and so on.

Further to this, the Department has included in its statement, *“High rental prices, and thus bonds, will continue to place considerable housing stress on low income earners in our community”*. Again we fail to see how this factors into the argument for or against the introduction of central bond holding scheme. While this is an issue that needs to be addressed, it is not one that will be addressed through the introduction of a scheme such as is being proposed in this paper.

The REINT can see no correlation between the establishment of a government body to hold and disburse bond money and the easing of pressures on low income earners in lower rents. In fact a bond board is likely to increase costs as this paper has also indicated that the lodgement of a bond with the bond board would incur a range of fees. Such fees would be passed along to the tenants in the form of higher rent.

## **PROBLEMS WITH THE CURRENT SYSTEM**

### **Item 5.1 – General**

This section commences by making the following statement:

The Commissioner of Tenancies undertakes, on average, 1000 hearings per year in regard to the *Residential Tenancies Act* of which only a small percentage relate to bond issues. However the Commissioner suggests that, anecdotally, this is very likely due to the fact that tenants generally do not know their rights under the legislation, and as such do not routinely seek return of bond moneys through the Commissioner.

The REINT would suggest that this statement by the Department indicates that in fact there is not really any problem. It clearly states that from the average of 1,000 hearings per annum *“only a small amount relate to bond issues”*, but it does not elaborate on what these issues are. It seems to make an assumption that if there is a bond dispute it can only be because the tenant has not been paid their bond. The statement does not indicate that in many cases the tenant is at fault due to a range of other issues.

Further this statement refers to the Commissioner 'suggesting anecdotally' that tenants do not know their rights under the legislation and therefore do not seek the return of their bonds.

Firstly we would suggest that it is inappropriate for the Government to be considering the introduction of broad reaching scheme, such as the one proposed, based on anecdotal suggestions. Secondly, if the Commissioner is correct in his assumptions then none of the cases being heard by the Tribunal would have any relationship to tenants not seeking the return of their bonds, as if they are not seeking their bonds, then they would not be appearing before the Tribunal.

However, this brings us back to our initial statements in this response being that there are a number of bodies currently providing information and guidance to the public, most of them funded by either the Government or the Fund including the Commissioner's own organisation, Northern Territory Consumer Affairs.

This section then goes on to state:

Currently, Agents and Landlords also retain the interest on the bonds as an income stream as tenants are not generally aware they can either seek return of the interest earned or the monies are held in accounts that attract very low levels of interest.

This is a generalisation which is not correct. Section 114 of the Act allows for an agreement to be made in the lease to attribute any interest earned to either party, or for the parties entitled to receive the greater part of the amount of the security deposit.

Real estate agents generally use the small interest earned from Security Deposit accounts to cover the administration costs of maintaining such accounts and the costs involved in processing the activities of their rent-roll. This is not, as the paper would indicate, an 'income stream'. In surveying its member firms, the REINT has established that even in the largest of agencies, the interest earned on Security Deposit accounts is minimal and most cases does not cover the administrative costs, but merely serves to supplement toward the coverage of such costs.

Where an agent does not operate a separate account for security deposits, but instead holds bond monies in its general Trust Account, it is required to transfer any interest earned to the Fund on a monthly basis.

The paper then states:

The Commissioner of Tenancies is currently not resourced to undertake any form of consumer or general tenant education about their rights and responsibilities under the legislation administered by the Commissioner.

With the introduction of the NTCAT the duties of the Commissioner of Tenancies has been greatly reduced as it no longer is tasked with hearing disputes and this should free up its resources to provide a greater level of advice and guidance to tenants.

### **Item 5.2 – Return of security deposits**

The paper again makes a number of ‘anecdotal’ claims that are not substantiated in fact.

The Commissioner of Tenancies reports frequent enquiries from tenants regarding delays in refunding bond monies, noting that it often takes weeks for landlords and agents to return security deposits notwithstanding that the legislation requires bonds to be returned within 7 days of handing over possession of the property.

A significant and related problem is that reasons for delays are not given and it is difficult for the tenant to determine whether there is a claim by an owner for loss or whether the delay arises from poor property management. If the tenant is aware at the outset that the owner intends to retain some or all of the deposit, the tenant can make a claim to the Commissioner.

