

Subject: Submission in Response to the bill regarding Residential Tenancies and Rooming Accommodation Act 2008

To Whom it May Concern

Thank you for the opportunity to provide a submission in response to the bill being introduced into parliament regarding the Residential Tenancies and Rooming Accommodation Act 2008.

I am a property owner and landlord and have held rental properties for over 10 years. I have many concerns regarding the proposed changes to the legislation and detail same as follows;

1. 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

It is a fundamental right of any person, to be able to terminate a contract at its expiry. To take away the right to do this from one party, but not the other, is a substantial breach of the law of equity and fundamentally changes the rights of one of the parties to the detriment of another.

What is the point of entering into a contract with an expiry date, if you cannot terminate it on this date? Lessors must be lawfully be allowed to end a tenancy in accordance with the contract condition. Similarly, tenants do not have to provide a reason for leaving either.

If a lessor needs to sell a home, then they should not be hindered to do so if a buyer requires vacant possession. A lessor is already restricted from terminating a fixed term lease, and this should stay.

However, if that lease expires and they wish to sell without restricting the type of buyer who can purchase the property, then they should be able to do so. If not, it could severely impact the price they achieve for the property and the timeframe in which they sell in.

In addition to this, the government does not seem to consider the lessor's insurance. Most insurers will only cover a lessor if tenants are on a fixed term lease. If lessors cannot terminate, but a tenant refuses to re-sign, then they will end up exposed.

Most tenants are good people and so are most agents and landlords. Sometimes there will be situations arise where a tenancy “goes bad”. This could include job loss, relationship breakdowns, domestic violence and more.

If tenants are on a periodic lease when things like this occur, the lessors will have no insurance coverage. The consequences of this will have a severe financial impact on the lessor for loss of rent, not to mention the damage to the property affecting the re-leasing or sale.

2. Vary minimum notice periods for a notice to leave

Under the current law a tenant is required to provide 2 weeks' notice to leave, whereas an owner must provide 2 months' notice.

My understanding of this difference is due to the moving expenses and bond requirements for tenants, so I do believe it is fair for tenants to have more time to save for these expenses that a lessor does not have.

Although it is important to consider that if there is a high vacancy rate in the area, then the lessor will also suffer a financial loss, if they are not given sufficient time to source a new tenant for the property when notice periods are already very short.

I do not believe a 2-month notice period should be increased for lessors, or a tenant notice period decreased. What we have now is sufficient for both parties.

3. Create an offence for lessors who issue a notice to leave on false grounds

The law already provides protections for tenants. Under section 292 of the Act, if tenants believe their notice to leave has been for retaliatory reasons, then they can apply to QCAT to have their case heard. Therefore, there is no need to increase legislation in this regard, I refer:

Section 292 Application to tribunal about notice to leave without ground

- (1) *This section applies if—*
 - (a) *the tenant is given a notice to leave without ground; and*
 - (b) *the tenant reasonably believes the notice was given in contravention of section 291.*
- (2) *The tenant may apply to a tribunal for an order to set aside the notice.*
- (3) *The application must be made within 4 weeks after the notice was given.*
- (4) *On an application under this section, the tribunal may make the order sought if it is satisfied the notice was given in contravention of section 291.*

4. Ensure certain inclusions in regulations made regarding minimum standards for rental homes

The law already provides protections for tenants for minimum housing standards. Section 185 of the Act details the lessor's obligations regarding quality and maintenance of a property.

Should the lessor not adhere to these standards, then tenants can issue a breach notice to the lessor for the maintenance issues to be resolved, I refer;

