

Submissions in response to the Community Support and Services Committee's Inquiry into the *Housing Legislation Amendment Bill 2021*

About LawRight

LawRight is an independent community legal centre and the leading facilitator of pro bono legal services in Queensland, directing the resources of the private legal profession to increase access to justice.

About the Community and Health Justice Partnerships

LawRight's Community and Health Justice Partnerships were established in 2002 to provide free legal assistance and representation to vulnerable Queenslanders. The Community and Health Justice Partnerships collaborate with housing, health, social work and other community professionals to deliver comprehensive, holistic support which meaningfully improves the lives of our clients and reduces barriers to housing.

Many of our clients experience several forms of disadvantage including mental illness, severe financial hardship, homelessness, addiction, physical or intellectual disabilities and complex family backgrounds.

In the 2019/2020 financial year, LawRight operated 15 Community and Health Justice Partnerships throughout Queensland, providing ongoing legal assistance (casework) to 424 vulnerable people to resolve 706 matters.

LawRight's Court and Tribunal Service provides advice, task assistance and representation for vulnerable tenants involved in disputes in the Queensland Civil and Administrative Tribunal (QCAT).

Summary of submissions

Our experience in assisting clients who are homeless or at risk of homelessness demonstrates the importance of a tenancy framework that supports access to safe, secure and sustainable accommodation. Our submissions include direct insights into marginalised people's experiences of renting in Queensland, and some of their stories are highlighted throughout.

LawRight's experience assisting vulnerable Queenslanders to resolve tenancy disputes highlights the importance of significant reform in this area. Our submissions make a number of key recommendations:

- that there should be no provision for 'without grounds' evictions, and that all evictions should have a legitimate reason;

- that tenants should be able to make minor modifications and improvements to their property, particularly tenants who have survived domestic violence or are living with disability;
- that minimum standards should be prescribed for lighting, ventilation and privacy;
- that the proposed amendments regarding repairs and repair orders be adopted;
- that tenants are supported to end tenancies which they were misled about or which do not meet community standards; and
- that procedural issues regarding tribunal applications are made fairer for tenants.

LawRight is a member of the Make Renting Fair Alliance and supports the position taken by the Alliance. LawRight has also had the benefit of reading the submissions prepared by the Tenants Queensland and endorses these submissions.

Submissions

1. Evictions without grounds

The removal of without-grounds evictions (towards a 'just cause' evictions model) has been a key message of the Make Renting Fair Campaign, and was identified in the 2019 *Consultation Regulatory Impact Statement Review* as a critical area for reform. This review noted that residents are "hesitant to exercise their tenancy rights, including to request repairs, because they feared retaliatory rent increase or eviction". This is consistent with experiences drawn from LawRight's casework, where vulnerable tenants frequently tolerate poor treatment or conditions due to the fear of retaliatory eviction.

Lachlan's story – eviction without grounds

Lachlan has been sleeping rough for six months, since being evicted from a private rental. His eviction profoundly affected him, and Lachlan believes that his homelessness is a direct result of his asserting his rights as a tenant.

He reported two issues to his landlord: faulty plumbing leading to sewage spilling into his bathroom, and a broken window. Lachlan's legitimate requests to fix these issues were ignored, and after continued complaints he was eventually branded as a troublemaker by his landlord and evicted without grounds.

Lachlan felt that he was forced into homelessness for making reasonable complaints regarding the standard of his housing, but that he didn't have any legal avenues to challenge his eviction into homelessness.

Vulnerable Queenslanders regularly face these kinds of retaliatory evictions for requesting repairs and maintenance. Allowing landlords to evict a tenant without grounds at their end of their lease agreement will discourage tenants from asserting their rights, and undermine other protections with regard to minimum housing standards and repair orders.



LawRight supports many of the amendments outlined in Clause 59 of the Bill, which limit the ability of an owner or property manager to evict a tenant without grounds. However we are strongly opposed to the proposed insertion to Section 291(1), which would allow without-grounds evictions at the end of a fixed-term tenancy agreement. Tenancy agreements in Queensland are frequently only six to twelve months, and the ability for lessors to arbitrarily evict a tenant at the end of this period creates significant uncertainty and disruption in the lives of tenants, particularly those with a lived experience of homelessness, disability, poverty, or other vulnerabilities.

Additionally, the allowance for without-grounds evictions at the end of a fixed-term tenancy undermines and weakens the other protections which have been proposed by the Bill. Stronger rights and protections relating to repairs and minimum housing standards have no genuine practical effect if tenants fear the threat of retaliatory eviction for asserting them. LawRight's casework has frequently shown examples of landlords evicting (or threatening to evict) tenants that they deem to be troublemakers for expressing their rights or requesting repairs. These evictions are often explained by some other pretext, come at great expense, and cause significant disruption to the lives of our clients. We expect that these evictions will continue under the proposed framework.

