

***Residential Tenancies Act 2010 (NSW) and the  
Residential Tenancies Regulation 2019 (NSW)***

**The Real Estate Institute of New South Wales  
Limited**

**Submission in response to the statutory review of the  
domestic violence provisions in the *Residential  
Tenancies Act 2010 (NSW)* and the *Residential  
Tenancies Regulation 2019 (NSW)***

**1 December 2022**

**TO:** *Real Estate and Housing Policy Team  
Better Regulation Division  
Department of Customer Service  
4 Parramatta Square, 12 Darcy Street*

**By email:** [dvreview@customerservice.nsw.gov.au](mailto:dvreview@customerservice.nsw.gov.au)

## 1. Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to the Issues Paper – Statutory review of the domestic violence provisions in the *Residential Tenancies Act 2010* (NSW) (**Issues Paper**) published by NSW Fair Trading on the Have Your Say website.

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

This submission has been prepared with the assistance of REINSW's Domestic Violence Statutory Review Sub-Committee, a special purpose sub-committee formed to assist with the development of the domestic violence legislation in NSW. This sub-committee comprises members of REINSW's Property Management Chapter Committee who are licensed real estate professionals with professional experience and expertise in the field of domestic violence. They are therefore able to bring a unique perspective to the questions raised in the Issues Paper and how the domestic violence provisions in the *Residential Tenancies Act 2010* (NSW) (**RT Act**) are working in practice. This Submission sets out issues and recommendations for the Department of Customer Service (**Department**) to consider when reviewing this legislation and its effectiveness in practice.

## 2. Response to questions raised in the Issues Paper

***Question 1: Do the current 'circumstances of domestic violence' listed in the Act adequately capture situations of domestic violence that would require someone to end a tenancy? If not, why and what other circumstances may be appropriate to list?***

REINSW believes the current legislation is adequate.

***Question 2: Are the types of evidence required adequate? If not, why? Are there other types of evidence that should be included?***

REINSW's view is that the evidence required by section 105C(2) of the RT Act for a domestic violence termination notice (**DV Notice**) is appropriate. However, sometimes in practice when a DV Notice is given, scenarios can arise where the legislation is ambiguous or silent, causing confusion for the agent, landlord and tenants as to the way forward. Rather than the legislation attempting to exhaustively capture every scenario which might arise in practice, REINSW's view is that it would be more beneficial to establish a specialist domestic violence division of NCAT with the jurisdiction to determine matters when the legislation is not clear.

An example of a situation that has occurred in practice and which would benefit from an NCAT determination, is when both parties present to an agent with evidence that they are the victim, and both want to remain in a property and exclude the other party. The property manager lacks the authority, experience and training to determine which of the tenants should remain in the rental premises. Furthermore, as the dispute is not between the landlord and the tenants

(rather between both tenants, as to which tenant should remain), the property manager cannot apply to NCAT for a determination but, because of their fiduciary duty to the landlord, also cannot advise the tenants that they should apply to NCAT.

REINSW offers a Helpline service (**REINSW Helpline**), which provides professional guidance to its members about practical real estate related issues. The REINSW Helpline is receiving more calls with these circumstances (believed to be exacerbated by the current rental crisis where access to new accommodation is difficult) and, on investigation, domestic violence service providers have discovered that it is not uncommon for a perpetrator of domestic violence to also obtain a DVO against the long-term victim as part of the cycle of abuse and cohesive control.

One of the main objectives for the domestic violence provisions in the RT Act is to ensure that ending a tenancy is not a barrier for a victim leaving a domestic violence situation. REINSW is concerned that, where a scenario like the above example arises, it can prolong the timeframe for a victim of domestic violence to get out of a tenancy, and this defeats one of the main objects of these provisions and can put the victim in danger. In the interests of ensuring that scenarios, like the example above, are resolved as quickly as possible to protect the true victim(s), **REINSW recommends** creating an avenue in which parties affected by a DV Notice can apply to a specialist NCAT process for determination of their matter.

Similarly, REINSW's view is that if both parties present to the agent with evidence of domestic violence and both want to end their tenancy leaving the other to remain in the property, responsible for ongoing rent and any damage caused to the property in a domestic violence event, a determination by NCAT should be available so that the owner of the property is not left paying for any damage or is not out of pocket for loss of rent between tenancies.

***Question 3: Is the current definition of competent person appropriate? If not, how could it be improved?***

REINSW's view is that the current definition of a competent person in section 105A of the RT Act is sufficient. In paragraphs 1.1 – 1.3 of REINSW's preliminary submission in response to the statutory review of the domestic violence reforms under the *Residential Tenancies Act 2010* (NSW) and the *Residential Tenancies Regulation 2019* (NSW) (**Preliminary Submission**) (**enclosed as annexure "A"** to this submission), REINSW raised some concerns that such a broad definition of a competent person may lead to misuse or inappropriate handling of domestic violence situations. **REINSW recommends** additional training measures to ensure that situations of domestic violence are handled appropriately, as discussed in more depth in REINSW's response to Question 4 below.

That being said, **REINSW would not object to** the list being extended to (and can see the benefit of including) disability advocate/support workers, community access workers, homelessness or housing workers, tenant solicitors and workers from Aboriginal corporations registered by the Office of the Registrar of Indigenous Organisations.

**REINSW opposes** extending the competent person list in section 105A of the RT Act to tenancy workers or tenant advocates for the following reasons:

- a) Unlike the other suggested extensions to the competent person list, tenant advocates or tenancy work is not a qualified field.
- b) Tenant advocates or tenancy workers are not sufficiently independent or impartial due to the nature of their role and lack the level of objectivity required to complete a Declaration by Competent Person Form (**Declaration Form**) in Schedule 3 to the *Residential Tenancies Regulation 2019* (NSW) (**RT Regulation**).
- c) The existing scope of the competent person list along with the proposed additions to this list is sufficiently broad.
- d) Unlike the other suggested possible additional classes of competent persons, tenancy workers and tenant advocates do not have more engagement with Aboriginal and Torres Strait Islander people, people with disabilities and people in rural areas than the listed and other proposed competent persons.

**Question 4: What issues (if any) are there with the provision of declarations by competent persons?**

**REINSW recommends** that due to the broad definition of who a competent person is, Division 3A of Part 5 to the RT Act and the Declaration Form should be extended to require any competent person engaged to sign a Declaration Form is “competent” and has completed a short online training course annually or bi-annually to ensure that person:

- a) is educated on how to appropriately respond and provide advice to a victim of domestic violence and where to refer them for further support;
- b) knows how to fill the form in; and
- c) understands the relevant sections of the RT Act, what has been asked of them in signing the form and any risk or consequences of signing it.

Such a training course could be run similarly to the COVID Safe online course that was run at the start of the pandemic, with a printable certificate that is included with the Declaration Form and could count toward any continuing professional development (**CPD**) required in the competent person’s industry. Additionally, it would allow practitioners (who meet the definition of a competent person but may not wish to take on the risk or repercussions of completing the Declaration Form) to “opt out” of being a competent person by not electing to complete the course.

