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13 July 2021

Mr Karl Holden, Committee Secretary
Community Support and Services Committee
Parliament House
George Street
Brisbane Qld 4001

By email: **CSSC@parliament.qld.gov.au**

Dear Sir

Submission in response to the *Housing Legislation Amendment Bill 2021*

The Real Estate Institute of Queensland Limited ("**REIQ**") welcomes the opportunity to provide this submission in response to the *Housing Legislation Amendment Bill 2021* ("**Bill**").

The REIQ has been the peak professional body for the Queensland real estate profession for 101 years and represents approximately 15,000 individual real estate practitioners across 1,450 agency members. REIQ members operate across the real estate spectrum, including residential property management and sales, commercial and industrial leasing and sales, business broking, auctioneering and buyer's agency. The REIQ is recognised as the leading authority on real estate in Queensland.

Executive Summary

The REIQ supports the key objectives underlying the proposed reforms. In particular, we support reforms that ensure all Queensland rental properties are safe, secure, and meet minimum housing standards. In addition, we support the strengthening protections for people experiencing domestic and family violence.

The REIQ does however, have serious concerns about some of the proposed reforms as they erode the fundamental rights and decision-making powers of lessors in respect of material matters affecting their properties. The impact of these changes would see current investors withdrawing from the permanent rental market and the introduction of disincentives to future investment. The combination of these factors would detrimentally impact the residential rental sector, resulting in reduced housing supply for renters and consequentially increased rents and a greater strain on the rental sector as a whole.

In addition to the above, we are also concerned that some of the proposed reforms lack clarity and/or fail to take into account relevant legal and practical considerations.

The recommendations made in this submission take into account the practical and commercial realities of tenancy relations and seek to ensure that a fairer balance is achieved between the rights of both tenants and lessors.

Background

The 2019/20 Annual Report of the Residential Tenancies Authority ("**RTA**") confirms that 88.5% of Queensland's rental properties are managed by real estate agents and onsite managers. Accordingly,

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the REIQ is well placed to provide valuable insights into the current operation of tenancy laws, and the potential consequences and benefits of proposed future reforms.

The REIQ is ideally positioned to provide an objective and independent viewpoint on the topic of tenancy reform. Unlike other stakeholders, the REIQ is not exclusively affiliated with eitherthe tenant or lessor in a tenancy relationship. The REIQ has a long and proud history of working effectively with both tenant and lessor aligned stakeholders and we are uniquely positioned to provide insights into the need for a balanced regulatory framework in this most critical of areas.

According to the housing occupancy figures from the Australian Bureau of Statistics ("**ABS**"), around 36% of Queensland's population rent. Meanwhile, rental demand is expected to rise based on historical rental trends and population statistics. These statistics demonstrate the importance of ongoing housing supply to meet both current and future rental demands. As over 90% of Queensland's rental housing is provided by private property owners[1], private investors occupy a crucial role in housing Queenslanders.

A regulatory framework that supports everyone

Given the current and anticipated rental needs of the community, it is critical that tenants and lessors have access to a fair and balanced legislative framework that provides sufficient support and protection to both parties. The REIQ supports rental reforms that are designed to create better security, safety and certainty forboth tenants and lessors. This is vital to the well-being and ongoing sustainability of our community and the rental sector.

Our submission focusses on the key reforms outlined in the Bill.

[1] Australian Bureau of Statistics, 4130.0 Housing Occupancy and Cost, 2017 – 2018 report, https://www.abs.gov.au/ausstats/abs@ nsf/mf/4130.0; Queensland Government, Open Data Portal, Rental Bond Data, 2016 Census QLD (STE): https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/3?opendocument; 2011 Census QLD (STE): https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/3?opendocument, 2006 Census QLD (STE): https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2006/quickstat/3?opendocument.

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1. ENDING TENANCIES FAIRLY

According to the Explanatory Notes, the Bill seeks to improve transparency and fairness in relation to ending tenancies. This has been achieved through the introduction of a series of new grounds for lessor initiated terminations. Those grounds are as follows:

1. a fixed-term tenancy agreement is due to expire;
2. the property is to be vacated so that redevelopment (such as conversion from a house into flats) or demolition of the property can be undertaken;
3. the property is to be vacated to allow significant repair or renovation works to be undertaken;
4. the property is subject to a change of use (such as changing from long-term accommodation to short-stay accommodation or holiday lettings);
5. the owner or their immediate family needs to move into the rental property;
6. the rental property has been sold and vacant possession is required; and
7. the property is to be vacated so that the lessor can prepare the property for sale.