Helen's story – eviction without grounds

Helen is a single mother of five children, the youngest of whom is two years old. Helen and her family had been living in a private rental for three years, until her landlord unexpectedly gave her a notice to leave.

Helen was confused, because she had always paid the rent on time and did not have any disputes with her landlord. LawRight's lawyers negotiated with the landlord to extend Helen's lease for two months, allowing her to find alternative accommodation. Without this advocacy, Helen and her family would have been evicted into homelessness. Even with this extension, the burden of relocating was substantial for a young, single-income family.

Tenants who have paid their rent, maintained the property, and met their other obligations should not fear groundless and arbitrary evictions. Without security and surety of their tenancies, vulnerable Queenslanders face regular unnecessary moving costs, life disruptions and evictions – often into homelessness.

The ability for tenants to live without fear of arbitrary and unreasonable eviction is necessary for physical, psychological, and financial wellbeing. Tenants who have paid their rent and met their other obligations should not fear potential eviction into homelessness at the end of a fixed-term tenancy agreement. This certainty is foundational for maintaining stability as a tenant, and other protections are significantly weakened due to the possibility of without-grounds evictions.

Recommendation: that the proposed amendment to s 291(1) be removed, and to disallow without grounds evictions at the end of a tenancy agreement.



2. Improvements and minor modifications

As presented, the Bill does not contain any provisions which would allow tenants or residents to modify their rental property, aside from the changing of locks in some circumstances. The ability for tenants to improve liveability of a property through minor modifications was identified as one of the five key areas for reform in the 2019 *Consultation Regulatory Impact Statement Review*. This review noted that allowing tenants to modify their property “may also support essential and tailored measures to ensure access, security, privacy and safety”, and identified four critical groups of tenants who would benefit from reform in this area:

- people who have experienced family and domestic violence;
- people living with disability;
- families with young children; and
- people who require modifications due to aging or injury.

Kate’s story – domestic violence

Kate is a single mum, who shared a tenancy with her abusive former partner and their young daughter. When Kate attempted to leave this unsafe relationship, her former partner became violent and assaulted her, which left her hospitalised and with permanent injuries. Several days after the assault, Kate’s former partner phoned her and made serious threats against her life.

After leaving hospital, Kate made an urgent application to install new security screens and deadlocks to ensure that the apartment was secure, and that her former partner wouldn’t be able to return. The landlord has not yet approved the installation of these security devices, which has caused Kate significant distress.

Six months have passed since the assault, and Kate has been living in constant fear and anxiety, has experienced regular nightmares, and has been diagnosed with post-traumatic stress disorder. Without a safe and secure home, Kate lives in fear of her former partner returning, and is concerned that she won’t be able to protect herself or her daughter.

Survivors of domestic violence must be allowed to install security screens, cameras, locks and other safety devices, to ensure the safety of themselves and their families.

Experience drawn from LawRight’s casework demonstrates the critical need for survivors of family or domestic violence to install security screens and other safety devices as necessary elements of their recovery. The fear of stalking or retaliation from a violent partner will frequently jeopardise not only a survivor’s physical and mental wellbeing, but also their willingness and capacity to maintain a tenancy. Empowering survivors to take these steps will help to ensure that families are able to maintain tenancies after an experience of violence, and are not forced needlessly into homelessness.



People living with disability will also benefit greatly from the ability to modify their rental properties to increase accessibility and liveability. The *Consultation Regulatory Impact Statement Review* noted that tenants living with disability “reported difficulties in obtaining property owner approval” for modifications which would make a rental property appropriate to their needs. Improvements such as handrails and wheelchair accessible ramps are absolutely vital for many renters, who are often effectively excluded from the rental market due to the lack of properties with appropriate amenities.

Recommendation: amend the Bill to include the Regulatory Impact Statement’s recommendations for minor modifications and improvements.

3. Minimum housing standards

LawRight supports the provisions in the Bill which require all rental properties to meet minimum community standards with regard to access and amenities. In particular, LawRight endorses:

- the adoption of prescribed minimum housing standards with respect to safety, security and reasonable functionality (Clauses 98-100); and
- the extension of these prescribed minimum housing standards to rooming accommodation (Clause 31).

These provisions ensure that all Queenslanders, but particularly those facing poverty and other forms of disadvantage, are able to access housing which is safe, secure, and does not negatively impact their physical or mental wellbeing.

LawRight has concerns however that the prescribed minimum housing standards set out in the proposed Schedule 5A do not specify standards for lighting, ventilation or privacy. These were identified as particular areas for reform in the 2019 *Consultation Regulatory Impact Statement Review*, where it was noted that New South Wales, Tasmania and South Australia all prescribe minimum standards in these areas. The 2018 Open Doors to Renting Reform consultation reported that these changes are supported by 88% of Queensland tenants, 75% of landlords, and 73% of property managers.

