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

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Real Estate submission provided by Property Owner / Manager

Dear Committee,

Thank you for the opportunity to make this submission. This submission is made in conjunction with the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021.

This submission is in relation to the Housing Legislation Amendment Bill 2021 and I am providing this submission as an experienced property portfolio manager..

I have been working and managing our rental property portfolio for more than 20 years. I also have significant business and practical management experience in property management, engineering, telecommunications, aviation, defence projects, mining industry, engineering, project and contract management.

Our properties, which are managed through real estate agents have had significant experience in both good and poor tenant behaviour. We currently have one case going to magistrates court for a defaulting tenant which resulted in significant damage and costs to restore the home to the prior condition also lost rent and associated costs to re-tenant the property. The action by the defaulting tenant has cost us significantly with only the prospect of gaining some compensation once the court process is completed. Thus we have been significantly adversely impacted financially in these conditions. This is a significant burden as we are relying on this critical income to fund our modest retirement income.

Our rental properties are based on typical house accommodation which generates modest returns given the capital investment involved.

I urge the committee to ensure a reasonable balance between the rights and obligations of tenant and landlords for the best future for rental accommodation providers and tenants in Queensland.

If the Queensland government imposes significant additional costs and or onerous obligations you are highly likely to motivate investors such as ourselves to exit the industry in droves, thus placing higher demands on government supplied rental house. It takes considerable effort to provide well maintained properties for rent at reasonably competitive market rates. Given the significant rise in real estate prices without any significant increase in rents may motivate owners to exit the rental market due to more onerous or difficult rental obligations arise.

Comments on the Proposed Legislation

Lessor's agent may arrange for emergency repairs to be made.

The proposed new section 219A is of great concern and appears to be in direct conflict of the Agents Financial Administration Act (AFA). Section 21 and 22 of the AFA Act states monies from the trust account (and the lessor's ledger), cannot be drawn unless there is written consent from the lessor/client, with section 21 of the Property Occupations regulations stating the agent must act in accordance with a client's instructions (unless it is unlawful to do so).

The proposed section 219A contradicts this. The Committee would be aware that the Office of Fair Trading regulate Property Agents and Property Managers via the Property Occupations Act and the Agents Financial Administration Act.

Clause 49 inserts new section 219A Lessor's agent may arrange for emergency repairs to be made to introduce a new power for agents of lessors to arrange emergency repairs to be carried out under residential tenancy agreements. Under subsection 219A(1), the lessor's agent may arrange for a suitably qualified person to carry out emergency repairs to the premises or inclusions if the repairs are not likely to cost more than the emergency repair limit for the residential tenancy agreement.

The emergency repair limit for a residential tenancy agreement is an amount equal to 4 weeks rent payable under the agreement. Subsection 219A(2) provides that if the lessor's agent acts as allowed under the section and pays for the emergency repairs, the agent may make deductions from rent payments received from the tenant, up to the cost of the repairs, before disbursement of the payments to the lessor's account. The lessor's agent must inform the lessor of the action as soon as practicable after taking it.

As a property manager I generally seek to review any repairs prior to signing off on approval for the contractor to proceed. I have found many occasions when significantly more expensive works were approved than was required. Also as I have many years of experience in engineering maintenance, I can assess the situation. For example, I had cause to dispute an initial recommended building repair at an estimated cost of several thousands dollars only to resolve the issue with a simpler more practical and cost effective solution resulting in the building being repaired at a fraction of the original cost estimate.

Obviously emergency repairs need to be completed in a timely manner. It is already common practice for Real Estate agents to effectively manage these issues. I have authorised an agreed list of trades to complete such works in a competitive and professional manner.

Legislators need to be aware that renting property is a business and needs to be run on business lines.

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.

Orders of tribunal about carrying out emergency repairs.

Proposed new subsection 221 as noted from page 43 Explanatory notes, is open for dispute due to the use of reasonable time frame. Reasonable time frame for both routine and emergency repairs should be defined to ensure all parties understand the time frames. Given this new proposed provision is subject to an application to tribunal for repair order, it is critical parties know the meaning to alleviate dispute and possible applications.

Also in the current environment with builders and maintainers fully occupied completing repairs to storm damaged properties, there is considerable competition to be able to sign up a contractor to complete works in a reasonable time. Recently one of our properties had significant damage to a large patio roof. I sought quotes from experienced contractors and found it extremely difficult to get a contractor to visit the site even to quote due to the significant demand around Brisbane. While I was completing the task, I was advised by several contractors that their price would increase by at least 50% because they were having difficulty maintaining labour and sourcing materials at the quoted price due to work demands. I had to draw on my previous experience to effect the repair at a reasonable cost and time frame.

