
From: [REDACTED]
Sent: Monday, 12 July 2021 12:17 PM
To: Community Support and Services Committee
Subject: Submission re Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021

Committee Secretary Community Support and Services Committee Parliament House George Street Brisbane Qld 4000

Dear Committee,

Thank you for the opportunity to make this submission.

My name is John Drury, and I am an Owner/Investor in Brisbane QLD. I write to the Committee regarding the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021

The current housing situation is well documented throughout Australia, and New Zealand. Regulating rent increases and amounts is not the solution to assisting tenants. Increased housing is the solution and incentives to invest to provide the housing needed. The Government has committed to increased housing however that will provide only part of the solution.

Limit rent increases to once every 24 months and by no more than CPI per year, including if there is a period for which the property is not rented or if current tenants move out and new tenants enter on a new lease.

Regulating rents and when rents can be increased will lead to investor concern, scarcity and looking to diversify in other free markets. This is the worst-case scenario. To be fair and balanced, and to deal with any unintended consequences, leaving status quo is recommended. The Residential Tenancies and Rooming Accommodation Act (RTRA Act) has provisions in place for rent increases during existing fixed term tenancy contracts, plus periodic tenancies. The tenant has ability to act and if need, apply to Tribunal (QCAT) to decide if a rent increase is excessive. (Sections 91 and 92). Section 94 allows for rent to be increased in a six month period only.

For fixed term tenancy agreement contracts that are renewed and effectively enter into another fixed term contract (known as lease renewals), section 71 adequately allows for tenants to seek assistance if they believe any rent increase is excessive.

There are adequate provisions in place in the legislation without need for further regulation.

Allow tenants to make minor modifications to a rental property without first obtaining the landlord's consent.

Section 217 to 219 of the RTRA Act currently cover tenants making fixture or structural changes to the property. There is no need to further regulate as these provisions adequately cover the rights of either party in this instance.

Give tenants the right to keep a pet unless the lessor applies successfully to the Queensland Civil and Administrative Tribunal (“the Tribunal”) for an order refusing the pet on reasonable grounds.

The provisions in the Housing Legislation Amendment Bill 2021 regarding pets are far more practicable and reasonable than this Bill. So many additional factors must be considered for this matter such as what is included in the Housing Legislation Amendment Bill including relevant laws including local and body corporate laws.

Support parties to residential leases reach agreement about renting with pets.

In essence, the proposed provisions appear to have reached a reasonable and balanced approach for all parties. The only concern is “if the pet is not a type of pet ordinarily kept inside, a condition requiring the pet to be kept outside the premises” from page 41 of the Explanatory notes. Who determines the type of pet not ordinarily kept inside? This is open to dispute and needs to be clarified.

Improve lease security by removing the ability for “no grounds” evictions or evictions for sale contract by the lessor, and replacing these provisions with two new grounds for a notice to leave, being:

- Occupation by the property owner or the owner’s close relative - Major renovations to be made to the property - Vary minimum notice periods for a notice to leave, including: - 6 months’ notice for owner/ relative occupation and major renovations

An unintended consequence which appears to not have been considered is Landlord insurance and risk. Most landlord insurance policies provide no, or limited coverage for periodic tenancies. Common practice of industry since the notice to leave without grounds provision was increased to two months in 2009 is for lessors to be contacted by their agents around 2.5 to 3 months prior to a fixed term agreement contract expiring. The only reason this best practice procedure occurs is in the event the lessor wishes for the tenancy contract to end at the end of the fixed term agreement, and the two months’ notice can be provided to the tenant.

The Regulatory Impact Statement (part of the 2018/209 review) notes Queensland has some of the highest fixed term tenancy contracts in Australia. The reason this would long be the case is due to security of all parties, best practice and particularly, landlord insurance. If a tenant is offered a new agreement contract (lease renewal), and refuses to enter into a lease renewal, the tenancy reverts to a periodic. This leaves the investor in a serious position of risk due to reasons noted above; most lessor insurance policies provide limited and no coverage in the event of loss if a tenancy contract is periodic. Due to insurance and management of risk and security, tenants may be given a notice to leave without grounds if they do not wish to enter into a new tenancy agreement (lease renewal).