Whilst the REIQ approves the abolishment of 'without grounds' terminations for fixed term tenancies and its replacement with a new ground (item 1 above), we are unequivocally opposed to the proposed abolishment of current periodic tenancy terminations rights. The introduction of the new termination rights is purported to be based on the need for improved transparency and improved certainty for tenants. On that basis, periodic tenancies should be quarantined from this process. Due to their very nature, periodic tenancies offer no certainty. They are 'rolling' agreements and therefore, an update to periodic termination rights is not justified or warranted.

A periodic tenancy has no end date and can be terminated at any time. Periodic tenancies are usually established when fixed term tenancy agreements are not terminated and they 'roll into' a periodic agreement. Periodic tenancies tend to be favoured by tenants (or lessors) who seek flexibility and do not want to be locked in for a fixed term due to personal circumstances or preferences. As noted on the RTA website: *"at any time, the tenant and lessor/agent can agree to end the periodic agreement"*. Tenants may give 14 days' notice and lessors must give two months' notice to end a periodic tenancy.

It is an absurd proposition that lessors would be unable to end a periodic tenancy agreement on the same terms as they currently can under *Residential Tenancies and Rooming Accommodation Act 2008* (**"the Act"**). Effectively, the Bill is proposing to give tenants a unilateral right to remain in the tenanted premises for as long as they wish. Conversely, the Bill allows the tenant to terminate the periodic tenancy with only 7 days' notice. Inexplicably, this creates a higher form of security for tenants who are in a periodic agreement over those who are in a fixed term tenancy agreement.

This proposed reform, in our view, would create in perpetuity leases that provide unilateral termination rights to tenants. This would prevent lessors having control in relation to the length of tenancy agreements and would severely impact the lessor's right to tenant selection. We also submit that this may create a registrable interest over the property in question. Not only would this create a series of expensive and complicated registration requirements, but the existence (or potential existence) of a registrable interest recorded on the title of an affected rental property, has the potential to complicate the ability of the owner to sell that property. Equally, it is likely that a prospective owner of a rental property in Queensland may be frustrated in their efforts to obtain finance for that purchase in circumstances where a bank's security may be made subject to a registerable interest of a tenant occupying that property.

In addition, the Bill strips the lessor of the right to end a periodic tenancy agreement with a minimum of 4 weeks' notice due to the sale of the premises. Again, lessors will often allow tenants to remain in a periodic tenancy agreement indefinitely while they consider selling their rental premises.

The erosion of the lessor's right to simply end a period tenancy with required notice (as is currently permitted) would result in the majority of Queensland periodic tenancy agreements being terminated. It would also result in lessors offering only fixed term tenancy agreements. The 'risk' of being locked into a potentially never-ending tenancy would see lessors opting for fixed term tenancy agreements that enable them to retain control over a material contractual term. In this case, the ability to specify the length of a tenancy agreement.

Lessors and lessor's agents would also face significant risks if they fail to issue a notice to leave at least 2 months prior to the end of the date of the fixed term. In this case, agreements would automatically become periodic and therefore termination rights would be severely restricted, as outlined above. Accordingly, it is likely that notices to leave will be issued more readily to counter this risk.

This reform must be urgently reconsidered. We believe this reform would result in abolishment of periodic tenancies from the Queensland rental landscape. Periodic tenancies should be distinguished from fixed term tenancy agreements. The current periodic tenancy termination rights should remain in place. Similarly, there is no need to introduce new termination rights in relation to them. Periodic tenancies play an important role in the Queensland rental landscape. They offer an important solution to tenants and lessors seeking flexibility with 'no lock in' terms.

Chapter 5, Part 1, Division 11 - Offences

The REIQ does not support the Division 11 offences associated with establishment of new lessor termination grounds. They are excessive and unreasonably restrictive and unjustified. These provisions unreasonably seek to regulate the manner in which a lessor can use their asset and seek to derive income from it. We submit that excessive regulation of this nature will undermine the appeal of property investment and drive investors to other asset classes where they have greater freedom to determine how they manage their asset.