REINSW’s view is that such a training program is required because of the serious nature of domestic violence situations. It is important that the competent person knows what to do when a victim of domestic violence comes to them asking to complete a Declaration Form. In REINSW’s view, this goes beyond the completion of the document and includes how to appropriately manage the situation more broadly (for example, ensuring a victim of domestic violence has a safe refuge, like a shelter, to go to in the interim period).

**REINSW also recommends** that the Department compile a comprehensive guide, accessible via hyperlink in the Declaration Form, which includes examples, scenarios and best practice protocols to help the competent person complete this document.

While some health practitioners may have received training in this area (for example doctors, nurses and psychologists), others (for example chiropractors, podiatrists and dental

hygienists) may not have, as their duties would not routinely involve dealing with situations of this nature.

In fact, REINSW is concerned that some of the registered health practitioners captured by the definition may not be aware that they are a competent person and, therefore, may not fully understand the responsibility, risk and best practices associated with completing the Declaration Form. REINSW is also concerned that if the listed competent persons are unaware of the requirements of section 105A of the RT Act, industry leaders are not able to ensure that industry educators are teaching the requirements to students gaining qualifications or even to the existing workforce.

Furthermore, while the Declaration Form serves an important purpose to help remove some of the hurdles faced by a person trying to flee a domestic violence situation, signing the Declaration Form also affects the landlord and any co-tenants who are not the domestic violence perpetrator. It is essentially a form used to terminate a binding legal agreement without an order of the Tribunal. Ensuring that the competent person has adequate training in this specialised field will make sure the Declaration Form is used for its intended purposes and not misused (which undermines the system for those who need this help).

For this reason, it is important to ensure that the Declaration Form is only completed in circumstances in which it is appropriate to do so and, most importantly, by persons who have adequate skills, training, expertise and knowledge in this specialised field which a short online training course and comprehensive guide to help complete the Declaration Form could provide.

***Question 5: Are you aware of any issues with other definitions in Section 105A of the Act? If so, what are they?***

REINSW is not aware of any issues with other definitions in section 105A of the RT Act.

***Question 6: Are the current provisions and penalties regarding false or misleading information appropriate? If no, what changes should be made?***

REINSW's view is that the current provisions and penalties regarding false or misleading information are not sufficient. REINSW is concerned by the lack of clear guidelines, processes and consequences which address the steps a party is to take in situations where the Declaration Form, or other evidence outlined in section 105C(2) of the RT Act used to support a DV Notice, has allegedly been misused.

Although section 105H of the RT Act contains penalties where a person makes a false or misleading statement in relation to a Declaration Form, the process for enforcing this provision, or challenging a Declaration Form which has been allegedly misused, is not clear. It is difficult to understand how the provisions can be enforced and what powers NCAT has to challenge a Declaration Form (or the information provided by the applicant to the competent person) on the basis that it contains false or misleading information. This is particularly so given that

section 105F of the RT Act states that the contents of any such declaration made by a competent person are not reviewable by a Tribunal.

Furthermore, although section 71 of the *Civil and Administrative Tribunal Act 2013* (NSW) carries penalty provisions for false and misleading information or statements provided to NCAT in an application, or during a proceeding (as opposed to at the time the Declaration Form was completed), the onus to prove such statements would fall on the applicant.

In most cases, this is likely to be the landlord or co-tenant and, given that these parties were not involved with the making of the Declaration Form or processes which give rise to other evidence used to support a DV Notice, this is a difficult fact for them to prove. To do so may be time-consuming and expensive for the landlord or co-tenant.

In the case of landlords, the cost in proving that the Declaration Form, or other evidence in support of a DV Notice, contained false or misleading information may outweigh the loss suffered, causing instances of wrongdoing to go unprosecuted and landlords left without any practical and cost-effective recourse.

REINSW's view is that these provisions are insufficient to allow a person, who alleges that the content of a Declaration Form includes false or misleading information or that a DV Notice has been misused, to challenge a form or DV Notice or to protect against possible misuse. Any processes would certainly be costly and time-consuming and would require seeking independent legal advice.

This could not only prejudice a landlord but could significantly prejudice other co-tenants who are not domestic violence perpetrators but are affected by a section 105B termination notice. There is no clear avenue for such co-tenants to challenge such a notice, or to recuperate expenses associated with moving and finding alternative accommodation where they believe the Declaration Form is false (particularly as they are a person who resided at the property).

Additionally, it is important to have clear guidelines and processes in order to protect the competent person against any false or misleading statements made by a person giving them the information.

**REINSW recommends** further clarity around what recourse is available to co-tenants, landlords and third parties where a person suspects that the information contained in a Declaration Form or evidence in support of a DV Notice is false or misleading.

**REINSW also recommends** that the Department should implement clear investigatory, enforcement processes and procedures to deal with instances of false or misleading statements made in the Declaration Form or other evidence in support of a DV Notice. This will ensure that parties are not unfairly prejudiced in circumstances where a form may have been misused.

***Question 7: Could the provisions and guidance about providing evidence be improved, and if yes, how?***

**REINSW recommends** implementing the below safeguards in circumstances of domestic violence as this would ensure DV Notices are dealt with safely and appropriately and would limit misuse:

- a) Requiring a competent person to undertake mandatory, annual or biannual CPD training and obtain a certificate upon completion which would be attached to the Declaration Form.
- b) As mentioned in REINSW's response to question 1 of the Issue Paper above, REINSW recommends creating an avenue in which a party affected by a DV Notice can apply to NCAT for a specialist domestic violence hearing in circumstances where the legislation is silent or ambiguous on a way forward. The example given above in REINSW's response to question 1, where both parties present with domestic violence evidence to either terminate a lease under domestic violence circumstances or both wish to remain at the property and exclude the other party, are examples of why it is important that parties have access to a specialist hearing before NCAT for matters of this kind.
- c) The implementation of clear investigatory, enforcement processes and procedures, as well as a review of appropriate penalty provisions to address circumstances in which a Declaration Form or DV Notice has allegedly been misused.

***Question 8: Are you aware of any issues or barriers relating to the use of domestic violence termination notices? If so, what are they?***

REINSW is not aware of any issues or barriers relating to the use of domestic violence termination notices.

***Question 9: What is your experience (if any) as a landlord, agent, tenant or co-tenant with domestic violence terminations?***

In May 2022, REINSW surveyed member property managers and collected evidence from those who had sought professional guidance through the REINSW Helpline service. The results of this survey, namely, the Property Manager Response to Domestic and Family Violence Re-Homing Survey 2022 (**DV Re-Homing Survey**), found that, overwhelmingly, agents are responding to a DV Notice by accepting the DV Notice and any subsequent damage to property reported as the result of a domestic violence event without question.

As a result, landlords are wearing the costs of reletting the property and any damage caused to it or, where possible, they are claiming against their Landlord Insurance policy. It should be noted that not all landlord insurance policies cover damage to a property as a result of domestic violence and most do not cover loss of rent in the time it takes to relet the property, leaving landlords out of pocket.

