



Secretariat,
Community Support and Services Committee,
Legislative Assembly,

SUBMISSION TO THE INQUIRY INTO THE HOUSING LEGISLATION AMENDMENT BILL 2021 AND THE RESIDENTIAL TENANCIES AND ROOMING ACCOMMODATION (TENANTS' RIGHTS) AND OTHER LEGISLATION AMENDMENT BILL 2021

Dear Sir/Madam,

Please find attached a submission from the Community Housing Industry Association (Queensland) to the Community Support and Services Committee in relation to its inquiry into the *Housing Legislation Amendment Bill 2021* and the *Residential Tenancies and Rooming Accommodation (Tenants' Rights) And Other Legislation Amendment Bill 2021*.

This submission has been cleared by the Board of Directors of the Community Housing Industry Association (Queensland) on behalf of its members. There are over 80 registered community housing organisations across Queensland that between them own or manage a portfolio of 16,000 rental properties.

Please do not hesitate to contact me by email to ceo@chpsfrqld.org.au, or by mobile phone [REDACTED] if you require further information on any of the matters raised in this submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Peta Winzar".

Peta Winzar
Executive Officer

13 July 2021

Overview

1. Since both Bills cover much the same ground, CHIA Queensland's submission focuses on the Housing Legislation Amendment Bill 2021 but concludes with some comments on the proposals in the *Residential Tenancies and Rooming Accommodation (Tenants' Rights) And Other Legislation Amendment Bill 2021*. The five key changes of interest to community housing organisations in the *Housing Legislation Amendment Bill 2021* (HLA Bill) are:
 - The approved reasons provided in the Bill for ending tenancies;
 - The notice periods for terminating tenancies;
 - The minimum housing standards;
 - Stronger protections for people experiencing domestic and family violence; and
 - Provisions enabling renting with pets.

Approved reasons for ending a tenancy

2. CHIA Queensland has several concerns with the provisions in the HLA Bill 2021 that would replace 'without grounds' notice to leave with an expanded suite of approved reasons for lessors to require tenants to leave.
3. First, removing the 'without grounds' notice provision creates a potential conflict between the notice periods applying to tenants under the Residential Tenancies and Rooming Accommodation Act 2008 and the notice periods that apply under the Property Law Act 1974 to properties head-leased by community housing organisations (CHOs). At present, if a property owner gives a CHO two months' notice to leave pursuant to the provisions of the Property Law Act, the CHO relies on its ability to issue a 'without grounds' notice to the tenant, in order to return the property to its owner. Under the amendments proposed by this Bill, the CHO will be in breach of either the tenancy agreement under the Residential Tenancies and Rooming Accommodation Act or the Property Law Act 1974 lease with the owner, since none of the new approved notice grounds enable the CHO to compel the tenant to leave in response to an owner ending a headlease. The removal of the 'without grounds' provisions appear to be aligned with a viewpoint that the landlord of a premises is the owner of the premises – this is not the case in a significant proportion of CHO-run housing.
4. The removal of the 'without grounds' notice reason also creates a problem for owners and lessees of affordable housing properties under the National Rental Affordability Scheme (NRAS) where a tenant refuses to provide evidence of ongoing eligibility under the program – for example, details of their current income and who is living in the home. While section 290 of the Residential Tenancies and Rooming Accommodation Act is clear that notice may be given if the tenant ceases to be eligible under an affordable housing scheme such as NRAS, there is no provision for the owner, or a lessee who headleases the property from the owner, to give notice to a tenant who refuses to supply such information. None of the new notice grounds would enable a community housing organisation managing an NRAS property to compel the tenant to leave unless the owner withdrew the property from the scheme completely. This would be a poor policy outcome.