Section 185 Lessor's obligations generally

- (1) *This section does not apply to an agreement if—*
 - (a) *the premises are moveable dwelling premises consisting only of the site for the dwelling; and*
 - (b) *the tenancy is a long tenancy (moveable dwelling).*
- (2) *At the start of the tenancy, the lessor must ensure—*
 - (a) *the premises and inclusions are clean; and*
 - (b) *the premises are fit for the tenant to live in; and*
 - (c) *the premises and inclusions are in good repair; and*
 - (d) *the lessor is not in breach of a law dealing with issues about the health or safety of persons using or entering the premises; and*
 - (e) *the premises and inclusions otherwise comply with any prescribed minimum housing standards applying to the premises or inclusions.*
- (3) *While the tenancy continues, the lessor—*
 - (a) *must maintain the premises in a way that the premises remain fit for the tenant to live in; and*
 - (b) *must maintain the premises and inclusions in good repair; and*
 - (c) *must ensure any law dealing with issues about the health or safety of persons using or entering the premises is complied with; and*
 - (d) *if the premises include a common area—must keep the area clean; and*
 - (e) *must ensure the premises and inclusions otherwise comply with any prescribed minimum housing standards applying to the premises or inclusions*

Again, most lessors and agents are good people and maintenance is always attended to promptly. If this does not occur, the legislation is sufficient.

I understand minimum housing standards have already been included into the legislation however we have not received the regulations that go along side this section.

I refer section 17A of the current legislation

Section 17A Prescribed minimum housing standards

- (1) A **prescribed minimum housing standard** means a standard prescribed by a regulation.
- (2) A regulation may prescribe minimum housing standards for—
- (a) a residential premises let, or to be let, under a residential tenancy agreement; or
 - (b) a rental premises; or
 - (c) inclusions for premises; or
 - (d) facilities in a moveable dwelling park (**park facilities**).
- (3) A prescribed minimum housing standard may be for any matter relating to the premises, inclusions or park facilities, including, for example, the following—
- (a) sanitation, drainage, cleanliness and repair of the premises, inclusions or park facilities;
 - (b) ventilation and insulation;
 - (c) protection from damp and its effects;
 - (d) construction, condition, structures, safety and situation of the premises, inclusions or park facilities;
 - (e) the dimensions of rooms in the premises;
 - (f) privacy and security;
 - (g) provision of water supply, storage and sanitary facilities;
 - (h) laundry and cooking facilities;
 - (i) lighting;
 - (j) freedom from vermin infestation;
 - (k) energy efficiency.

Without the regulation having been written to give us specifics on what the above may include, then it is difficult to make constructive comments.

Most of the above standards are covered under section 185 already, what else will be added?

For example, energy efficiency. Surely the government will not expect lessors to supply solar panels to all properties or certain types of lights or restrict what appliances they may choose to fit the home?

5. Remove the lessor or lessors' agents ability to accept rent bids from prospective tenants

The law already prohibits agents/lessors from requesting more rent for a home or encouraging rental bidding under section 57.

If a tenant wishes to make a higher offer, this is entirely up to them and some tenants would like this option to help secure a property when there is high competition. Just like the sales market.

The law is already sufficient. The Government is attempting to restrict the "free market" by the introduction of this new section? I refer;

Section 57 Premises must be offered for rent at a fixed amount

(1) A lessor or lessor's agent must not advertise or otherwise offer a residential tenancy for premises unless a fixed amount is stated in the advertisement or offer as the amount of rent for the premises.

Maximum penalty—20 penalty units.

6. 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

The Government is again attempting to restrict the “free market” what is the point of investing in something when returns are restricted in such a way and cannot move with market demand? If a lessor/agent is processing an application and assessing affordability, then there is no reason why being able to set a price, as per market conditions, should disadvantage anyone.

Rent increases are already restricted under the legislation to once every 6 months, only within market conditions and with 2 months notice in writing on a periodic agreement, or any notice if a new contract is negotiated, I refer;

Section 91 Rent Increases

- (1) *This section applies to increases in rent for the following—*
 - (a) *a periodic agreement;*
 - (b) *a fixed term agreement, during the term of the agreement.*
- (2) *If the lessor proposes to increase the rent, the lessor must give written notice of the proposal to the tenant in the way required by this section.*
- (3) *The notice must state—*
 - (a) *the amount of the increased rent; and*
 - (b) *the day from when the increased rent is payable.*
- (4) *The day stated must not be earlier than 2 months after the notice is given.*
- (5) *Subject to an order of a tribunal under section 92, the increased rent is payable from the day stated in the notice, and the agreement is taken to be amended accordingly.*
- (6) *However, if the agreement is a fixed term agreement, the rent may be increased before the term ends only if the agreement—*
 - (a) *provides for a rent increase; and*
 - (b) *states the amount of the increase or how the amount of the increase is to be worked out.*
- (7) *A rent increase is payable by the tenant only if the rent is increased under this section.*