Most tenants are good people, as are most investor lessors and agents. Bad things happen to good people meaning if the tenant does not want to enter into a lease renewal agreement, as they want the flexibility of a periodic lease, and the lessor does not have a proposed prescribed reason to end the tenancy, the investor is left in a dangerous position if the tenant situation and life changes. Examples include addiction, job losses, relationship dispute as opposed to violence and more. In the event the good tenancy ‘goes bad’, and the lease is periodic, there is great risk of loss to the investor.

There are genuine concerns investors may leave the market due to their loss of right to end a tenancy contract for their asset without grounds. This is a possibly the Government cannot find afford to risk, given supply and demand drive rental market price, plus, the lack of social housing and homelessness. All parties will suffer should the removal of without grounds proceed.

The solution to the minority of lessors who the Government call the 'retaliatory and revenge eviction' is to introduce a penalty unit provision if a tenant is provided a without ground notice in breach of section 291, with section 292 allowing for tenant to make complaint to the RTA if there is an alleged breach of the lessor.

My understanding is Tenants Queensland have long expressed concern regarding section 292 in the tenant must 'action'. The action being applying to tribunal within 4 weeks of being given a notice to leave and it is thought to be retaliation to a tenant utilising their rights, such as issuing a breach to lessor for alleged breach of their maintenance obligations under section 185.

The option of introducing a penalty for the issuing of a notice to leave without grounds is a win for all parties; and provides the tenant an effortless cost-free option of complaining to the RTA for review of the notice to leave without grounds given in breach of section 291. The RTA should have the option of setting the notice aside, plus opposing a penalty if upon their usual investigation procedures finds the lessor is in breach.

There may be administration burden for the RTA; however, this should not deter the Government consideration given the serious risks involved for all parties should notice to leave without grounds be removed from the legislation as noted above. Given the number of QCAT decisions relating to retaliatory evictions in the last ten years, a substantial administration burden is not expected to occur for the RTA. This is a matter that could be reviewed in the years to come. The Government can fix this so-called widespread industry practice which is greatly disputed by introducing a penalty unit offence and ability to set aside a notice to leave without ground if it is found there has been a breach by the lessor of section 291.

Section 291 of the RTRA Act clearly sets out when a notice to leave without reason cannot be given to a tenant.

Section 292 protects tenants who believe a lessor has contravened the provision.

Therefore, there is no need to add increased legislation unnecessarily.

Disclosing particular information

In relation to Clause 32 from the Explanatory notes states the following.

insert a new section 57A Offer of residential tenancy must disclose particular information. New subsection 57A(1) states that a lessor or agent must not advertise or offer a residential tenancy unless the information prescribed by regulation is stated or disclosed in the advertisement or offer. A maximum penalty of 20 penalty units applies. New subsection 57A(2) clarifies that a lessor or agent must not accept a rental bond from a tenant of a premises if the residential tenancy for the premises was advertised or otherwise offered in contravention of subsection 57A(1). This is for consistency with existing section 57 requirements. A maximum penalty of 20 penalty units applies. New subsection 57A(3) provides that section 57A does not apply to a person merely placing a sign on or near premises advertising that the premises are available for residential tenancy".

There is no draft regulation available in the Housing Bill to comment on what the regulations proposed are to comment or provide feedback.

Investors should always have the right to lawfully terminate a tenancy without reason. If investors comply with legislation, a lessor should have the right of possession without having to state a reason. Tenants are protected if lessors act outside the legislation. This is fair and balanced for all parties.

Please contact me if any additional information is required, and or any questions are raised as part of my submission.

Yours sincerely
John Drury