Bunnings on rising timber prices example of escalating costs

Recently a Bunnings executive, Mr Scott called out lumber as a major input for the conglomerate's Bunnings chain that was ratcheting higher, due to steeper shipping and shipping container costs which threatens to eat away at margins, according to the report. "Lumber prices have gone up and there has been constraints there around supply. We have seen pricing pressure, similarly containing shipping is another area where there have been strong increases in pricing and there has also been some increases in other raw material prices, cotton and other categories. I think what is important to note across all these areas the whole market is facing these cost pressures," Mr Scott told the Macquarie Australia Conference.

New subsection 221(1) provides that the tenant, or a representative entity, may apply to the tribunal for a repair order if the premises or inclusions need repair and:

- for routine repairs, the tenant has informed the lessor or agent of the need for repairs (in line with requirements under section 217, and the repair was not done within a reasonable time after the lessor or agent was informed of the need for repair by the tenant.
- for emergency repairs, the tenant has been unable to notify the lessor or nominated repairer of the need for the repair or the repair was not made within a reasonable time after the tenant had given notice to the lessor or nominated repairer of the need for repair.

Many tenants may not have the skill, knowledge or abilities to know what repair was required or to know whether or not any contractor was providing the service at a competitive rate. This passing on inflated costs to the property owner without due cause.

Support tenants and residents to enforce their existing rights by removing the ability for lessors and providers to end tenancies without grounds.

As provided in the Tenant Rights Bill submission, the removal of without grounds is fraught with concerning outcomes.

With the proposed introduction of two months' notice for end of fixed term contract, and the removal of without grounds for lessors, an unintended consequence may be if a tenant is offered a new fixed term agreement contract, prior to an existing fixed term contract ending (as is best practice today), and the tenant fails to enter into a new contract, a notice to leave for this provision may be given due to the lessor risk management and lessor insurance coverage as mentioned in the Tenants' rights Bill mentioned above.

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 2018/2019 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).

Many 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 property owner 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".

The solution is to keep the status quo and afford both parties the right to end a tenancy contract at any time by giving the appropriate notice without grounds.

Also landlords are fully aware of the additional costs for re-leasing a property, therefore there is little motivation for a landlord to remove a tenant without due cause.

The proposed amendments are silent on a ground to end a tenancy that is periodic (other than using a new proposed ground and or tribunal application).

Provide an expanded suite of additional approved reasons for lessors/providers and tenants/residents to end a tenancy.

The additional provisions for tenants to end tenancies demonstrates an unbalance that will be created in the Act. **The tenant retains the right to provide two weeks' notice without grounds, whilst the lessor has that right removed. This does not display any equality in rights for the landlord.**

The proposed ground for tenants to end a tenancy because the property is not in good repair is broad and open for dispute and or potential abuse. Good repair should be defined so that all parties understand the meaning of good repair and to minimise and or alleviate dispute.

The new proposed ground for tenants to end the tenancy if the property does not comply with minimum housing standards is at similar risk as mentioned above for good repair.

Ensure all Queensland rental properties are safe, secure, and functional by prescribing minimum housing standards and introducing compliance mechanisms to strengthen the ability to enforce these standards.

As a Real Estate property owner and qualified HSE Manager, I support the contention that properties being safe and fit to live in as per the current long standing provisions of section 185.

In general over the years, we have observed that a well maintained property results in longer lease terms with minimal issues and happy and contented tenants which is a benefit to all parties. Many rental properties are managed by experienced Real Estate Property Managers who are trained and experienced to resolve any rental issues in a timely manner. To use a big hammer approach on all landlords to punish poor performers may result in significant consequences for the rental market.

The proposal for the entry condition report to be returned by the tenant from 3 day (current law) to an increase of 7 days is a concern. The concern is centred around possible increased dispute regarding the condition of the property upon possession and the time frame for return. A lot can happen in seven days by way of accidental damage whilst moving in, and or cleaning. For example, damage may happen to the property when the tenant moves in due to carrying furniture and other goods.

Also as most people have ready access to mobile phones with photo capacity the tenant has ample opportunity to take photos for the entry condition report.

Other adverse events such as a storm may come through and wet all the windows making them appear 'not clean', and or a dust storm passes through, and dust is throughout the property during this extended time. Time is of the essence and is critical in all contract situations. The extended time has potential to create dispute. A different approach is to increase advice on the approved Form 1a regarding the intent, further guidance to the tenant, the importance, and timelines. This includes the importance of agreeing or disagreeing should be added to the approved form to assist all parties to self resolve any matters.