The Government has promoted the establishment of additional grounds for lessors to end a tenancy:

- a fixed-term tenancy agreement is due to expire
- the property is to be vacated so that redevelopment or demolition of the property can be undertaken
- the property is to be vacated to allow significant repair or renovation works to be undertaken
- the property is subject to a change of use
- the owner or their immediate family needs to move into the rental property
- the rental property has been sold and vacant possession is required
- the property is to be vacated so that the lessor can prepare the property for sale

Notably, each of the above grounds require the lessor to provide at least 2 months' notice and, in any event, the grounds cannot be used before the contracted end date of a fixed term tenancy. Given those parameters, it is difficult to understand the justification for the restrictive and punitive nature of the Division 11 offences.

In reality, to avoid the risks associated with Division 11 offence, lessors will exclusively rely on 'the a fixed-term tenancy agreement is due to expire' grounds to terminate a fixed term tenancy.

It is disappointing that these new grounds for termination have been touted as a form of expanded lessor rights when they are, from a practical perspective, pointless in a fixed term tenancy context.

As outlined in Section 1 – Ending Tenancies Fairly, we do not support the application of these new grounds in relation to periodic tenancies either. Periodic tenancy agreements should be terminable based on the existing grounds for termination.

If the offence provisions remain in the current form (which we oppose), we propose, at a minimum, the following amendments to ensure the offence provisions are more reasonable:

a. Section 365B prevents a lessor from reletting the premises for at least 6 months after issuing a notice to leave if premises are being sold (s286). It is unreasonable to prevent an owner from reletting their property and earning an income from it for 6 months despite a genuine attempt to sell the property. We submit that the time limit should be abolished. The requirement to establish a defence under section 365B(2) satisfies the intention of the Bill irrespective of the reletting timeframe. Alternatively, the timeframe should be amended to a maximum of 90 days. This aligns with the maximum appointment allowed for a residential property sale for sole or exclusive agency appointment.[2] The 90-day time limit specified in the *Property Occupations Act 2014* has been designed to align with average time on market. This is further evidence that the 6-month restriction is unreasonable.

b. Section 365D prevents a lessor from reletting the premises for at least 6 months after issuing a notice to leave for lessor occupation. Again, this is excessive and should be decreased to a maximum of 2 months. This caters for common situations where the owner or a family member is seeking to reside in the premises for a period that is shorter than 6 months. The requirement to establish a defence under section 365D(2) satisfies the intention of the Bill irrespective of the reletting timeframe.

c. Section 365C prevents a lessor from reletting the premises for 6 months after issuing a notice to leave for change of use requirements. Again, this is excessive and should be decreased to a maximum of 1 month. This allows lessors to let the premises for holiday letting purposes for less than 6 months. This is particularly relevant where lessors may wish to let their properties at peak holiday times to third parties or occasionally reside in the property for personal holiday purposes. The requirement to establish a defence under section 365D(2) satisfies the intention of the Bill irrespective of the reletting timeframe.

2. DOMESTIC AND FAMILY VIOLENCE PROTECTIONS

The REIQ supports the need for appropriate safeguards to ensure that people who experience domestic and family violence ("**DFV**") are able to leave a tenancy quickly and safely. The REIQ's commitment to this important issue has been demonstrated through our partnerships with various DFV stakeholders and our DFV related education campaigns for the real estate industry. Whilst we understand that property owners may be disadvantaged by supporting tenants who experience DFV, the seriousness of this problem, in our view, warrants special consideration. Equally, we recognise that these reforms may also put co-tenants at a commercial disadvantage.

[2] *Property Occupations Act 2014* (Qld), Section 103(2)(b)(iii).

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The REIQ supports the introduction of the following measures to assist tenants who experience DFV:

1. allowing them to end a tenancy by giving at least 7 days' notice of their intention to leave, supported by evidence prescribed by regulation;
2. providing them with a streamlined process to have their rental bond contribution refunded subject to the comments below.

If the above measures are introduced, the introduction of statutory safeguards are required to protect lessor's agents from potential lessor claims and actions. In circumstances where the vast majority of Queensland rental properties are managed by property managers, it is critical that they are adequately protected and not exposed to any form of legal action and/or claims associated with early termination by DFV victims. We recommend an express provision be inserted in the Bill which ensures the agent is not liable civilly or under an administrative process in relation to this.