The results of the DV Re-Homing Survey concluded that 49.3% of property managers

surveyed had a property damaged as a result of domestic violence and, of that 49.3%, only 6.3% of perpetrators had paid to rectify the damage. This survey also revealed that 49.1% of responders felt that their landlords would not be responsive to leasing a property to a tenant that had left a domestic violence relationship, with damage to the property cited as a primary concern with 91.2% of responders.

REINSW's experience, based on feedback from property managers, is that DV Notices are costing landlords money that is not able to be recouped from the perpetrator and that the risk of damage to a landlord's property is the primary barrier to landlords who are hesitant to leasing a property to a potential tenant who has left a domestic violence relationship. REINSW's view is that were the Department to implement appropriate processes to ensure that landlords were not left to bear costs associated with property damage as a result of a circumstance of domestic violence, they would be more likely to approve victims of domestic violence for future tenancies. REINSW makes a range of recommendations in its response to question 21 of the Issue Paper below and refers the Department to those recommendations.

***Question 10: Are you aware of tenants experiencing any difficulty with giving a domestic violence termination notice to a landlord/agent or a co-tenant? If yes, how might this be addressed?***

REINSW is not aware of any tenants experiencing difficulty in issuing a DV Notice as there are multiple methods available to do so.

***Question 11: Are you able to provide additional context through case studies or examples?***

REINSW refers the Department to the results of the DV Re-Homing Survey, initiated and collated by the REINSW, discussed above in its response question 9 of the Issue Paper.

***Question 12: Are the provisions prohibiting information about tenants who have given a domestic violence termination notice in a tenancy database adequate? If not, how could they be improved?***

REINSW feels that the current provisions are adequate and information regarding the prohibition are readily available and already in force.

***Question 13: Are any other restrictions or changes required to protect the confidentiality of tenants or co-tenants terminating their tenancy using a domestic violence notice?***

REINSW is not aware of any restrictions or changes required.



***Question 14: Is the prohibition against contents of competent person declarations being reviewable in Tribunal proceedings clear and working well? If not, how?***

Given the powerful nature of the Declaration Form and right to end a tenancy by the giving of a DV Notice, and the serious implications involved for the landlord and any co-tenant who is not the perpetrator of domestic violence, REINSW is concerned by the lack of clear guidelines, processes and consequences which address the steps a party is to take in situations where this form (or other evidence outlined in section 105C(2) of the RT Act used to support a DV Notice) has allegedly been misused.

As REINSW has already mentioned in its response to question 6 above, the RT Act carries a maximum penalty of \$11,000 and/or 2 years imprisonment for false and misleading statements made in a Declaration Form by either the competent person completing the form or the person providing the information to the competent person. However, it is unclear how such provisions can be enforced and what powers NCAT has to challenge a Declaration Form, or the information provided by the applicant to the competent person, on the basis that it contains false or misleading information. This is particularly so given that section 105F of the RT Act states that the contents of any such declaration made by a competent person are not reviewable by a Tribunal.

REINSW's view is that the provisions which allow a person to challenge the contents of a Declaration Form on the basis that they contain false or misleading information are unclear. Without any clear enforcement mechanisms in place, it leads to the issue of a DV Notice open to misuse, which undermines Parliament's intention for these provisions – being to ensure that a tenancy isn't a barrier for a victim to leave a domestic violence situation. Current legislation also does not protect the competent person against any false or misleading statements made by a person giving them the information.

Similarly to the recommendations in REINSW's response to question 6 above, **REINSW recommends** that:

- a) a process should be made available to co-tenants, landlords and third parties to allow them to challenge this piece of evidence, where a person suspects that the information contained in a Declaration Form is false or misleading;
- b) the Department should implement clear investigatory, enforcement processes and procedures to deal with instances of false or misleading statements made in a Declaration Form to protect parties from being unfairly prejudiced in circumstances where a form may have been misused. REINSW's view is that this is an important issue, and one in which it has previously raised with NSW Fair Trading, and so it would welcome changes to the legislative framework which clarifies the correct pathway to take where a person alleges that a Declaration Form has been misused. Furthermore, REINSW's view is that that the Department could help deter instances of misuse by simply having a clear enforcement process in place; and
- c) the Department should provide clarity around what recourse is available.

**REINSW also recommends** that any such recourses against misuse or investigatory and enforcement processes should also extend to other evidence outlined in section 105C(2) to

the RT Act which gives rise to a right to terminate a tenancy in circumstances of domestic violence.

***Question 15: Have you ever experienced a dispute related to a competent person declaration or a domestic violence termination? Is so, what happened?***

REINSW is not aware of any agents that have attempted to question the validity of, or raised a dispute regarding, a Declaration Form or DV Notice. REINSW's understanding, from it's the REINSW Helpline's feedback, is that if an agent is presented with a domestic violence termination notice then they do not question its validity due to the unclear nature of how to do so.

Without a clear pathway for questioning a DV Notice, landlords are placed at a severe disadvantage. The DV Re-Homing Survey identified that in 53% of the properties reported as damaged as a result of a domestic violence event, the landlord paid to have the repairs carried out and a further 31.9% were claimed on insurance. **REINSW re-iterates its recommendations** made in its responses to questions 6 and 14 above.

***Question 16: If you are a co-tenant who has applied for an order terminating a tenancy agreement after another co-tenant gave a domestic violence termination notice, what was your experience?***

REINSW is not aware of any cases of this nature.

***Question 17: Are the current processes enabling an occupant to become a tenant after a tenant is prohibited from accessing the premises by an apprehended violence order working well? If no, how can they be improved?***

REINSW is only aware of one similar case and the remaining occupant applied to the Tribunal to be recognised as the tenant. The process appeared to be straight forward, and the tenancy continued with the occupant, now the tenant, with the previous tenant excluded from the property.

REINSW is aware of problems when both tenants or the tenant and an occupant both present with a DV Notice, as raised in its answer to question 2 above. REINSW re-iterates its recommendations made in response to question 2.

***Question 18: Have there been any other impacts on remaining co-tenants? What were they?***

REINSW is of the view that co-tenants (who are not perpetrators) would be unfairly prejudiced if a Declaration Form or DV Notice was misused and re-iterates its recommendations in response to questions 6 and 14 above.

***Question 19: Are the exemptions from liability for property damage occurring during a domestic violence offence clear and operating effectively? If not, how could they be improved?***

REINSW's view is that, currently, such provisions are not operating effectively as generally it is landlords who are left to bear the costs associated with property damage occurring as a result of a domestic violence offence (noting that costs may not be limited to physical property damage but might also include associated costs, such as cleaning and rubbish removal). REINSW refers the Department to its response and recommendations in question 21 below for suggestions as to how these provisions could be improved.

