
From: Barbara Gray [REDACTED]
Sent: Monday, 12 July 2021 5:21 PM
To: Community Support and Services Committee
Subject: HOUSING LEGISLATION AMENDMENT BILL 2021

Dear Committee,

Thank you for the opportunity to make this submission. This submission is in relation to the Housing Legislation Amendment Bill 2021.

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.

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.

Regulating rents and when rents can be increased will lead to investor concern, scarcity and looking to diversify in other free markets. This is the worst case scenario. To be fair and balanced, and deal with any unintended consequences, leaving status quo is recommended.

The Residential Tenancies and Rooming Accommodation Act (RTRA Act) has provisions in place for rent increases during existing fixed term tenancy contracts, plus periodic tenancies. The tenant has ability to act and if need, apply to Tribunal (QCAT) to decide if a rent increase is excessive. (Sections 91 and 92). Section 94 allows for rent to be increased in a six month period only.

For fixed term tenancy agreement contracts that are renewed and effectively enter into another fixed term contract (known as lease renewals), section 71 adequately allows for tenants to seek assistance if they believe any rent increase is excessive.

There are adequate provisions in place in the legislation without need for further regulation.

Remove the lessor or lessors' agent's ability to accept rent bids from prospective tenants.

Rent bidding is an emotive, unjust, misused and unfair word. There is no evidence rent bidding occurs in the industry. The use of the word rent bidding alludes to the thought that there is a form of 'auction' occurring which is not the case.

The RTRA Act requires rent be advertised at a fixed amount (section 57). Words such as negotiable and price ranging are prohibited. Property managers cannot encourage or solicit offers from prospective tenants. Section 57 is a penalty unit provision.

Orders of tribunal about carrying out emergency repairs.

Proposed new subsection 221 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.

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.

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

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.

There are genuine concerns investors may leave the market due to their loss of right to end a tenancy contract for their asset without grounds. This is a possibly the Government cannot find afford to risk, given supply and demand drive rental market price, plus, the lack of social housing and homelessness. All parties will suffer should the removal of without grounds proceed.

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 2018/209 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).

Most 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 investor 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. This is a balanced approach, suggest penalty unit provisions for lessors if they breach section 291 (the current provision for notice to leave without grounds).

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.

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.

We, the landlord, supports properties being safe and fit to live in as per the current long standing provisions of section 185.

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, 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.

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

We, the landlord, supports these mechanisms to assist victims suffering domestic and family violence.

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.

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 "if the pet is not a type of pet ordinarily kept inside, a condition requiring the pet to be kept outside the premises". Who determines the type of pet not ordinarily kept inside? This is open to dispute and needs to be clarified. So many additional factors must be considered for this matter such as what is included in the Housing Legislation Amendment Bill including relevant laws including local and body corporate laws.

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 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.

We thank you for your time and trust that consideration of fairness will be given to both tenants and landlords.

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