Whilst the proposed DFV provisions largely achieve the objectives of the reforms, we have identified a series of issues that trigger potential legal questions and practical difficulties.

Chapter 5, Part 1, Division 3, Subdivision 2A, Section 308A and Section 308E

Although the REIQ supports the introduction of a streamlined process which allow tenants experiencing DFV to end a tenancy quickly, there are several matters associated with the 'Domestic Violence' provisions that require further consideration. These matters are outlined below.

Section 308E Effect of notice ending tenancy interest if more than 1 tenant

Term 3 of the General Tenancy Agreement Form 18a ("**GTA**") specifies that each tenant named in the residential tenancy agreement holds their interest in the tenancy as a tenant in common unless a special term states the tenants are joint tenants; and must perform all the tenant's obligations under the agreement. Furthermore, a disposition of the beneficial interest in any property, whether with or without the legal interest, to or for 2 or more persons together beneficially shall be construed as made to or for them as tenants in common, and not as joint tenants.[3]

Given term 3 of the GTA, we believe that further amendments to section 308E(3)(b) are required to avoid any potential ambiguity regarding the impact of the vacating tenant's ending of the tenancy agreement in respect of the remaining tenant/s. In particular, section 308E(3)(b) should clearly state that the rights and obligations of the vacating tenant pass to the remaining co-tenant/s. Similarly, an express provision should be made to preserve any right or liability of the vacating party immediately before the vacating tenant's interest in the tenancy (excluding matters provided for in section 308G). In this respect, we note that the Explanatory Notes accompanying the Bill provide that:

> *"This... (referring to bond refund process) .... is balanced against the obligations still imposed on the vacating tenant that they remain liable for any damage caused to the property not related to incidents of domestic and family violence and the lessor or provider can make a dispute resolution request to the Authority in these circumstances".*

We recommend that section 308E(3)(b) of the Act be drafted in a similar manner to section 244 under which deals with the death of a co-tenant. By way of example, section 308E(3)(b) would incorporate

[3] *Property Law Act 1974* (Qld), Section 35(1).

the following provisions:

1. Following the issue of a vacating tenant's notice under section 308E(1), the vacating tenant's interest in the tenancy ends; and
2. The agreement continues in force with the parties to the agreement being the lessor and the other co-tenant or co-tenants.
3. 1 and 2 do not affect, as between the vacating and the other co-tenant or co-tenants, any right or liability of the vacating party existing immediately before the vacating tenant's interest in the tenancy ended except where provided for in section 308G.

Further to the above, where the vacating tenant is a sole tenant, section 308D should also be amended to preserve any right or liability of the vacating party existing immediately before the vacating tenant's interest in the tenancy ended (except where provided for in section 308G) as outlined in item 3 above.

Payment of Bond if applicant affected by Domestic Violence

The Bill sets out a process for victims of DFV to utilise to end their tenancy agreement to claim a bond refund from the RTA. We are concerned by the lack of clarity in the Bill relating to the interconnection between the notice to end a tenancy under section 308A, the rental bond refund process and the application to the Queensland Civil and Administrative Tribunal ('**QCAT**') about the notice to end the tenancy based on DFV. In particular, we believe the Bill requires practical clarification in relation to:

- The process for ensuring the RTA does not issue a rental bond refund until the tenancy has actually ended pursuant to sections 308D and 308E;
- The process for ensuring the RTA does not refund the vacating tenant's rental bond whilst an application to QCAT is in process under section 308H;
- The impact of the rental bond refund process where the vacating tenant has received notification of the lessor's response under section 308C.

We consider that greater clarification of the above process is required to ensure that vacating tenants and lessors both understand their rights and obligations. Similarly, it is important the process followed by the RTA aligns to the intended legislative requirements.

Abandoned goods of vacating tenant

Under section 308G(2), a vacating tenant is not liable for costs relating to the ending of the residential tenancy agreement or, costs relating to goods left at the premises by the tenant. Although these domestic violence provisions were intended to largely replicate those in *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020,* we note that above exclusion of liability is new. It is not clear what the lessor's or tenant's rights are in respect of the goods left behind. We presume this is to be governed under the provisions of section 363 of the Act and there is not a unique process for tenancies that end pursuant to sections 308D and 308E. For the avoidance of doubt, if this is so, we submit that this should be added to the domestic violence provisions to avoid uncertainty.