REINSW has concerns regarding how property damage is defined. REINSW's view is that, in circumstances where property damage has occurred in circumstances of domestic violence leading to a DV Notice, it can be difficult to differentiate between damage to the property as a result of a domestic violence event and damage caused in the general use of the property (not as a result of a domestic violence event), and what an agent or landlord is to rely on for that determination. **REINSW recommends** that in cases of a domestic violence event which gives rise to a DV Notice being given, the landlord should be able to recover any costs of damage to the property (including associated costs mentioned above relating to cleaning or rubbish removal) against the offender.

***Question 20: Are you aware of tenants that have experienced claims for property damage contrary to the exemptions, or any difficulty relying on the exemptions? If they did, what were their claims or difficulties?***

REINSW is not aware of any cases where a tenant has experienced a claim for property damage contrary to the exemptions or had any difficulty relying on the exemptions.

***Question 21: What is your experience (if any) as a landlord, agent, tenant or co-tenant in relation to liability for property damage arising from domestic violence?***

REINSW understands, from feedback from its members, that pursuing a domestic violence offender is problematic when the offender is not a tenant and contact information is limited. In the REINSW's DV Re-Homing Survey, it was reported only 6.3% of perpetrators paid to rectify the cost of damage as a result of a domestic violence event.

While the current domestic violence provisions in the RT Act and RT Regulation seek to reduce and remove barriers that victims of domestic violence face when leaving a tenancy, REINSW is of the view that the legislation should also address some of the barriers that victims face when applying for future tenancies after having left domestic violence situations.

According to the Australian Homelessness Monitor 2020 Report conducted by the University of New South Wales and the University of Queensland, between 2018 and 2019, family and domestic violence was the most often cited "factor aggravating housing insecurity and possible

homelessness” for users of SHS Services.<sup>1</sup> 28% of national assisted service users and 22% of NSW assisted service users stated that it was the main reason for seeking assistance.<sup>2</sup> It was also an “associated issue” in 40% of assisted homelessness service users cases.<sup>3</sup> It is important that victims of domestic violence are able to find shelter upon leaving the perpetrator.

In many cases, the most appropriate form of shelter will come from entering into a new residential tenancy agreement. However, landlords are often hesitant to approve such persons as tenants because there is a greater risk of property damage where the perpetrator tracks down the victim.

In these circumstances, landlords are often left to foot the bill for the damage, pay for the insurance excess or pursue the damage through other available legal avenues. This is both time-consuming and costly (as it also involves the landlord seeking legal advice). REINSW has been working in collaboration with Domestic Violence NSW. According to the results of a survey conducted by Domestic Violence NSW, this is a concern held by over 80% of landlords.

At the end of the day, landlords are private investors and, if their investment properties are not adequately protected from property damage by perpetrators of domestic violence, they may choose to look to other investments which would impact the availability of housing for all tenants (not just victims of domestic violence). REINSW is concerned that this exacerbates the housing crisis with fewer rental properties available on the market. REINSW is also concerned that, when landlords are selecting tenants, they often choose to protect their rental property, income and investments against those that are considered to have more risk if appropriate safeguards are not implemented to protect properties against damage from domestic violence perpetrators.

REINSW recognises that some insurance providers cover property damage arising from domestic violence situations but not many. We understand that some examples of such insurance providers include Honan, underwritten by Blue Zebra, AON, RealtyProtect and EBM. However, only a small percentage of landlords have domestic violence insurance cover and, even when they do, they are left to pay the excess.

REINSW is concerned that a consequence of the lack of protections afforded to landlords in these circumstances is that they are less likely to approve an application for tenancy by a victim of previous domestic violence which, in turn, makes it more difficult for such persons to seek the shelter and refuge they need after leaving violence. This increases demand for temporary domestic violence shelters and, in some cases, the lack of appropriate housing being a key reason that victims return to violence.

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<sup>1</sup> Hal Pawson et al, *Australian Homelessness Monitor 2020*, Launch Housing 2020  
<https://data.launchhousing.org.au/app/uploads/2020/10/Australian-Homelessness-Monitor-2020.pdf>,  
accessed 30 November 2021, 70.

<sup>2</sup> Ibid, 71

<sup>3</sup> Ibid, 70

## **REINSW Recommendations**

REINSW's view is that landlords could be encouraged to approve victims of domestic violence as tenants if appropriate procedures could be implemented to ensure that they are not left out of pocket for any damage and other associated costs arising from the perpetrator.

REINSW suggests that this could be achieved by creating a government application process which allows a landlord to seek direct reimbursement from a government fund for the cost of property damage and other costs associated with a domestic violence offence, or, alternatively, for the cost of the insurance excess gap (which might also encourage more landlords to apply for insurance). The government could then pursue the perpetrator directly through their existing debt and legal channels, such as State Debt Recovery. Such a process would provide more certainty for landlords while additionally creating a more streamlined, uniform approach for holding perpetrators financially to account for their acts where property has been damaged.

After all, the cost of supporting victims of domestic violence should not fall squarely on the shoulders of landlords but should be a cost borne by the community as a whole.

Alternatively, REINSW suggests that a provision could be inserted into the RT Act whereby the perpetrator of an act of domestic violence is held liable for the damage and other associated costs. Such a provision would allow the landlord to take the perpetrator to NCAT, should they not pay. REINSW envisions that if the perpetrator violates the NCAT orders then they can be blacklisted as a tenant on tenancy databases.

Division 5A of Part 3 of the RT Act deals with rectification orders and section 65B(1)(a) of the RT Act allows a landlord to request that the Secretary investigate whether the tenant has caused or permitted "intentional" or "negligent" damage to the property. This provision then sets out certain processes for the application and investigation processes. If, as a result of the investigation, the Secretary is satisfied that the tenant intentionally or negligently damaged the property then the Secretary is permitted to make certain orders to rectify or compensate the landlord for the damage and other associated costs.

Unfortunately, these current provisions only provide the landlord with recourse against acts done to the property by the tenant as opposed to damage caused by a third-party perpetrator either invited or when trespassing onto the property.

REINSW recommends that a provision similar to section 65B of the RT Act but relating to acts committed by a third-party perpetrator be inserted into Division 5A. This would allow the landlord to make an application to the Secretary requesting a similar investigation into a domestic violence incident.

A landlord could also apply to a government-held fund to be, prima facie, reimbursed for the property damage or insurance excess pending resolution of the investigation so that they wouldn't have to wait for any investigation to conclude before being reimbursed for the damage or excess.

Alternatively, REINSW considers that such provisions could sit within Part 10, Division 1 of the RT Act which deals with the powers of investigators in enforcement proceedings.

***Question 22: What issues are you aware of that tenants have experienced regarding the repayment of the rental bond when a tenant has given domestic violence termination notice and a co-tenant has continued renting a property?***

While not directly involved with the details of a bond transfer between tenants subject to a DV Notice, REINSW acknowledges this is a highly emotive time and disputes surrounding a jointly held bond occur regularly.

Problems appear to arise over a victim needing to contact a perpetrator to make arrangements surrounding the bond, who has what share, victims getting the bond money in the allotted time and perpetrators using the distribution of the bond as another form of financial abuse.