The REINT has surveyed its members on this issue by asking members who manage rental properties to report on results from the previous year relating to the amount of bonds refunded, either in full or with small amounts deducted by agreement; bonds refunded with deductions for rent and cleaning; and bonds refunded with greater deductions for actions such as unpaid rent, additional cleaning or damage to the property.

Our results indicated the following:

- 92 percent of bonds were refunded with small agreed deductions;
- 6 percent of bonds were refunded following a higher level of deduction for rent and cleaning and other events; and
- 2 percent fell into the area of dispute where bonds were returned with a high level of deduction for unpaid rent, excessive cleaning or damage to the property.

It should be noted that, with the exception of matters that proceeded to Tribunal for a decision, all REINT members reported that bonds were repaid within the legislated 7 day time-frame.

While the REINT cannot comment on the activities of private landlords, it finds generalisations such as this statement from the Commissioner to be wholly incorrect and in making such statements the Commissioner is insinuating that real estate agents in the Territory regularly flout the laws that govern this profession. This is not only untrue but in the context of this paper seeks to paint a picture of tenants who are at the mercy of ruthless and unethical real estate agents. The REINT, and its members, take great affront to this.

The Department's paper goes on in this section to make the assumption:

One of the advantages of a well-designed central deposit repository is that deposits can be administratively transferred from one landlord to another.

This assumes that this practice does not already occur, which we feel with our previous statements we have established is an incorrect assumption. It further assumes that ALL bond transfers will be dispute free. Again this is an unrealistic assumption. Under the current system, assuming there is not a dispute to be heard before the Tribunal, a tenant can expect to receive back all, or an agreed portion, of their bond within the requisite 7 day period whereupon they can establish a bond with their next landlord. The REINT fails to see how a centralised scheme, run from India (a point we will discuss at a later point in this submission) will alter or improve on that position.

### **Item 5.3 – Numbers of people making applications**

The REINT takes issue with a number of the comments made in this section. This section begins with the statement:

The Commissioner of Tenancies has expressed concern about the low numbers of people accessing the current dispute resolution system.

It appears that many people simply do not apply for dispute resolution. Analysis of complaints statistics from other states and territories supports this concern about low application numbers.

The assumption in this statement is that the low number of complaints relates only to a lack of awareness from tenants. It gives no credence to the possibility that the lack of complaints may be due to, and in fact we believe is due to, there not being as big a problem in the current system as this paper implies.

The Department attempts to correlate dispute numbers in the relatively small jurisdiction of the Northern Territory to much larger jurisdictions of Queensland, New South Wales and Victoria and begs the questions as to why the Territory does not receive as many complaint actions. It does not explore the probability that in these jurisdictions the lower level of licensing for real estate agents leads to a lower standard of compliance and therefore a higher level of complaints. Nor does it recognise the simple fact that in a larger jurisdiction there is likely to be a larger number of complaints.

This, we feel is actually validated by the next statement in the paper:

The problem of low application numbers is not fully understood.

### Item 5.5 – Real estate agents

Some real estate agents have also created problems by claiming that the security deposit has been spent effecting repairs or has been otherwise spent in accordance with the direction of the owner.

The REINT takes offence at such broad-brush generic and unsubstantiated comments which seek to present an unbalanced view to the reader. There are strict processes applied to the withholding of security deposits for repairs and unpaid rent and real estate agents cannot simply withhold money at will without being able to substantiate their actions.

This statement implies that security deposits can be spent at the will of, and on direction from, the owner with no substantive reason and no process being attended to. This is not the case.

The tenant, if they disagree with the reason or the amount to be withheld, has the avenue of taking the matter to the NTCAT for a decision.

### General Comment

There were a number of other issues raised in this section that point to problems with some non-Territory based landlords who do not use a Territory based agent, and a few rare occasions wherein mortgagors have defaulted on loans and have lost control of the security deposit.

These, and other such issues, and rare and minimal in their instance and we feel that they alone, or as a substantive part of the argument for a Central Bond Holding Scheme, do not carry enough weight to warrant the introduction of a system that would essentially penalise and restrict the great majority of landlords and agents that abide by the legislation.