Notices

In order to streamline processes for lessor's agents and mitigate the risk of disputes arising regarding the validity of the relevant notice, we recommend that the notices required under the following sections be prescribed by regulation:

i. sections 308C(2) and (3);
ii. section 308E(3); and
iii. section 308H(2).

3. MINIMUM HOUSING STANDARDS

Subject to some minor amendments outlined below, the REIQ supports the proposed minimum housing standards for rental properties that relate to health and safety and security matters.

Changing Locks

The changing of locks in rental properties is a serious matter for both tenants and lessors. Locks create security and protection for both tenants and lessors. Access to the property is also essential for both parties. We therefore recommend that a reasonableness requirement be added to sections 211(1)(c) and (2) allowing lessors and tenants to change locks if they "reasonably believe" this to be necessary on account of the relevant matters mentioned in the above sub-sections of section 211.

Vermin, damp and mould

Whilst we recognise that mould can be linked to structural faults that require lessor rectification, mould can also arise quickly and easily due to our climate and regular natural disaster events. As noted on the Queensland Government website: *"in northern Queensland, mould is...a wet season issue, even without floods, and is not uncommon in buildings"*[4]. In many cases, mould can be easily cleaned if properly addressed in early stages.

Under the Bill, if the property is affected by mould, the tenant may:

1. claim up to 4 weeks' rent to address the mould by invoking 'emergency repairs' provisions;
2. issue a notice of intention to leave due to a breach of minimum housing standards;
3. seek a repair order from QCAT;
4. seek compensation in connection with a repair order.

Mould is a controversial topic in tenancy relations in Queensland. Although mould caused by the tenant has been excluded from minimum housing standards, we are aware that disputes regularly arise as to the cause of mould and where responsibility rests. Additionally, mould can be very minor in nature and caused by external climate issues.

Given the above, tenants may determine they are entitled to pursue the legislative options listed in items 1-4 even where they are actually responsible for the mould or where the mould is very minor in nature (and could be resolved though basic cleaning). In such cases, it would be unjustified, in our view, to invoke the emergency repairs provision and/or issue a notice to leave.

Given the disputes that arise in connection with mould and the prevalence of mould in Queensland (particularly in some parts of Queensland), we recommend further clarification on what is meant by the property being *"free of mould"* to meet minimum housing standards.

[4] https://www.qld.gov.au/community/disasters-emergencies/recovery-after-disaster/cleaning-up/mould

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Plumbing and drainage

The minimum housing standards require rental properties to have "adequate plumbing and drainage for the number of persons occupying the premises".

We do not understand what this provision intends to regulate and what is required from a compliance perspective. We recommend that further clarification be provided and practical examples be provided.

Safe and secure housing is essential for all Queenslanders. The REIQ has always supported this principle. We agree that rental premises must meet minimum housing standards that ensure health, safety and security. It is important however, that the identified provisions outlined above are further clarified to minimise disputes and assist compliance.

Disclosure of particular information

Under section 57A of the Bill, a lessor (or lessor's agent) must not advertise or offer a property for rent *"unless the information prescribed by regulation is stated in, or otherwise disclosed with, the advertisement or offer"*. It is not clear what "information" is to be advertised (or offered). Without this, it is difficult to comment on this requirement.

In any event, we note that the information must be included in all advertisements except for on-site 'for rent' signs on-site. Depending on the length of the information, this may be impractical and potentially, expensive to incorporate. Although property portals and online advertisements are now more commonly used, printed advertisements and newspaper advertisements are also commonly used throughout Queensland when advertising property. Depending on the length of the information, it could add considerable expense to printed advertisements.

We do not consider it necessary to advertise the prescribed information in all advertisements for properties. However, we do support the giving of the information to tenants before the tenancy agreement is entered into. Currently, a range of information is to be provided to tenants at the outset of a tenancy. The prescribed information under section 57A could be added to this.

Emergency repairs

The REIQ does not support the extension of the emergency repair limit from two weeks to 4 weeks. We consider this to be excessive in circumstances where the maximum amount for bonds for general tenancies is only 4 weeks.[5] The doubling of this amount has not been justified and we cannot see any basis for this. Further, the repair limit is not capped or tiered based on weekly rent amounts. Tenants could therefore spend up to 4 weeks' rent irrespective of whether rent is $300 per week or $2,500 per week (or more). Based on the Queensland median rent in 2019/20 this permits the tenant to spend almost $1500 on emergency repairs[6]. Where the weekly rent is more than $370, the amount could be far higher.