***Question 23: Are the provisions on repayment of the rental bond working effectively? If not, what are the current barriers and how could they be improved?***

It is REINSW's view that a division of NCAT that is dedicated to hearing domestic violence cases could be beneficial to allow an impartial third party to hear and award the distribution and time frame of payment for a bond in a safe and sensitive environment. REINSW re-iterates its recommendations in response to question 2 above.

***Question 24: What could be the consequences, both positive and negative, if landlords and agents are required to obtain consent each time they wish to publish photos or video recordings of the interior of residential premises in which the tenants possessions are visible?***

REINSW's view is that the current legislative framework is robust and already protects victims of domestic violence in this regard because tenants are able to revoke consent on the basis that they are in a domestic violence relationship or if their circumstances change and they find themselves in a domestic violence relationship after having consented to the publishing of photographs and/or video recordings. Compliance with the current provisions is high and REINSW is not aware of any issues with them. **REINSW recommends** that no changes should be made to these current legislative provisions.

***Question 25: Should the Act provide that it is not unreasonable for a tenant to withhold consent to such photos or video recordings in any other specific circumstances? If your answer is yes, what are the circumstances? If your answer is no, why not?***

No. REINSW acknowledges domestic violence as a valid reason to withhold consent. REINSW's view is that other circumstances are not required and that the current statutory review is not the appropriate forum in which to consider non-domestic violence related reasons as they do not form part of the domestic violence provisions in the RT Act.

***Question 26: Should any other circumstances be listed as a reasonable cause for altering, removing or adding a lock or other security device for the residential premises? If yes, what are they?***

The existing framework sufficiently covers circumstances that require amendments to locks or other security devices without consent of the owners. REINSW's view is that the current statutory review is not the appropriate forum in which to consider non-domestic violence related reasons as they do not form part of the statutory review of the domestic violence provisions in the RT Act.

***Question 27: As a tenant, landlord or agent, what issues (if any) have you had with the operation of these provisions, particularly where a tenant is in circumstances of domestic violence or has given a domestic violence termination notice?***

REINSW's main concerns with the operation of these provisions is when the agent or owner is not provided with a copy of the lock or security device within 7 days and tenants do not satisfy their tenancy obligations pursuant to section 72 of the RT Act. **REINSW recommends** that there should be an emphasis on compliance with the obligation to promptly provide the other party to a tenancy with a copy of the changed lock or other security device as it is important that the agent and landlord receive a copy of the new lock or security device as soon as possible. REINSW suggests that this could be achieved by making tenants more aware of their obligations in this regard.

Other issues experienced because of locks and security device amendments include issues surrounding changes that create fire safety dangers, or which do not comply with fire obligations or satisfy strata and body corporate requirements. **REINSW recommends** that the scope of legislation should be extended to ensure that it complies with strata and fire obligations.

Additionally, the installation of security cameras can become problematic when recordings include common areas of strata properties or are deemed privacy concerns for neighbouring properties. **REINSW recommends** that the scope of legislation should be extended to respect the privacy of neighbouring properties and common areas.

***Question 28: If you or someone you know were involved in a domestic violence matter that went to the Tribunal, what was your/their experience? How could it have been improved?***

REINSW is not aware of tenant experiences at the Tribunal.

***Question 29: Could a matter have been prevented from going to the Tribunal? If so, how? Could the provisions be improved to address this?***

REINSW is of the belief that preventing a matter from going to the Tribunal may not be the best course of action. This is because the Tribunal would be equipped to meet the needs of a domestic violence victim and resolve issues faced by victims in a safe and supported

environment, where tenants can have matters or disputes resolved by an impartial third party whose orders are enforceable.

If the environment is supportive for the victim, a dedicated NCAT division would provide victims with a speedy resolution that is adjudicated independently outside of the domestic violence relationship and where the victim would have a better outcome than attempting to resolve tenancy matters from an impeded position of power arising from the imbalance of power between a perpetrator of domestic violence and the victim. REINSW re-iterates its recommendations in response to question 2.

### **3. Summary**

In summary, REINSW:

- a) recommends that the Department create an avenue in which parties affected by a DV Notice can apply to a specialist NCAT process for determination of their matter;
- b) does not oppose extending the definition of a “competent person” in section 105A of the RT Act to include disability advocate/support workers, community access workers, homelessness or housing workers and workers from Aboriginal corporations registered by the Office of the Registrar of Indigenous Organisations;
- c) opposes extending the definition of a “competent person” in section 105A of the RT Act to include tenant advocates or tenancy workers;
- d) recommends that competent persons should be required to complete a short annual or bi-annual training course to educate them on how to appropriately manage circumstances of domestic violence, how to complete the Declaration Form correctly and to ensure they understand relevant provisions in the RT Act, what has been asked of them in signing the form and any risk or consequences of signing it;
- e) recommends that the Department compile a comprehensive guide accessible via the Declaration Form, which includes examples, scenarios and best practice protocols to help the competent person complete the form;
- f) recommends that the Department should clarify what recourse is available to co-tenants, landlords and third parties where a person suspects that the information contained in a Declaration Form or the evidence used to support a DV Notice is false or misleading and make available to them a clear process for challenging a Declaration Form that they allege is being misused;
- g) recommends that the Department should implement clear investigatory, enforcement processes and procedures to deal with instances of false or misleading statements made in the Declaration Form or the evidence used to support a DV Notice. This will ensure that parties are not unfairly prejudiced in circumstances where a Declaration Form or the DV Notice may have been misused
- h) recommends that any such recourses against misuse or investigatory and enforcement processes should also extend to other evidence outlined in section



- 105C(2) to the RT Act which gives rise to a right to terminate a tenancy in circumstances of domestic violence;
- i) recommends that in cases of a domestic violence event which gives rise to a DV Notice being given, the landlord should be able to recover any costs of damage to the property (including associated costs mentioned above relating to cleaning or rubbish removal) against the offender because sometimes, in these circumstances, it can be difficult to differentiate between property damage arising from the offence and property damage caused in the general course of the tenancy;
  - j) recommends that the Department should create a government application process allowing a landlord to seek direct reimbursement from a government fund for the cost of property damage and other costs associated with a domestic violence offence, or alternatively, for the cost of the insurance excess gap (which might also encourage more landlords to apply for insurance). The Government could then pursue the perpetrator directly through their existing debt and legal channels, such as State Debt Recovery. Such a process would provide more certainty for landlords while additionally creating a more streamlined, uniform approach for holding perpetrators financially to account for their acts where property has been damaged;
  - k) recommends, alternatively to recommendation i) above, that the Department insert into the RT Act a provision whereby the perpetrator of an act of domestic violence is held liable for the damage and other associated costs. Such a provision would allow the landlord to take the perpetrator to NCAT, should they not pay. REINSW envisions that if the perpetrator violates the NCAT orders then they can be blacklisted as a tenant on tenancy databases. REINSW recommends that this could take the form of a provision similar to section 65B of the RT Act but relating to acts committed by a third-party perpetrator and which would allow the landlord to make an application to the Secretary requesting a similar investigation into a domestic violence incident. Alternatively, it could also sit within Part 10, Division 1 of the RT Act which deals with the powers of investigators in enforcement proceedings;
  - l) recommends that there should be no changes to the current provisions relating to obtaining consent to publish photos or video recordings of the interior of residential premises in which the tenants' possessions are visible, as the current legislative framework is robust;
  - m) recommends that there should be an emphasis on compliance with the obligation to promptly provide the other party to a tenancy with a copy of the changed lock or other security device as it is important that agents receive an updated copy of the lock or security device as soon as possible. This could be achieved by making tenants more aware of their obligations in this regard;
  - n) recommends that the scope of legislation should be extended to ensure that any amendments to locks and security devices complies with strata and fire obligations; and
  - o) recommends that, in relation to the installation of security cameras, the scope of legislation should be extended to respect the privacy of neighbouring properties and common areas.

