

We produce this paper to assist Members of Parliament in their consideration of the *Better Regulation Legislation Amendment Bill 2019*. We generally support the passage of the bill with some amendments to the clauses relating to the *Residential Tenancies Act 2010*, and acknowledge the NSW Government's responsiveness to consultation on the matters within.

### **1.10 Residential Tenancies Act amendments**

#### **[1]: Section 8 Agreements to which Act does not apply**

We prefer the substance of agreements determine coverage, noting for instance the ongoing exclusion issues created by section 10. We consider this part of the Short Term Rental Agreement framework and will consider its impact as part of the proposed 12 month review.

Though the bill attempts to draw a line around agreements where the contract is not for the purpose of a principal place of residence, we are concerned about the possibility of tenancies being described as Short Term Rental Agreements with the intention to evade the *Residential Tenancies Act 2010*. This is particularly for Parliament as some specifics of coverage under the meaning of section 54A of the *Fair Trading Act 1987* is not yet finalised. We propose a narrowing to include only functionally fully furnished premises. We believe this is consistent with the intended target premises and agreements and will help to avoid unintended exclusions.

#### **Recommendation:**

Amend clause [1] to read

##### **[1] Section 8 Agreements to which Act does not apply**

Insert after section 8(1)(ba)–

(bb) short-term rental accommodation arrangements, within the meaning of section 54A of the *Fair Trading Act 1987*, under which the person is given the right to occupy the residential premises to which the arrangement relates does not occupy the premises as the person's principal place of residence and the premises are provided fully furnished,

#### **[2] to [6]: miscellaneous clauses**

We have some reservations about the operation of aspects of these clauses, and encourage Parliament to consider the forthcoming *Residential Tenancies Regulations 2019* at the appropriate time. At this time we have no objection to these clauses, and recognise the attempt to solve some wicked problems in the current legislation.

#### **[7] to [14] except clause [12]: Misc. Domestic Violence provisions**

We support these clauses as written with an additional recommendation to the definition of competent person.

In general we support efforts to assist medical practitioners feel comfortable making the declaration under Section 105C(2)(d) in line with their other professional obligations. We are concerned though that this approach furthers an apparent misapprehension by some medical practitioners that they are making a quasi-judicial finding of fact. This contrasts with what we consider the intent of Parliament that they are acting to confirm the expressed or implied experience of the victim. This distinction should be stressed in training materials.

We do note that professionals working in the domestic violence sector may be able to more easily and capably make these declarations without ongoing need for legislative reform.

We recommend an amendment expanding the list of competent person in line with repeated advice of Women's Legal Services, ourselves and others, most recently in our joint submission on this point<sup>1</sup>. We also consider this to be in line with the original intention of the policy that victims of domestic violence have options to move from an unsafe environment without being forced to engage with the justice system.

We recommend the lists reflect other similar frameworks including Department of Immigration and Citizenship, with additions to recognise the experiences of Aboriginal or Torres Strait Islander people and expanded.

**Recommendation:**

Amend s105A to include in the definition of competent person to include

- medical practitioners,
- other health workers (Aboriginal and Torres Strait Islander specific health workers, registered nurses or midwives, dentists, drug and alcohol and mental health workers),
- child protection workers,
- domestic violence specialist workers and sexual assault specialist workers,
- social workers,
- psychologists,
- school counsellors and school principals,
- community access workers,
- Aboriginal Corporations registered by the Office of the Registrar of Indigenous organisations,
- independent disability advocacy and representative organisations,
- tenancy and homelessness/housing services workers,
- counsellors approved by Victims Services

**[12]: Section 105H False or misleading information**

We are concerned that this hefty penalty (by the standards of the Residential Tenancies Act 2010) is aimed squarely at victims of domestic violence and their supporters, such as their family. We believe it effectively replicates s105H(1) which ensures both competent

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<sup>1</sup> Women's Legal Service NSW et al, (2019) *Residential Tenancies Regulation 2019* accessed at <https://www.wlsnsw.org.au/wp-content/uploads/Joint-submission-in-response-to-Residential-Tenancies-Regulation-2019-f.pdf> 5th November 2019

persons and survivors of domestic violence would not make false or misleading statements.

It may act as a barrier to victims of violence people speaking to a competent person for fear of being accused by a perpetrator of false and misleading statements and attempting to essentially weaponise Fair Trading's enforcement powers to prevent victims from discussing the violence. Given the circumstances of domestic violence are often traumatic is understandable that details may be incomplete, and it may be hard to surmise whether this incompleteness was knowing or not.

We are concerned this provision will diminish this Government's good work in ensuring victims of domestic violence are not trapped in unsafe living environments. If the requirement shifts in this way we recommend that the section refers to instances of wilfully misleading a competent person. This will ensure that it acts to punish people who acted with the intention of misusing the system, rather than punishing people who may misspeak during a traumatic episode in their life. We believe this to be consistent with the intention of the Government's policy.

**Recommendation:**

Insert a conditionality that the person is acting to wilfully give false information. For example,

(2) A person must not wilfully give a competent person information that the person knows, at the time of providing the information, is false or misleading in a material particular for the purposes of the competent person making a declaration under section 105C(2)(d).

Maximum penalty—100 penalty units or imprisonment for 2 years, or both.