In addition, we do not see the need for this substantial increase in circumstances where tenants are being afforded an array of additional protections under the Bill which include, the introduction of minimum housing standards, a right to issue a notice to leave for various grounds including a breach

[5] For general tenancies, if the rent is $700 or less per week, the maximum bond amount is 4 weeks rent. If the weekly rent is higher than $700, the amount of bond may be negotiated.
[6] RTA Annual Report 2019/20

of minimum housing standards, the right to seek a repair order and compensation and the right to make an application for termination based on misrepresentation.

Under subsection 216(3), it is proposed that the residential tenancy agreement or written notice *must* state the name and telephone number of the nominated repairer, and whether the nominated repairer is the tenant's first point of contact for notifying the need for emergency repairs. Given that these details must be made available to the tenant, it is important that the tenant is required to use reasonable attempts to first notify the lessor or lessor's agents of the emergency repairs before they can contact the nominated repairer in relation to the emergency repairs.

In circumstances where almost 90% of rental premises in Queensland are managed by a lessor's agent[7], this is a practical and necessary solution to minimise disputes about emergency repairs. Agents are far better placed to deal with the coordination and management of emergency repairs. Given their profession, they will have better access to a range of repairers (if an alternative to nominated repairer is required) and be in a position to negotiate a faster outcome at more competitive rates.

We therefore recommend that section 216 of the Bill and section 218 of the Act be amended to implement the requirement that reasonable attempts to first notify the lessor or lessor's agents of the emergency repairs before they can contact the nominated repairer in relation to the emergency repairs.

Section 219A allows an agent to arrange for a suitably qualified person to carry out emergency repairs up to the proposed 4 week emergency repair limit. If the agent does so, subsection (2) allows the lessor's agent to pay for the emergency repairs and to "make deductions from payments of rent, up to the cost of the repairs, before disbursement of the payments to the lessor's account". Subsection (3) requires the agent to inform the lessor of the action as soon as practicable after making the payment. The intent of this section is presumably to give agents the same authority as that extended to tenants. In our view, section 219A fails to do so for the reasons outlined below.

In Queensland, the Agents Financial Administration Act 2014 ("**the AFA**") governs real estate trust accounts. Under the AFA, the payment of emergency expenses can only be made if following three conditions are satisfied:

1. it is drawn against an amount held for the transaction;
2. it is drawn when the expense becomes payable;
3. the agent is authorised by the client (in this case, a lessor) to incur the particular expense (authorisation is required in the form of a Property Occupations Act Form 6 authority).

A breach of these requirements attracts a penalty of up to $27,570 or two years' imprisonment.

Accordingly, section 219A can only be invoked where the lessor properly authorises the emergency repair limit in the authority mentioned at item 3 above. Given the difficulty agents experience seeking even two weeks' rent for emergency repairs, it is very unlikely that lessors will authorise a 4 weeks' emergency repair limit.

In any event, as previously stated, we do not consider that a 4 week limit is justified or warranted.

[7] The 2019/20 Annual Report of the Residential Tenancies Authority ("**RTA**") confirms that 88.5% of Queensland's rental properties are managed by real estate agents and onsite managers.

If a new 4 week emergency repair limit were to be introduced for tenants (which we oppose), lessor's agents must be given the same authority limit on the same statutory terms as tenants. For the reasons set out above, this would require an amendment to the AFA permitting agents to incur and pay for the emergency repairs even in the absence of the normal required lessor authority. In addition, the AFA would need to provide the agent with statutory protection to ensure the agent is not liable civilly or under an administrative process in relation to the payment in the absence of written lessor authority.

It is our position that the current 2-week emergency repair limit is sufficient and should not be increased to 4 weeks.

Repair orders

A tenant (or representative entity) may bring an application for a repair order in relation to emergency repairs. As outlined above under 'Emergency Repairs' we submit that before an application for a repair order can be made under section 221(1)(c)(i) for emergency repairs, the tenant must make first make reasonable attempts to contact the lessor or lessor's agent. Given the seriousness of a repair order, this is entirely reasonable and essential.