5. CHIA Queensland does not support the removal of section 372 of the Residential Tenancies and Rooming Accommodation Act which currently enables 30 days' notice to leave rooming accommodation without grounds. Community housing organisations have used this provision to reduce occupancy levels in a property for COVID-related reasons. It is also used to manage inter-personal dynamics within rooming accommodation (or between residents and neighbours) that could lead to distress or damage to other residents or property, but which has not yet led to a serious breach. Under the amendments proposed in this Bill, CHOs would be limited to giving rooming accommodation residents 2 months' notice to leave at the end of a fixed term lease agreement, or to obtain vacant possession for refurbishment. This would make management of rooming accommodation extremely difficult.
6. The inclusion of a specific provision to enable a notice to be given to leave at the end of a tenancy agreement provides a back-stop for lessors, but does not resolve the problems above in relation to head-leased properties, affordable rentals under the NRAS and other income assessed eligibility programs, nor in relation to managing a safe environment for all residents in rooming accommodation. At the same time, we consider that allowing a notice to leave to be issued at the end of a lease period effectively undermines the aim of improving rental security for tenants in the private rental market.
7. CHIA Queensland notes that the HLA Bill would provide that if a tenancy has ended on the grounds that the property has been sold, or the owner or their family has moved into the property, or for change of use reason, the HLA Bill provides that the property cannot be re-let within six months. While we understand the intent of the provision, we believe it will be particularly hard to ensure compliance.
8. Finally, the proposed new section 290B of the Residential Tenancies and Rooming Accommodation Act appears to be a catch-all provision with potentially very wide application, even if its primary intent is to end a tenancy to facilitate resumption of a property to build a new road, for instance. More information is needed on the intent of this provision.

Recommendation: Include a provision that enables notice to leave to be given where the lease of a property head-leased for providing social housing is terminated by the owner of the property. The notice period we propose is two months.

Recommendation: Include a provision that enables notice to leave to be given to a tenant who fails to submit documentation to prove their ongoing eligibility for a housing program or a housing assistance program within a reasonable time frame.

Recommendation: Include a provision that enables 30 days' notice to leave to be given to a rooming accommodation resident.

Notice reason - serious breach

9. CHIA Queensland supports the different rules in the HLA Bill 2021 setting out how lessors can respond to a serious breach by a tenant, occupant, or guest, depending on whether the lessor is the department, a community housing provider, or a private landlord. CHIA Queensland also supports the alignment of the definition of 'serious breach' applying to private sector tenancies with that applying to social housing

tenancies. This includes reference to illegal activity in the definition of a serious breach and by extending the coverage of these provisions to include the behaviour of an occupant, guest or person allowed entry by the tenant, as well as the tenant themselves.

Notice periods

10. CHIA Queensland welcomes the presentation of all notice periods in a single schedule to the Residential Tenancies and Rooming Accommodation Act 2008, this makes it extremely easy to identify the correct notice period. We agree that it makes sense to align the notice periods for the new notice reasons with the previously used 'without grounds' notice period of two months, with the exception of the notice to leave for rooming accommodation residents in certain circumstances, as discussed at paragraph 5 above.

Grounds on which tenants can end a tenancy

11. CHIA Queensland supports the provisions in the HLA Bill that would provide tenants with access a wider range of specific grounds to end the tenancy, in particular those designed to improve compliance with the new minimum housing standards.

Prescribed minimum housing standards

12. CHIA Queensland welcomes the new minimum housing standards that will apply to rental properties and rooming accommodation as set out in the new Schedule 5A *Prescribed minimum housing standards*. CHIA Queensland supports the amendments to the Residential Tenancies and Rooming Accommodation Act to encourage compliance, clarify repair and maintenance obligations and support enforcement of the new minimum standards.
13. CHIA Queensland considers that the new prescribed housing standards are long overdue. However, a missing dimension of the housing standards relating to functionality is energy efficiency. This is a significant contributor to the total cost of housing and impacts most heavily on low-income tenants. We recommend that the standards specify minimum standards for heating and cooling – for example, that at least one room in the property has a functioning heater and a functioning fan or air conditioner. We propose that the energy efficiency rating of a property (where the rating exists) must be disclosed to prospective tenants when the property is advertised for rent. This will help renters make informed decisions about the true cost of renting a particular property.
14. We agree that a by-product of improved standards will be reduced lessor and property manager liability for injury or illness incurred due to poor property condition and help maintain or improve investment value. However, we are concerned that some private landlords may respond to the new standards by withdrawing their properties from the rental market.

Recommendation: The minimum housing standards include minimum standards for heating and cooling.

Recommendation: Where an energy efficiency rating exists for a property, the rating must be disclosed to prospective tenants when the property is advertised for rent.

Changes to better support people experiencing domestic and family violence

15. The provisions in the HLA Bill will introduce a streamlined process for tenants experiencing DFV to end a tenancy quickly and create a raft of other protections for tenants in this situation. CHIA Queensland endorses the reforms in the HLA Bill as a significant step forward for tenants experiencing domestic or family violence. We agree that it is important for people experiencing domestic violence to be able to change the locks on their homes. However, in a medium or high density building that operates on a master key system, a lock changed by a locksmith engaged by a tenant inevitably will need to be changed again to confirm with the master key that operates across the rest of the complex. The issue arises in relation to Build to Rent or other multi-unit buildings where there is a single owner and therefore no strata or body corporate. The building management policies will not be regarded as equivalent in law to strata title by-laws and thus the actions of the tenant would not be limited by proposed sub-section 211(5).