Tenants are also afforded protections under the current law, from **unreasonable** rent increases. For example, if their rent is increased drastically after one lease term, they can dispute the increase with QCAT within 30 days of its implementation. The law is already sufficient protection, I refer

Section 92 Tenant’s application to tribunal about rent increase

- (1) *If the lessor gives the tenant notice of a proposed rent increase under section 91 and the tenant considers the increase is excessive, the tenant may apply to a tribunal for an order under this section.*
- (2) *The application must be made—*
 - (a) *within 30 days after the tenant receives the notice; and*
 - (b) *if the agreement is a fixed term agreement—before the term of the agreement ends.*
- (3) *The tribunal may make either of the following orders on an application under this section—*
 - (a) *an order reducing the amount of the proposed increase of rent by a stated amount;*
 - (b) *an order setting aside the amount of the proposed increase of rent.*
- (4) *In deciding the application, the tribunal must have regard to the following—*
 - (a) *the range of market rents usually charged for comparable premises;*
 - (b) *the proposed increased rent compared to the current rent;*
 - (c) *the state of repair of the premises;*
 - (d) *the term of the tenancy;*
 - (e) *the period since the last rent increase (if any);*
 - (f) *anything else the tribunal considers relevant.*
- (5) *Without limiting the tribunal’s powers, the tribunal may make an interim order about payment of the rent increase pending its final decision on the application.*

7. 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

If the government is going to allow pets at all properties, without choice, will there be protections introduced for lessors for damage caused? Currently, there is no such thing as a pet bond. Also, due to section 171 and section 53 of the legislation, lessors are unable to specify a professional service be used at the end of the tenancy to control pests or have tenants use professional carpet cleaners, I refer:

Section 171 Supply of goods and services

(1) A person (the **proposer**) must not require another person (the **prospective tenant**) to agree to buy goods or services from the proposer or someone else as a condition of the prospective tenant being accepted as the tenant under an agreement.

Maximum penalty—20 penalty units.

(2) The lessor or lessor's agent must not require the tenant to buy goods or services from the lessor, the lessor's agent or a person nominated by the lessor or agent (the **nominated supplier**).

Maximum penalty—20 penalty units.

Section 53 Contracting out prohibited

(1) An agreement or arrangement is void to the extent to which it purports to exclude, change or restrict the application or operation of a provision of this Act about the terms of a residential tenancy agreement.

(2) A person must not enter into an agreement or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act. Maximum penalty—50 penalty units.

If this is passed, along with the “end to no grounds evictions” which gives lessors no insurance coverage, how will they rectify damage caused by animals at the end of a tenancy if applicable? 4 weeks bond is not sufficient, especially if there are also rent in arrears.

Have the government also considered body corporate by laws? These are a separate legislation and also restrict pets at certain properties. Will they both be amended?

Surely the government cannot expect a landlord to go to QCAT every time they need to say no to a pet. For example, if someone has 3 dogs and applies for a one bedroom unit, will we be able to refuse based on the property not being suited to this?

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

How is a “minor modification” actually going to be defined in the regulations? What will be the rules at the end of a tenancy? Will tenants be required to return the property to its original condition as they are required to now?

What about safety and compliance issues? If a tenant was to do their own maintenance and hurt themselves or someone else, who will be responsible for this? Another situation where insurance may not be the answer.

There are so many variables with regards to this section, that again, without the regulations to refer to, it is difficult to make constructive comments.

In summary it is my understanding that the proposed amendments fundamentally introduce the concept that a “tenant” does not need to take any action in the case of a failure of the “lessor”. Why is the “tenant” being given such protections? This concept is utterly inequitable.

There is no difference to a lessor having to “take action” to enforce a resolution from “tenants”. Laws are created to bring equity and fairness to our society. I am utterly dumbfounded as to why the Government of a free democratic society would attempt to skew the rights of one party to the utter detriment and potential ruin of another? The Government must also bearing in mind that both parties have entered into agreement under their own free will.

Regards