Proposed Schedule 5A (regulations) 1. states good repair. What does good repair mean? Whilst good repair has formed part of current section 185 for many years, the repeat of good repair in the regulation as part of the Minimum Housing Standards is an opportunity to define it, and or not have it. As the committee would appreciate, good repair means different things to different people. Weatherproof and structurally sound are reasonable. Who will determine good repair and the meaning? This is open widely to possible dispute and differing views and should be addressed before implementation. Good repair has also been mentioned in submissions by highly experienced real estate manager and this provides an expanded suite of additional approved reasons for lessors/providers and tenants/residents to end a tenancy.

A judge held in a previous legal case that “to keep the property in repair and good condition was held to go beyond what is normally associated with repair” (Commercial Property 2018 A. Roddell).

Also any definition of repair / restore to original condition should also apply to the tenants obligation on exiting the property. All too often tenants want to claim “fair wear and tear” for an obvious damage caused during the tenancy.

Where the government requires a step change in standards which requires additional works or costs, then sufficient time must be allowed to allow owners to budget for and implement any changes to the property. Owners simply do not have spare buckets of money available.

Strengthen rental law protections for people experiencing domestic and family violence.

As a Property owner / manager, I support mechanisms to assist victims suffering domestic and family violence however the procedures should not unduly burden the property owner with additional costs if the party has sufficient means to exit urgently but complete the exit sharing costs.

Also the process should ensure that the party experiencing the domestic violence has their privacy protected for safety and life provisions.

Notice to leave for serious breach.

Clause 57 amends current section 290A is encouraged to include general tenancies and not just public or community housing. Whilst clause 61 insertion of new section 297B which allows for application for termination for because of serious breach under a residential tenancy agreement is welcomed, the committee is urged to consider the obvious benefit to have this provision included in a new ground for notice to leave to expedite such serious matters.

Application for termination for misrepresentation

New proposed section 312A allowing for tenants to apply to tribunal for an application for a termination order because of lessor or lessors' agent giving false or misleading information is encouraged to be clarified and further defined. For example, the services provided may be withdrawn for just reasons outside the lessor control, and a matter relating to the premises that is likely to affect the tenant's quiet enjoyment is ambiguous.

What about council roadworks and or a unit development being built behind the property in another street? Matters of which a lessor and or agent would not reasonably be aware. Whilst the provision states the lessor or lessor's agent gave information about, example should be provided with the new section. **The process should not allow trivial complaints to burden the process eg in normal contact law would require a significant breach.**

The law often refers to "the reasonable man test" in order to decide what should be concluded on an issue.

New section 347B states tribunal may make the order if they are satisfied the false or misleading representation justifies termination of the agreement, the goal is to avoid the Tribunal and resolve dispute via self resolution and or the RTA conciliation process if required.

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 that the property owner should have the ability to approve/ disapprove pets based on reasonable grounds.** Also 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. **Also pet damage needs to be separate from "fair ware and tear" which applies to the bond. Any other arrangement may result in insufficient bond to cover repairs.**

Notice to leave for Contract of Sale – periodic tenancy.

The new proposed Schedule 1 Notice periods for notice to leave for a sale contract for a periodic tenancy change from current 4 weeks to 2 months is of concern. The current section 286 of the RTRA Act allows for notice to leave to be given to a tenant with section 329 allowing four weeks' notice to end the tenancy. The change from 4 weeks to 2 months is potentially going to affect some sales contract situations, particularly with owner occupier contracts. The tenant in this situation (periodic tenancy contract) can give 2 weeks' notice to terminate the agreement. Situations may occur whereby tenants are given 2 months' notice as per the proposed provision, and the tenant terminates on their grounds and give 2 weeks' notice. The lessor (seller) will be in a position of a vacant property, and if contracts cannot be renegotiated, open for substantial loss. **The notice provision needs to be a fair and reasonable balance between tenant and landlord.**

The other concern which may occur is reluctance of owner occupiers to buy properties that are rented which places the lessor property owner selling under potential duress if the sale is forced due to financial and or other hardship. They may then have to apply to have the tenancy terminated for excessive hardship ground.

Once again, I stress the importance of maintaining a reasonable balance of rights and obligations for tenants and landlords.

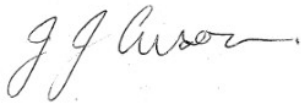
If the Queensland government imposes significant additional costs and/ or overly onerous obligations, the likely result will be to motivate investors such as ourselves to exit the industry in droves.

It takes considerable effort and ongoing investment to provide well maintained properties for rent in a competitive rental market.

Given the significant rise in real estate prices without any significant increase in rents many will decide in the coming months whether to remain or leave the rental market. As these prospective sales are likely to go to owner/ occupier buyers rather than other investors, this would significantly reduce the pool of rental accommodation available in Queensland. The State government is already struggling to provide sufficient access to publicly funded housing in Queensland.

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

Yours sincerely

A handwritten signature in cursive script, appearing to read 'J J Cirson'.

Jeffrey Cirson

Sent via email from [REDACTED]