The repercussions of a repair order are serious in nature. On that basis, we welcome the inclusion of an extension of time to comply with a repair order on various grounds (s221B). Under section 221C(1), penalties apply for non-compliance with a repair order unless a lessor has a "reasonable excuse". Accordingly, section 221B(2) should include "reasonable excuse" as a prescribed reason for an application for an extension of time. It appears, the penalties for breaching a repair order commence immediately and therefore should be suspended whilst the application is in process. If the application is not successful, the imposition of penalties may commence following QCAT's decision.

Finally, we note that under section 221A(4)(f), QCAT is given the right to grant a tenant "compensation for loss of amenity". In circumstances where QCAT may order rent reduction until the relevant repairs are carried out to the standard decided by QCAT (section 221(4)(e)), we see no need to include further compensation rights.

4. RENTING WITH PETS

The REIQ supports the introduction of measures to encourage pet approvals. To that end, we welcome the exclusion of pet damage from fair wear and tear and the allowance of conditional pet approvals. We do not however, support the introduction of specific pet approval constraints which only enable pet approval to be withheld on the proposed prescribed grounds.

Damage caused by pets can lead to significant repair and renovation billsand property values can be significantly impacted by pet damage. The REIQ has encountered many stories of pet related property damage. The most common examples include floors and carpets having to be replaced due to cat and dog urination and faeces, cupboards and cabinetry having to be replaced due to excessive pet chewing and scratches, walls having to be repainted due to excessive marks and damage and gardens and grass having to be replanted due to holes and damage.

Notably, landlord insurance does not automatically nor commonly cover accidental or other damage caused by pets. Many insurance policies do not respond to pet related damage. Although some policies include 'pets' in their coverage, this is often to cover the cost of the loss or injury of the pet, not the damage caused by them. Even where pet damage is included, technical wording within

insurance policies may leave owners without protection. Given the above matters, owners should retain the right to decline a pet request for reasons outside those listed in 184E.

In the alternative, if the grounds listed in 184E are those that are maintained, we submit that clause 184E(1)(c) be amended to state that the lessor may withhold consent if:

- keeping the pet is likely to cause damage to the premises or inclusions that could not be properly repaired or restored to the same standard, quality or characteristic as it was at the outset of the tenancy; or
- keeping the pet is likely to cause damage to the premises or inclusions that could not practicably be repaired or replaced for a cost that is less than the amount of the rental bond for the premises.

The above alternative wording for section 184E(1)(c) is designed to cater for situations where damage cannot be properly rectified due to the unavailability of a 'match' or a 'like for like' repair or replacement. Examples may include traditional character houses that contain features and inclusions that can no longer be sourced.

The REIQ understands the importance of pets to many Queenslanders, and the potential health and wellbeing benefits associated with pet companionship. Allowing a tenant to keep a pet can also be beneficial to owners as it may encourage positive tenant behaviour and longer tenancy periods. We therefore support the introduction of additional reforms that encourage pet ownership and provide owners incentives to consent to pets. In particular, the introduction of pet bonds. Feedback from lessors and property managers indicates that the average 4 week bond is often insufficient to cover substantial damage that may be caused by pets. The Snap Poll in the Open Doors Report noted that 75% of respondents said that a pet bond would assist tenants and property owners reaching an agreement[8].

The REIQ is opposed to the provisions contained in section 184D which deem lessor approval if the lessor does not respond to a pet request within 14 days and/or if the lessor's response does not comply with subsection (3). The time period is not reasonable and does not take into account that the lessor or lessor's agent may need to conduct certain due diligence before responding (for example, seeking approval as required under body corporate by-laws or investigating applicable local government restrictions). In any event, we oppose the principle of deemed consent. We submit that lessors should retain the right to deny a pet approval.

We are also concerned about the impact of deemed consent where the tenant has failed to take into account the matters outlined in section 184E which may be relevant reasons for not being able to keep a pet. Disturbingly, the Bill is silent on the lessor's rights where a pet is being kept in the premises based on deemed consent (under s184D) but it is in contravention of body corporate by-laws or local government laws or other applicable rules or laws. It is essential that legislative process is created to deal with this situation.