An example of the rarity of such events is contained with a response received by the REINT from Ms Carolyn Walter, a senior lawyer with Ward Keller, who gave the following comment regarding mortgagee sales and bonds:

*In my 14-15 years of mortgage enforcement in the NT I have had only a handful of matters with a tenant in occupation. In all cases the tenants have vacated voluntarily before sale. I have never been made aware of an issue with bonds. Over the last 6 - 12 months the bulk of our possessions are where properties are abandoned or the owners voluntarily surrender.*

If we were to take the issues paper on face value and accept the proposition that it is private landlords that are the predominant issue, particularly interstate landlords as the paper implies, perhaps examining the legislation to encourage these landlords to use professional industry participants may be the way forward. This has not been considered as an option by the Department.

Item 5.7 which looks at *solving current problems* makes the assumption that what is required is a concerted public exposure campaign to raise the awareness of access to dispute resolution processes. But then goes on to state that if this were successful it would lead to a greater level of dispute and neither the campaign nor the hearing of increased disputes can be funded by Government. Therefore, by implication, the paper is stating that the proposed interest drawn from the central bond scheme would pay for both.

We believe this assumption is flawed in a number of ways. Firstly we do not subscribe to the ‘anecdotal suppositions’ put forward that the level of dispute is low because there is a problem with people seeking bond returns. We believe the level of dispute is low because the system is well managed and bonds are being returned, albeit many with agreed deductions, within the prescribed timeframes.

Further this assumption is based on the Government making a substantial amount of money from interest held from security deposits. We feel the Government is overestimating the amount of money it might garner from this scheme once it has taken out operating costs from the bureaucracy it will need to establish to maintain even the basic activities of an outsourced central bond scheme.

If the Government does not make enough from the scheme to cover its aim to mount a substantial public campaign, and to fund action on the purported increase in claims, then it could be easily assumed a higher cost will be applied to the lodgement of bonds to make up the shortfall thus increasing the cost to the tenants as there would be a flow through in the rental costs.

Anecdotal information from community legal service groups suggests that tenants are more likely not to engage in a dispute resolution system if the owner holds the deposit because they do not believe that the process will deliver a fair outcome. Where there is an independent authority to hold the deposit, people are more likely to have confidence in the outcomes of the dispute resolution process and will have a better perception of the system. Similarly, anecdotal evidence suggests reluctance by tenants to lodge a dispute for fear it will affect any future applications they make for rental properties.

Again the REINT objects strenuously to such a major decision as the introduction of the proposed scheme being based on anecdotal information alone.

We have again surveyed our members, who deal with these matters on a professional basis daily, and their feedback does not support these anecdotal conclusions. There are processes to alert agents to tenants with reoccurring problems, such as tenancy databases, but a dispute over concerns with rental deductions will not automatically place a tenant on any form of 'list'.

In order for a tenant to be added to a list such as TICA or VEDA, which agents subscribe to, a tenant must first have been found guilty of a substantial breach by the Tribunal or a similar body. A simple dispute over the return of a bond or the amount being claimed is in itself, insufficient action to warrant a tenant being placed on such a database.

Therefore to suggest that anecdotal information from an organisation established to serve the needs of only tenants, with no exposure to landlords or the professionals operating in the real estate sector, should be used to inform the debate as to there being a problem or a lack of confidence in the existing system, is at best naïve.

One needs to take into account that even with the introduction of central bond scheme, the mechanism for dispute will not change. This will remain as it currently is with tenants, or landlords, taking the matter before the NTCAT for a decision.

Community legal service organisations have long argued for a bond board,....because the existence of such institutions in other jurisdictions now comprise part of the prevailing Australian rental culture.

The REINT and its members were less than impressed with this statement as any form of meaningful argument toward the creation of the proposed scheme. We should have one because everyone else has one? It brings to mind a saying our Mother's used to drum into us as children, which was "if all your mates jumped off a bridge, would you?"

If the Department and those organisations that seem to be dictating its thinking on this issue cannot present more verifiable, logical, factual and evidence based justifications for the need to implement this proposed scheme, other than 'others do this so we should too', then the REINT would suggest that the Government ignore this proposal in its entirety and maintain the current system, which we feel is quite sufficient.