## 4. Conclusion

REINSW has considered the Issues Paper on the statutory review of the domestic violence provisions in the RT Act and has provided its comments above, aiming to provide input on as many pertinent aspects of the Issue Paper as possible. However, REINSW's resources are very limited and, accordingly, it does not have the capacity to undertake a thorough review and is unable to exhaustively investigate all potential issues in this submission. Nonetheless, REINSW has identified a number of matters that it believes will cause significant consumer detriment, some of which appear above.

REINSW appreciates the opportunity to provide this submission and would be pleased to discuss it further, if required.

Yours faithfully



Tim McKibbin  
**Chief Executive Officer**

## **Annexure A**

The following pages include REINSW's submission in response to the statutory review of the Domestic Violence reforms under the *Residential Tenancies Act 2010* (NSW) and the *Residential Tenancies Regulation 2019* (NSW) dated 23 December 2021.

# **The Real Estate Institute of New South Wales Limited**

## **Submission in response to the statutory review of the Domestic Violence reforms under the *Residential Tenancies Act 2010 (NSW)* and the *Residential Tenancies Regulation 2019 (NSW)***

**23 December 2021**

**TO:** Julie Wright  
Policy Manager, Real Estate and Housing  
Better Regulation Division  
Department of Customer Service

**By email:** [julie.wright@customerservice.nsw.gov.au](mailto:julie.wright@customerservice.nsw.gov.au)

## Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) in response to the statutory review of the provisions of the *Residential Tenancies Act 2010* (NSW) (**Act**) and the *Residential Tenancies Regulation 2019* (NSW) (**Regulation**) relating to domestic violence.

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW represents 11,976 individual members and seeks to promote their interests and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of legislative and agency policy in New South Wales.

This Submission has been prepared with the assistance of REINSW's Domestic Violence Statutory Review Sub-Committee, which has been formed by members of REINSW's Property Management Chapter Committee. These members are licensed real estate professionals with experience and expertise in their field. As specialists in the field of property management, they have a working knowledge of how these statutory provisions are applied in practice and are, therefore, able to offer a unique perspective on the practical day-to-day workings of the domestic violence reforms. REINSW has also worked collaboratively with Domestic Violence NSW who has shared invaluable insight into some of the issues discussed below. This submission sets out issues and recommendations for the Government to consider when reviewing the legislation and its effectiveness in practice.

## 1. COMPETENT PERSON

### 1.1 REINSW Proposal

REINSW is of the view that the broad definition of a “competent person” may lead to misuse or inappropriate handling of domestic violence situations but this concern could be addressed through additional training measures to ensure that situations of domestic violence are handled professionally and appropriately. Furthermore, REINSW suggests that there needs to be guidelines and processes in place to guard against any misuse of the Declaration by Competent Person form (**Declaration Form**).

### 1.2 Definition of a “competent person”

The definition of a “competent person” in section 105A of the *Residential Tenancies Act 2010* (NSW) was expanded by schedule 1.10[9] to the *Better Regulation Legislation Amendment Act 2019* (NSW) to include:

*(a) a health practitioner within the meaning of the Health Practitioner Regulation National Law (NSW) who is eligible for registration in a health profession under Division 1 or 2 of Part 7 of that Law...*

[emphasis added]

However, prior to the commencement of this definition, it was further amended by schedule 1.5 to the *Statute Law (Miscellaneous Provisions) Act 2020* (NSW), slightly narrowing the definition so that instead of simply being “eligible for registration” the health practitioner in question had to be “registered”.

Schedule 1.10[9] to the *Better Regulation Legislation Amendment Act 2019* (NSW) commenced on 11 December 2020, the same day as schedule 1.5 to the *Statute Law (Miscellaneous Provision) Act 2020* (NSW) such that the definition reflects the latter. The amended Declaration Form contained in Schedule 3 to the Regulation also commenced on this date.

The current definition of a “competent person” is:

*(a) a registered health practitioner within the meaning of the Health Practitioner Regulation National Law (NSW), but only if the health practitioner is registered under Division 1 or 2 of Part 7 of that Law.*

The *Health Practitioner Regulation National Law* (NSW) provides that the following health professions can hold a general or specialist registration under Part 7, Division 1 or 2 (refer to the definition of “health profession” in section 5):

- Aboriginal and Torres Strait Islander health practice
- Chinese medicine
- Chiropractic
- Dental (including a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist)
- Medical
- Medical radiation practice
- Midwifery
- Nursing
- Occupational therapy
- Optometry
- Osteopathy
- Paramedicine
- Pharmacy
- Physiotherapy
- Podiatry
- Psychology

### **1.3 Additional Training Measures for Competent Persons**

While REINSW holds some reservations about the broad definition of a “competent person” under section 105A of the Act, REINSW’s view is that this concern could be addressed by implementing appropriate training requirements for persons who meet this definition.

REINSW’s position is that not all persons, who are deemed to be “competent persons”, have the requisite training, knowledge and experience and this may result in inappropriate advice and handling of domestic violence situations.

While some health practitioners may have received training in this area (for example, doctors, nurses and psychologists), others (for example, chiropractors, podiatrists or dental hygienists) may not have, as their duties would not routinely involve dealing with situations of this nature. In fact, REINSW is concerned that some of the registered health practitioners captured by the above definition may not be aware that they are a competent person for the purpose of this

definition or may not fully understand the responsibility, risk and best practices associated with completing the Declaration Form.

Circumstances of domestic violence are serious and, in worst case scenarios, can result in physical harm and danger to the victim. Persons who are attempting to flee domestic violence situations often face significant hurdles and the purpose of these provisions are to ensure that the residential tenancy agreement does not pose a barrier where a person is not safe within a tenancy. The mechanism which allows them to do so is the Declaration Form. It is thus imperative that registered health practitioners deemed “competent” to complete this form have the necessary training and expertise and are in a position to adequately assess the situation. This not only includes how to fill out the Declaration Form but also how to assess and manage other aspects of the situation (for example, best practices for asking questions or ensuring that the victim of domestic violence does not return home but seeks refuge at a safe place, such as a shelter). Inappropriate handling of such situations could result in serious implications for the victim of domestic abuse and can simultaneously expose the competent person to significant professional risk.