The Bill allows lessors to impose certain conditions on pet approvals. This includes fumigation at the end of the tenancy. We support this however, we are concerned that under section 184F(4), a tenant may meet the fumigation requirements under subsection (2) "*if the fumigation and cleaning are done to a standard ordinarily achieved by businesses selling those services".* This provision enables a tenant to potentially conduct a 'DIY' fumigation using store bought products and/or hiring equipment.

[8] Final Report for Queensland Department of Housing and Public Works. P 18

According to Queensland Health "*most pesticides and fumigants are inherently hazardous and the risk to human health and the environment depends on how safely they are handled and used*" [9]. Given that fumigation could potentially cause harm to humans, pets and the environment, it is essential that professionals are engaged to conduct the fumigation and that evidence of same is required. We submit that section 184F must be amended to require this. Further, subsection (4) should be omitted.

Under section 184D(1) the tenant may request in the approved form, the lessor's approval for the tenant to keep a stated pet at the premises. The lessor is only required to respond in wring to the request. Section 184D(4) allows for deemed consent if the lessor's response does not comply with subsection (3). Given the potential consequences of a non-compliant response, we recommend that the lessor's response be required in an approved form to minimise the risk of a non-compliant response.

Under section 571, the transitional arrangements applying to pets appears to be inconsistent and requires clarity. This provision states that if, before the commencement of the section, a lessor approved a pet being kept at premises, the approval continues in effect for the pet and premises. However, subsection (3) states that a condition of the approval is of no effect to the extent it is inconsistent with the Act (as amended and from commencement). The REIQ's position is that that any pet approvals (and relevant conditions) should continue to apply if/when the legislative amendments commence. Similarly, any existing agreements which state that no pets are permitted should also prevail.

5. OTHER RELEVANT MATTERS

Misrepresentation

Section 312A of the Bill allows a tenant, within the first 3 months of occupying the premises under a residential tenancy agreement, to apply to QCAT for a termination order for misrepresentation about matters outlined in 312A(a) to (e). This is an additional right afforded to tenants under the Bill which also provides tenants with the ability to issue a notice of intention to leave (with 7 days notice) under s307A(1)(a) to (d). Given that the latter right is limited to 7 days, we do not understand the justification for allowing the tenant up to 3 months to apply for a termination order for misrepresentation. We recommend that Section 312A(1) be amended to 14 days. This provides a tenant sufficient time to familiarise themselves with the property and discover whether a lessor or lessor's agent has provided any misleading information about the premises or its inclusions.

Miscellaneous matters in Schedule

We have identified a potential error in Schedule 1, Part 2, Division 1 under 'Notices of intention to leave'. 'A Notice of intention to leave because of condition of premises' features a corresponding notice period of 14 days after the notice is given to the lessor however, section 307A states the notice period if 7 days.

Schedule 1, Part 2, Division 1 also appears to be missing a prescribed 'Notice to leave for serious breach' under section 297B of the Bill.

Conclusion

[9] https://www.health.qld gov.au/__data/assets/pdf_file/0022/444253/pest-mgt-technician-know.pdf

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Rental law reform is complex. Residential Tenancy laws must ensure that rental properties are safe and secure and meet required standards and that tenants are protected from unfair practices and exploitation. Meanwhile, lessors must retain the right and freedom to make material decisions relating to their property, its management and its use.

Access to rental housing is directly linked to supply. The vast majority of Queensland's rental housing supply is provided by private investors. Current and future supply of rental accommodation therefore relies on a fair and balanced legislative framework.

The REIQ has serious concerns about some of the proposed reforms as they erode the fundamental rights of lessors. The impact of these changes would see current investors withdrawing from the permanent rental market and the introduction of disincentives to future investment. The combination of these factors would detrimentally impact the residential rental sector, resulting in reduced housing supply for renters and consequentially increased rents and a greater strain on the rental sector as a whole.

The recommendations made in this submission provide a fairer and more balanced approach to tenancy reform. These recommendations align with the objective of providing more safe and secure housing and greater certainty and transparency to tenants, whilst still recognising the importance of lessors and the protection of their rights.

We confirm that no part of this submission is confidential with the exception of the writer's private contact details.

If you would like to further discuss any aspect of this submission, please do not hesitate to contact me directly via email: [redacted] or by telephone on: [redacted]

Yours faithfully

Antonia Mercorella
Chief Executive Officer