### Item 5.8 – Funding a Bond Board

Historically, the only difficulty with such a proposal in the Northern Territory was that the size of the rental housing pool was too small to provide sufficient funds to cover the costs of operating such a system. As discussed in section 7.3 below, that impediment has diminished over time, with the rental housing pool now of a sufficient size to fund a scheme that leveraged off another jurisdiction's existing scheme.

The REINT would disagree with this statement because the supposition here is that it can only work *IF* it is leveraged off another jurisdiction's scheme. The reality should be that if the Territory's property market remains of such a size that it alone cannot support the operation of a Territory operated and managed Bond Board then we are not yet ready to try and create one.

The reference in this section to item 7.3 is a reference to the fact that the Department of Treasury and Finance had been tasked to look at two possible models for the potential implementation of a scheme, the first being a Territory self-managed scheme – which they obviously found was unviable, and the second being managed by a third-party.

There was not an option given to Treasury to maintain the status quo and not have a Bond Board, which may lead one to consider asking if the propositions put forward in this Issues Paper are simply a cover for something the Department considers a *fait accompli*?

The REINT feels that applying an assumption that the Northern Territory mimic the Tasmanian model is flawed in as much as the proposal put forward by the Department is not the same given the Department is not proposing that the Territory scheme go direct to a third party management firm, but rather to go firstly to Tasmania, then by somehow integrating into their scheme, go to a third party management operation. Having a Bond Board that is managed, as is suggested in this case, from Tasmania then Chicago then Bangalore, is fraught with risk not the least of which will be the time it might take to return bonds and the process points at which a problem can arise.

Quite simply, if we, as a jurisdiction, are incapable of managing our own Bond Board in the Territory, then it is the opinion of the REINT that we should not precede with creating one at this point in time.

## THE PROPOSED MODEL

Before going on to examine the options and to provide you with the preferred option in the opinion of the REINT, we need to further highlight that the proposed model involves outsourcing management of the Northern Territory scheme to 4 other jurisdictions (as the product also has to pass through a gateway in Melbourne) including one in India.

The paper, in Attachment A, informs the reader that the proposed system is to be operated by iGate (a US based firm that outsources to Bangalore, India) and is operated on a mixture of internet based OCR and fax, but then relies on staff in Bangalore to physically match signatures between lodgements and claims.

All of this is charged on fee per transaction basis, therefore we can assume that the user – the landlord - will be charged fees for the lodgement of the bond and fees for the removal of the bond. It would appear that the tenant would not be charged anything.

Further to that the paper indicates that development work for the *enhancement of iGate's database* is also done on a fee for service basis and one must assume that such fees will be passed along to the Government and through them to landlords, as the users, given the Department has made it abundantly clear in this document that the government is so under-funded it is incapable of running even a modest public relations campaign.

So at this point we have an offshore solution with three major potential weak links – the possibility of internet interruptions and thus inability to communicate; the possibility of poor fax transmissions resulting in either illegible documents or receiver error; and manual comparisons of documents which, depending on the capacity and capability of the operators in India, could result in a good outcome or catastrophe.

If a Northern Territory system were to mimic the Tasmanian system it would still require offices and staff located throughout the Territory, and unlike the Tasmanian system where there is a singular operational facility in Hobart, we would suggest that given the tyranny of distance in the Territory, and the legislative requirements to lodge bonds within a prescribed timeframe, it would require multiple offices throughout the Territory. This is a cost not incurred in the Tasmanian model.

While the paper discusses the process of having to send lodgement signatures to Bangalore, then send withdrawal signatures to Bangalore for sight verification, then having this sent to Melbourne, then sent to Hobart, and one would assume finally sent back to the Territory, and it states that monetary transactions can occur on a daily basis, the paper does not indicate how long this overall process might take.

The paper does state that the claim process involves all claims (requests for return of the rental bond) being sent by either the claimant or a real estate agent to an iGate fax server located in Melbourne. The data on the claim form is, according to the descriptive given, then entered into the RDA/iGate database – one assumes manually by an operator in Melbourne. From there, based on earlier notations it would appear to be sent, either electronically or by fax, to Bangalore where it will be checked manually by a number of persons and a response, we assume sent back to Melbourne, and then if we are coupling with Tasmania, to Hobart and finally, we assume to the Territory.