While the Declaration Form fulfills an important purpose, it is also a document which has significant consequences for others involved. Competent persons asked to complete the form by a victim of domestic violence are called upon to make a decision as to whether or not a person is facing a domestic violence situation and assumes professional risk, personal responsibility and a duty of care in doing so. While in reality, many competent persons, when presented with a Declaration Form, will not refuse to sign it for liability reasons, REINSW’s view is that additional training measures will ensure that they are at least equipped with the appropriate knowledge and information to guide them in making this decision.

The Declaration Form also affects the landlord and co-tenants (including any co-tenants who are not the domestic violence perpetrator). It is essentially a form through which a person can terminate a binding legal agreement without an order of the NSW Civil and Administrative Tribunal (**NCAT**) or the Court. As mentioned above, the policy behind such provisions is to ensure that persons facing domestic violence situations have an avenue to leave a tenancy and so these circumstances outweigh the potential detriment and risk to the landlord. However, without sufficient knowledge and expertise in this specialised area, a competent person may simply sign any form that is given to them for fear that failing to do so could leave them open to liability given the serious nature of such situations. Doing so may lead to unjust implications for both the landlord and the co-tenant who is not a perpetrator of domestic violence, for example, if the form is misused. For this reason, it is important to ensure that this form is only completed in circumstances in which it is appropriate to do so and, most importantly, by persons who have adequate skills, training, expertise and knowledge in this specialised field.

REINSW suggests that this issue could be addressed by implementing additional training measures for competent persons. REINSW suggests that such training could include the following:

- a) A comprehensive guide which assists the competent person filling out the form and includes examples, scenarios and best practice protocols for dealing with situations of domestic violence. The Declaration Form could include a hyperlink to this guide; and
- b) A mandatory annual or biannual domestic violence training course, as part of each competent persons’ continuing professional development (“CPD”) units. REINSW

proposes that a competent person be required to attach evidence of having completed such a course to the Declaration Form, ensuring safe and appropriate handling of domestic violence situations. This would also allow practitioners who technically meet the definition of a “competent person” in section 105A of the Act but who may not wish to take on the risk or repercussions of filling out the Declaration Form to effectively “opt out” of being a competent person by electing not to take the domestic violence CPD course.

#### **1.4 Insufficient guidelines, processes or repercussions for misuse of the Declaration Form**

As raised above, the Declaration Form has the effect of dissolving otherwise legally binding obligations between parties without an order of NCAT or the Court. Given the powerful nature of this form and the serious implications involved for the landlord and any co-tenants (who are not perpetrators of the violence), REINSW is concerned by the lack of clear guidelines, processes and consequences which address the steps a party is to take in situations where this form has allegedly been misused.

Section 105H of the Act specifies penalties (monetary and imprisonment) for false and misleading statements made in the Declaration Form by either the person giving the competent person information, or the competent person. However, it is difficult to understand how such provisions can be enforced and what powers NCAT has to challenge a Declaration Form (or the information provided by the applicant to the competent person) on the basis that it contains false or misleading information. This is particularly so given that section 105F of the Act states that the contents of any such declaration made by a competent person are not reviewable by a Tribunal.

Furthermore, although section 71 of the *Civil and Administrative Tribunal Act 2013* (NSW) carries penalty provisions for false and misleading information or statements provided to NCAT in an application, or during a proceeding (as opposed to at the time the Declaration Form was completed), the onus to prove such statements would fall on the applicant. In most cases, this is likely to be the landlord or co-tenant and, given that these parties were not involved with the making of the Declaration Form, this is a difficult fact for them to prove. To do so may be time-consuming and expensive for the landlord or co-tenant. In the case of landlords, the cost in proving that the Declaration Form contained false or misleading information may outweigh the loss suffered, causing instances of wrongdoing to go unprosecuted and landlords left without any practical and cost-effective recourse.

REINSW’s view is that these provisions are insufficient to allow a person, who alleges that the contents of a Declaration Form includes false or misleading information, to challenge a form or to protect against possible misuse of such a form. Any processes would certainly be costly and time-consuming and would require seeking independent legal advice. This could not only prejudice a landlord but could significantly prejudice other co-tenants who are not domestic violence perpetrators but are affected by a section 105B termination notice. There is no clear avenue for such co-tenants to challenge such a notice, or to recuperate expenses associated with moving and finding alternative accommodation where they believe the Declaration Form to be false (particularly as they are a person who resided at the property). Additionally, it is important to have clear guidelines and processes in order to protect the competent person against any false or misleading statements made by a person giving them the information.



REINSW recommends further clarity around what recourse is available to co-tenants, landlords or third parties where a person suspects that the information contained in a Declaration Form is false or misleading. REINSW also recommends that the Government should implement clear investigatory, enforcement processes and procedures to deal with instances of false or misleading statements made in the Declaration Form. This will ensure that parties are not unfairly prejudiced in circumstances where a form may have been misused.

### **1.5 Summary**

REINSW believes that by implementing the following safeguards, circumstances of domestic violence which require a completed Declaration Form would be dealt with safely and appropriately and would not be misused:

- Preparing a comprehensive best practice guide to assist competent persons when filling out the Declaration Form;
- Requiring competent persons to undertake a mandatory, annual or biannual CPD course, a completion certificate of which can be attached to the back of the Declaration Form (and thus allowing practitioners who meet the definition of a “competent person” but who do not want to fill out the Declaration Form to opt out by electing not to participate in the mandatory CPD course which would be a pre-requisite for completion of such a form); and
- The implementation of clear investigatory, enforcement processes and procedures, as well as a review of appropriate penalty provisions to address circumstances in which a Declaration Form may be misused.

## **2. CHANGES IN THE CO-TENANT**

### **2.1 Co-tenant who is a domestic violence perpetrator**

REINSW is of the view that there needs to be clear safeguards in place to protect a property manager or third party (for example, a third-party worker or an owner/occupier if in a strata scheme) where the co-tenant who is a domestic violence perpetrator remains on the premises after the section 105B termination notice is given. This is because this person may potentially be dangerous.

Section 92 of the Act allows a landlord to apply to NCAT seeking an order to terminate a tenancy for “threat, abuse, intimidation or harassment” by the tenant toward the landlord or property manager. However, REINSW is concerned that in circumstances where a tenancy has been terminated on grounds of domestic violence, the property manager, landlord or even a third party should not be put in potential danger before a tenancy can be reviewed or terminated.

REINSW recommends that there should be a provision in the Act which allows a landlord the right to evict the perpetrator of the domestic violence if a Declaration Form is signed or, alternatively, based on the evidence in the Declaration Form. REINSW suggests that such a provision could allow a 14-day termination notice to be served on the perpetrator – a similar

timeframe to that given under section 88 of the Act for termination on grounds of non-payment of rent or charges. Alternatively, REINSW suggests that there could be a provision allowing the landlord to review the tenancy having regard to the evidence in this form to determine whether a perpetrator's tenancy should be terminated. REINSW believes that a period of between 60 and 90 days should be given for any such review to allow appropriate investigations and findings to be carried out based on the evidence in the Declaration Form.