Housing which lacks adequate lighting and ventilation poses potential health complications, particularly to those with chronic health conditions. Community consultation has demonstrated widespread support for minimum housing standards regarding lighting, ventilation and privacy. All Queensland renters, but particularly those facing vulnerability and marginalisation, should be able to rent properties which are safe, private, and which provide adequate access to air and sunlight.

Recommendation: adopt the proposed amendments relating to minimum housing standards, with the addition of adequate privacy, lighting and ventilation to the list of prescribed standards.



4. Repairs and Repair Orders

LawRight supports the provisions in the Bill which would assist tenants to request and carry out repairs. In particular, LawRight endorses the amendments which would:

- attach a Repair Order to the property rather than to the tenancy, and empower the tribunal to make an order that the property cannot be relisted until a Repair Order is complied with (Clause 51);
- increase the amount a tenant is entitled to spend on emergency repairs in some circumstances to the equivalent of four weeks' rent (Clause 48);
- allow agents to carry out repairs up to the equivalent of four weeks' rent (Clause 49); and
- require the lessor to list a nominated repairer for emergency repairs (Clause 47).

These measures help to ensure that all tenants, particularly vulnerable Queenslanders, have access to properties which are safe, secure, and continue to meet appropriate community standards.

Recommendation: adopt the proposed amendments which strengthen tenants' rights with regard to repairs and Repair Orders.

5. Tenants rights to end a tenancy

LawRight supports the provisions in the Bill which would empower tenants to end a tenancy which they were misled about, or which does not meet minimum community standards. In particular, LawRight endorses the proposed amendments which:

- allow tenants and residents to end an agreement within seven days if the property does not comply with minimum standards (Clause 63);
- allow tenants and residents to end an agreement if a Repair Order is not complied with (Clause 63);
- allow tenants and residents to end an agreement within three months of occupying, if they were given misleading information which significantly impacts or affects them (Clause 64);

These provisions ensure that properties are only listed if they meet minimum community standards, and protect tenants from misleading conduct on behalf of lessors and agents.

LawRight has concerns regarding a potential inconsistency in the proposed Bill regarding the ending of a tenancy for the lessor's unremedied breach. In the event that a lessor fails to remedy a breach, Clause 88 of the Bill would allow a tenant to provide the lessor with a Form 13 (Notice of Intention to Leave) within seven days. Section 309 of the *Residential Tenancies and Rooming Accommodation Act 2008* however requires an application to the Tribunal in order to end a tenancy due to the lessor's unremedied breach.



This potential inconsistency should be reviewed to ensure that both tenants and lessors understand the correct process and timeframes in the event of the lessor's unremedied breach.

Recommendation: adopt the proposed amendments allowing tenants to end tenancies they were misled about, or which do not meet minimum standards.

Recommendation: review Clause 88 to ensure it is consistent with the existing Section 309 of the Residential Tenancies and Rooming Accommodation Act 2008.

6. Tribunal and process considerations

LawRight has two key concerns relating to Tribunal applications and procedures, which we would ask the Committee to consider:

Disputes about lessor's notices

Under the proposed framework, a tenant seeking to dispute the grounds in a lessor's Notice to Remedy Breach must apply to the Tribunal, which is considered non-urgent (Clause 85). In LawRight's experience, these applications face frequent delays, often as long as six months, to be heard.

While waiting for this application to be heard, the tenant can be issued with a notice to leave at the end of the prescribed period listed on their Notice to Remedy Breach. If the tenant does not leave the property then the lessor can apply to the Tribunal for a warrant of possession. The lessor's application is considered urgent, so will be heard well before the tenant's application disputing the notice.

This creates an insurmountable practical and procedural obstacle for tenants disputing a Notice to Remedy Breach.

Significant changes in agreement

Tenants who wish to dispute a significant change in a subsequent lease agreement must apply to the Tribunal within 30 days of signing the new agreement. This means that the tenant must agree to the change and sign the agreement before they are given the opportunity to dispute it.

They must sign this agreement with no guarantee that the significant change will be deemed unreasonable by the tribunal. If this is a rent increase, then the tenant commits to that amount for 6 or 12 months and must rely on the Tribunal's findings to recoup this cost. This leads to many tenants, particularly those facing poverty and other vulnerabilities, accepting changes which they consider unfair or unreasonable but have no practical means to dispute.

This issue was not considered in the proposed Bill.

Recommendation: review Tribunal procedures to ensure consistency and procedural fairness, particularly for vulnerable tenants.



Thank you for the opportunity to make these submissions, which should be read alongside and in the context of submissions prepared by members of the Make Renting Fair in Queensland Alliance.

Submissions made on 12 July 2021 to:

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