However, the paper does address any history of problems with the Tasmanian/iGate system, and we must assume there have been some problems as no system, particularly one involving so many pinch points, could be faultless.

The paper notes that iGate is solely responsible for the storage, management and backup of data. No thought is given to the possibility of the loss of, or inability to access, that data from Bangalore and what issues that may present to persons trying to retrieve bonds within a 7 day time frame.

Further, the management of personal information would be required to meet the prescriptions in the *Privacy Act* (CWth). The Act imposes significant obligations on the movement of personal information generally but greater restrictions again in connection with information that is transferred 'off shore'. Cyber security is an ever expanding area of risk management where larger data bases are targeted by cyber hackers. The conglomeration of information on the one hand and it's 'off-shoring' on the other promote significant risk to the security of the information that would necessarily be held. Who will be responsible where significant cyber breaches occur? How will damages for such breaches be funded? These are all matters not even considered in the 'issues paper'.

The paper notes that where there is a disagreement or no agreement, the matter is referred to the Residential Tenancy Commissioner. Disbursement is made in accordance with the decision of the Commissioner. The paper also states that there is a right of appeal against the Commissioner's decision to a magistrate and final payment is made in accordance with the magistrates' decision. While this process is currently technically correct it will only remain so for a short period until all activity is transferred to the NTCAT.

And what is apparent is that it is no different from the current system of dispute resolution, only that all transactions must firstly go via a different country and at least 4 intersection points before a dispute can be enacted. Whereas currently there are only two parties involved in the dispute before it goes to NTCAT (Tribunal) for dispute resolution and at no time is it required to go off-shore.

The final point on this proposed international system is that there is no indication of where the funds (actual money) will be held. We would like to assume that they would be held in the Territory, but the paper does not address this.

The assumption is that the Government would be able to place the money into an account of some description that would return them very large amounts of interest. We see a problem with this assumption given the current Cash Rate of 2 percent. In order to have cash available to tenants or landlords wishing to make claims against their bonds the government would need to ensure that they had access to these funds inside of a 7 day period, including any processing time involved.

The Government also contends that it would be using monies gained from the banking of the security deposits to pay for the operations of the scheme and the sizeable public relations campaigns it proposes to mount. This again would require considerable and regular drawing against the account.

The REINT is unaware of any banking institution offering sizeable interest rates on accounts which require immediate or very short term access to funds.

## **OPTIONS.**

The Department has provided 4 options for consideration and comment, all of which have again been worded in such a fashion that does not invite debate but rather have the reader acquiesce to the desired position of the Department, which would be the introduction of the scheme.

If the REINT were to choose one of these four options to support it would be **Option 1**, which is to maintain the status quo.

As we have clearly stated throughout this document, we see no clear and unequivocal evidence that a problem exists to the extent that the implementation of a central bond holding scheme is required.

There is no denying that a few parties in the private rental market – not agency managed sector – may on occasion, behave in manner that is less than optimal, but this in itself is not evidence enough to warrant the proposals contained in this paper which would have the reader believe immediate and harsh measures must be instituted by the government.

The Department, in its wording of Option 1, points to a need to mount a sizable public relations campaign if it were to maintain the current system. The REINT would object to a campaign of the nature and size that the Department is alluding to, as the existing outlets for public discourse – NT Consumer Affairs, Tenants Advisory Service and REINT – with a small amount of well-structured material, of both print and electronic means, could easily distribute and display product aimed at informing tenants of their rights.

This could be done in a very cost-effective manner and if some small additional funding were required, the REINT would support a grant being requested from the Fund.

All of the other 3 options offered in this paper are not, in the view of the REINT, of any merit.

## **SUMMARY**

In summary the REINT does not support the development or introduction of a Central Bond Holding Scheme in the Northern Territory, in any form at this juncture.

The REINT does not feel that the Department has made a substantive case for such a scheme to be introduced as its arguments are based predominantly on anecdotal comment, supposition and, in many cases, incorrect assumptions.

The REINT feels it is unnecessary to mount a large, extensive and expensive public awareness campaign as this can be achieved at a minimal cost through an existing network and funding, if required, could be garnered via the Agents Guarantee Fidelity Fund.