Recommendation: Sub-section 211(5) be amended to exclude multi-unit apartment buildings owned by a single entity (ie, where no strata title or body corporate exists) from the operation of section 211.

Recommendation: Tenants should also be permitted to have other security fittings (such as deadlocks, window locks or security alarms) professionally installed on condition that the installation is arranged by the landlord and the tenant is prepared to meet the cost.

Renting with pets

16. The HLA Bill would set up a framework to help lessors and tenants agree on keeping pets in rental properties. CHIA Queensland notes that while the tenant will have to get the lessor's consent to keep a pet, the lessor can only refuse a pet request on prescribed grounds that cannot be rectified by reasonable conditions. Further, a lessor cannot increase rent to allow a pet, or charge an additional pet bond, noting that the amendments specify that fair wear and tear does not include pet damage.
17. CHIA Queensland notes that the provisions proposed in the HLA Bill for keeping pets aim to set a reasonable balance between the interests of lessors and tenants and provide much clearer guidance for both parties than exists under current legislation. However, the grounds for refusing pets set out in section 184E involve highly subjective decisions on suitability of premises and reasonableness of the conditions under which pets are approved. Inevitably, this will lead to a significant increase in workload of the Queensland Civil and Administrative Tribunal.

18. Further guidance is required on the suitability of premises and the reasonableness of conditions under which pets can be kept in rental premises or rooming accommodation. The additional guidance could reference matters such as waste disposal, odour, roaming pets, acceptable noise levels or mitigation strategies such as barking collars. We note that where an apartment block is owned by a single entity, such as a community housing organisation, there are no strata or body corporate by-laws to guide acceptable conduct of tenants and their pets, as envisaged by this legislation.
19. As a practical example of the challenges posed by these new rules, while it may be utterly reasonable to allow a small dog in an apartment, the prospect of 80 small dogs in a block of 80 apartments is not at all reasonable.
20. Second, CHIA Queensland considers that the provision which precludes an additional pet bond is unhelpful. Many private landlords will simply respond to the new 'pet provisions' by removing properties from the rental market, adding to the demand for scarce social housing properties. Further, in a significant number of cases the bond paid by social housing tenants is already insufficient to cover the costs of damage or rent arrears owed by exiting tenants. CHIA Queensland is keenly aware that some tenants will find it a challenge to pay a bond of any amount, CHOs are not in a financial position to simply absorb the cost of rectifying any damage caused by pets.

Recommendation: Further policy guidance on reasonableness of conditions and suitability of premises be provided either through a Ministerial direction or via regulation, with particular application to single-owner multi-apartment buildings.

Recommendation: A lessor be able to charge an additional pet bond not exceeding four weeks rent.

Other matters - Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021

Limiting increases to rent to once every 24 months, capped at CPI

21. CHIA Queensland does not support the proposal in the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021 to limit rent increases to once every 24 months and by no more than the CPI. In social housing, rents are set by reference to household income, rather than in response to supply and demand, and generally adjusted at annual rent reviews. Rents that are set as 25 per cent of household incomes will increase (or decrease) if household incomes change, including because of changes in household composition or family size. To render social housing landlords unable to adjust rents when household income increases would mean that households whose income rises would continue to benefit from a concessional rent for up to two years at the expense of others seeking accommodation who are on much lower incomes. It would also impair the financial viability of community housing organisations who already operate on extremely slender margins.

Requesting information from prospective tenants – bank statements

22. CHIA Queensland does not support the proposed limitation on the information that can be collected from prospective tenants. For tenants who work in the gig economy, traditional methods of verifying income such as payslips are not an option and the most assured way of confirming eligibility for income-tested programs, or ability to pay the rent, is by examining bank accounts. For example, Uber drivers submit an invoice for their hours and the payment is deposited into their bank account. Bank statements also enable confirmation of other deposits from third parties such as child support payments, that are relevant to a rent assessment in social housing. As worded, proposed section 57B would capture all incoming as well as outgoing 'daily transactions'.

Keeping pets

23. CHIA Queensland does not support the approach proposed in the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021 that tenants be allowed to keep a pet unless the Queensland Civil and Administrative Tribunal issues an order refusing the pet. In our view, this would create an excessive and unnecessary increase in workload for the QCAT that could be avoided by the adoption of a clear legislative framework such as that proposed in the Housing Legislation Amendment Bill 2021.