## **2.2 Summary**

REINSW holds the view that if a co-tenant who is a perpetrator of domestic violence remains on the premises after a section 105B termination notice has been served, there should be a provision in the Act permitting a landlord to terminate, or review the tenancy to determine whether a perpetrator's tenancy should be terminated, based on the evidence in the Declaration Form.

## **3. DAMAGE TO PROPERTY**

### **3.1 Landlord concerns about damage to property**

While the current domestic violence provisions in the Act and Regulation seek to reduce and remove barriers that victims of domestic violence face when leaving a tenancy, REINSW is of the view that the legislation should also address some of the barriers that victims face when applying for future tenancies after having left domestic violence situations. According to the Australian Homelessness Monitor 2020 Report conducted by the University of New South Wales and the University of Queensland, between 2018 and 2019, family and domestic violence was the most often cited "factor aggravating housing insecurity and possible homelessness" for users of SHS Services.<sup>1</sup> 28% of national assisted service users and 22% of NSW assisted service users stated that it was the main reason for seeking assistance.<sup>2</sup> It was also an "associated issue" in 40% of assisted homelessness service users cases.<sup>3</sup> It is important that victims of domestic violence are able to find shelter upon leaving the perpetrator. In many cases, the most appropriate form of shelter will come from entering into a new residential tenancy agreement. However, landlords are often hesitant to approve such persons as tenants because there is a greater risk of property damage where the perpetrator tracks down the victim.

In these circumstances, landlords are often left to foot the bill for the damage, pay for the insurance excess or pursue the damage through other available legal avenues. This is both time-consuming and costly (as it involves the landlord seeking legal advice). REINSW has been working in collaboration with Domestic Violence NSW. According to the results of a survey conducted by Domestic Violence NSW, this is a concern held by over 80% of landlords.

At the end of the day, landlords are private investors and, if their investment properties are not adequately protected from property damage by perpetrators of domestic violence, they may

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<sup>1</sup> Hal Pawson et al, *Australian Homelessness Monitor 2020*, Launch Housing 2020  
<https://data.launchhousing.org.au/app/uploads/2020/10/Australian-Homelessness-Monitor-2020.pdf>,  
accessed 30 November 2021, 70.

<sup>2</sup> Ibid, 71

<sup>3</sup> Ibid 70

choose to look to other investments which would impact the availability of housing for all tenants (not just victims of domestic violence). REINSW is concerned that although landlords are not permitted to discriminate between tenants, the reality is that some do (and will continue to do so) to protect their rental income and investments if appropriate safeguards are not implemented to protect properties against damage from domestic violence perpetrators.

Some insurance providers do cover property damage arising from domestic violence situations. We understand that some examples of such insurance providers include Honan, underwritten by Blue Zebra, AON, RealtyProtect and EBM. However, only a small percentage of landlords have domestic violence insurance cover and, even when they do, they are left to pay the excess.

REINSW is concerned that a consequence of the lack of protections afforded to landlords in these circumstances is that they are less likely to approve an application for tenancy by a victim of previous domestic violence, in turn, making it more difficult for such persons to seek the shelter and refuge they so desperately need after leaving violence, increasing demand for temporary domestic violence shelters and, in some cases, lack of appropriate housing being a key reason that victims return to violence.

### **3.2 REINSW Recommendations**

REINSW's view is that landlords could be encouraged to approve victims of domestic violence as tenants if appropriate procedures could be implemented to ensure that they are not left out of pocket for any damage arising from the perpetrator. REINSW believes that such processes could complement provisions discussed in paragraph 1.4 concerning guidelines, processes and procedures to guard against misuse of the Declaration Form.

REINSW suggests that this could be achieved by creating a government application process allowing a landlord to seek direct reimbursement from a Government fund for the cost of property damage, or alternatively, the cost of the insurance excess gap (which might also encourage more landlords to apply for insurance). The Government could then pursue the perpetrator directly through their existing debt and legal channels, such as State Debt Recovery. Such a process would provide more certainty for landlords while additionally creating a more streamlined, uniform approach for holding perpetrators financially to account for their acts where property has been damaged. After all, the cost of supporting victims of domestic violence should not fall squarely on the shoulders of landlords but should be a cost borne by the community as a whole.

Alternatively, REINSW suggests that a provision could be inserted into the Act whereby the perpetrator of an act of domestic violence is held liable for the damage. Such a provision would allow the landlord to take the perpetrator to NCAT, should they not pay. REINSW envisions that if the perpetrator violates the NCAT orders then they can be blacklisted as a tenant on tenancy databases.

Division 5A of Part 3 of the Act deals with rectification orders and section 65B(1)(a) allows a landlord to request that the Secretary investigate whether the tenant has caused or permitted "intentional" or "negligent" damage to the property. This provision then sets out certain processes for the application and investigation processes. If, as a result of the investigation, the Secretary is satisfied that the tenant intentionally or negligently damaged the property then

the Secretary is permitted to make certain orders to rectify or compensate the landlord for the damage.

Unfortunately, these current provisions only provide the landlord with recourse against acts done to the property by the tenant as opposed to damage caused by a third party perpetrator either invited or when trespassing onto the property. REINSW recommends that a provision similar to section 65B of the Act but relating to acts committed by a third party perpetrator be inserted into Division 5A. This would allow the landlord to make an application to the Secretary requesting a similar investigation into a domestic violence incident. A landlord could also apply to a government held fund to be, prima facie, reimbursed for the property damage or insurance excess pending resolution of the investigation so that they wouldn't have to wait for any investigation to conclude before being reimburse for the damage or excess.

Alternatively, REINSW considers that such provisions could sit within Part 10, Division 1 of the Act which deals with the powers of investigators in enforcement proceedings.

### **3.3 Summary**

REINSW believes that if appropriate processes were put in place to ensure that landlords were not left out of pocket in circumstances where a perpetrator of domestic violence damaged their property, it would encourage them to accept more tenancy applications from victims of previous domestic violence. This, in turn, would mean that it is easier for persons fleeing domestic violence situations to find secure shelter and take steps to re-build their lives. It would also reduce the number of victims of domestic violence in temporary shelters, thus easing backlog where there are insufficient beds or resources for the demand. REINSW believes that such measures could not only prevent rates of homelessness amongst victims of domestic violence from increasing, but would allow the private housing sector to play an active role in supporting victims of domestic violence to find settled and safe private accommodation.

## **4. CONCLUSION**

REINSW makes these recommendations in the hope of assisting Government with their statutory review of the domestic violence provisions within the framework of the residential tenancies legislation. Since the commencement of these provisions, REINSW has worked with the Domestic Violence Statutory Review Sub-Committee to discuss the practical issues arising from their implementation and believes that these provisions could benefit from further clarity and guidance on the issues discussed in this submission.

REINSW appreciates the opportunity to provide this submission and would be pleased to discuss it further.

Yours faithfully



Tim McKibbin  
**Chief Executive Officer**