The Commissioner of Tenancies previously produced a booklet on the Rights & Responsibilities of Landlord and Tenants. The REINT distributed this to all agents and gave them private landlords purchasing rental leases from the REINT. A copy then was given to every landlord and every tenant. While this booklet was an excellent educational tool, the Commissioner chose to stop the production of these booklets some time ago in favour of an online version, available from NT Consumer Affairs website. So it is clear that educational tools did, and in fact still exist, in the market place to advise tenants of their rights.

If we were to take the issues paper on face value and accept the preposition that it is private landlords that are the predominant issue, particularly interstate landlords as the paper implies, perhaps examining the legislation to encourage these landlords to use professional industry participants may be the way forward. This was not considered as an option.

Another point of concern to consider is the impact on funding to bodies such as the Tenants Advisory Service, Consumer Affairs, the Real Estate Institute of Northern Territory and the Australian Institute of Conveyancers NT, that is drawn from the Agents Guarantee Fidelity Fund, which in turn gets a good deal of its income from trust account interest.

If the government seeks to capture all interest on all bond activity this may lead to a reduction of funding to the Fund, which in turn will mean less funding being available to organisations who use it to assist the public and the real estate profession.

This would, over a fairly short period of time, serve to erode the level of education and training available in the market; lead to higher instances of dispute; and thus increase the workload of the Tribunal.

Privacy issues are not considered in the paper. The REINT considers the failure to address how regulatory compliance will be assured is a significant flaw in the paper; particularly in the context of private information of tenants and landlords alike being accumulated and 'off shored' in the fashion proposed.

The REINT would call upon the Government to reject this Issues Paper and the proposal put forward in it, in its entirety, and instead to enter into meaningful discussion with the real estate profession and other key stakeholders to establish what issues may need to be addressed and how these may be addressed collectively without the implementation of an unnecessary and unwarranted centralised bond holding scheme.

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This submission was written for and on behalf of the Members of the Real Estate Institute of Northern Territory by:  
Quentin Kilian  
Chief Executive Officer  
Real Estate Institute of Northern Territory Inc. (REINT)

[DATE]



## MINISTER FOR BUSINESS

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Mr Quentin Kilian  
Chief Executive Officer  
Real Estate Institute of the Northern Territory  
via email: [quentin@reint.com.au](mailto:quentin@reint.com.au)

  
Dear ~~Mr~~ Kilian

The Real Estate Institute of Northern Territory (REINT) sought a grant under section 93 of the *Agents Licensing Act* to establish a real estate helpline service for people who have real estate issues that cannot be resolved by existing services. The total amount sought was \$300 800 over three years (2013-2015).

Under the requirements of the *Agents Licensing Act*, I was required to consult with:

- (a) the Agents Licensing Fidelity Guarantee Fund (ALFGF) regarding the ability to pay the money
- (b) REINT, as the industry body to whom it is proposed to pay the money, regarding the purpose to which the money has been, or is to be, put
- (c) the Agents Licensing Board (ALB).

ALB questioned whether the proposal met the requirements of section 93(1) of the *Agents Licensing Act* and whether REINT was the appropriate body to run such a service. Ultimately, ALB advised that they would not support the application.

There have also been concerns raised that the proposed service is already available through the Tenants Advisory Service, Consumer Affairs or ALB, and that there does not appear to be any mechanism inbuilt into the proposed structure of the helpline which would precipitate either legislative or industry improvement as a result of calls taken.

ALFGF advised that they could only commit to funding for the first year due to the uncertainty of the financial climate moving forward. In keeping with its obligations under the *Agents Licensing Act*, they have only commented on the ability to fund the application and not whether the proposal meets the requirements of the Act or is duplicating existing services.

Therefore, based upon the responses from the bodies consulted, I am unable to approve REINT's application to establish the proposed real estate helpline.

If you have any questions regarding this matter, please contact the Deputy Director Licensing, Department of Business, Ms Carolyn Parsell, on telephone 8999 1307 or email to: [carolyn.parsell@nt.gov.au](mailto:carolyn.parsell@nt.gov.au).

Yours sincerely

  
DAVID TOLLNER

23 SEP 2013