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

Dear Committee,

Thank you for the opportunity to make this submission. The 'Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill' is a private bill brought before the Queensland Government by Amy MacMahon, Member for South Brisbane (Greens) on 26th May 2021.

My name is Neil Hallett-Carpenter, and I have been a private residential landlord in FNQ since 2008. During that period my partner and I have been scrupulous in using the RTA contracts and following the legislation.

The 'Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill' is a private bill brought before the Queensland Government by Amy MacMahon, Member for South Brisbane (Greens) on 26th May 2021.

Her stated intent is the abolishment of "without grounds terminations or evictions", but the emphasis of the bill is markedly different, and imposes major strictures on Landlords. She refers to cases of severe rental housing shortage with a focus on Brisbane, which differs markedly from the environment outside the South-East corner, and ignores the reality that the larger proportion of rental properties are owned by small investors.

"Qld's current weak rental laws mean there's nothing to stop wealthy investors and agents using record low rental vacancy rates as an opportunity to drive up rents. All across our state families are struggling to find affordable housing. It's time for caps on rent increases".

Twitter 26th May

Rent control introduces market distortion and adds inefficiencies to the distribution of resources. It is popular with renters, and thus tends to be a one-way street – rent controls are seldom if ever removed, even if they are manifest failures. The long-term result is often that whilst a proportion of renters get a good deal, more end up worse off, or lose their accommodation altogether. In some markets such as New York, rent control has been blamed for the creation of slums, as Landlords have no money to maintain properties. Private rentals have never successfully replaced Social Housing, no matter what legislation is introduced.

In her submission to the Community Support and Services Committee, Ms MacMahon made a number of unsupported statements:

1. She stated that her bill would not reduce housing rental stock. She offered no arguments as to why this should be the case, given that investors would see, at the very least, reduced returns.
2. She states that it is easier for a house buyer to purchase their fourth property than for a new entrant to purchase their first; it is unclear on which research this conclusion is based.

Whilst negative gearing is often cited as the main reason for increasing house prices, it is also very clear that rental prices would be higher if negative gearing is scrapped, as negative gearing allows an investor to offset losses in rent and the cost of interest. In the current low-interest environment the latter benefit is miniscule. Studies suggest a 7% to 15% increase in rentals despite a fall in house prices should negative gearing be abolished.

3. She provided an estimate of 20,000 unoccupied homes based on the last census data combined with water usage, and went on to insinuate that these could all become rental properties; her opinion seemed to be that the majority of these were held by owners for capital appreciation. Again – no research was proffered either about the number that might be suitable for rental, the distribution, or the likely price segment. It seems unlikely that these will be low-valued properties.
4. She attributed a reduced number of pet surrenders in Victoria to the recent tenant legislation there, incorrectly providing the duration of this legislation (delayed by COVID) and providing no recognition of the other factors in play.
5. Two markets were offered to demonstrate successes in rent capping: ACT and Canada. With a population of under half a million and a high percentage of civil servants, the ACT has few if any points of comparison with Queensland. Similarly, Canada is not a valid comparison, with differing policies across the States.
6. She did not understand that rental bonds in Queensland were capped at a maximum of four weeks rent. It is extraordinary that an expert offering massive changes in rental legislation would not comprehend such a fundamental part of the existing legislation.
7. She ignored the fact (or was not aware) that the existing legislation allows the tenants to submit a Notice to remedy breach (Form 11) if routine repairs are not fixed within a reasonable time.
8. She ignored the fact (or was not aware) that the existing legislation already makes it illegal in Queensland for landlords to initiate rental bidding by advertising a price range, asking for offers or openly advertising a rental auction. Whilst they may accept offers from prospective tenants who approach them, in practise, doing so may result in a complaint to the RTA, and if the property manager or owner has engaged in deceptive or misleading behaviour the RTA may refer the complaint to the Office of Fair Trading or the Australian Competition and Consumer Commission, which puts the Agent's licence in jeopardy. The stated reason for her legislation is to outlaw something that is already illegal, and which has come into prominence during the shortage of rental properties and the increases in value of housing.
9. She ignored the fact (or was not aware) that Landlords suffer a loss in rental income every time a tenant is replaced, both through agency fees and through the period the property is empty. It is generally in the Landlord's interest to have a long-term tenant. Often they will commence with a six-month tenancy to see if the tenant adheres to the most important four obligations (paying rent on time, keeping the property clean (and mowing where required), reporting maintenance issues promptly, and not interrupting the quiet enjoyment of their neighbours). Extensions to the lease will often then be offered.
10. She ignored the fact (or was not aware) that 'no grounds' terminations often were used by Landlords and Agents to avoid a prejudicial track record for the tenant, in cases where the tenant has been problematic and not seen as attractive in the long-term.
11. The idea that the tenant can unilaterally renew the lease without the consent of the owner of the asset runs contrary to the principle of contract law, and risks creating a dangerous

precedent. There will always be an asymmetric relationship between the owner of an asset and the renter of an asset.

12. All the stakeholders Ms MacMahon consulted are tenancy advocates – there appears to have been no attempt to talk to Landlords, Agents, or their peak bodies, and that is reflected in the unbalanced nature of the proposals.
13. The current lengthy backlog in QCAT makes the position that new elements (pets, modifications) be determined using QCAT a nonsense. The proposed legislation provides no guidance on suitability of pets to the rental, or how conflicts between this and existing special conditions, strata title regulations, insurance and neighbours rights to quiet enjoyment can be balanced.

[The following section appears in both submissions]

There is currently a very tight rental market in Queensland and a reduction in rental stock as Landlords sell into a rising market. Similarly, State investment in Social Housing has failed to keep up with demand. The major unintended consequence of imposing further strictures on private sector Landlords is that more of them will sell their rental property, displacing tenants, and the Social Housing queue will grow even longer. There is a need for unprecedented investment in housing by Queensland State Government, or the acknowledgement that a housing crisis is upon us.

- The urban and rural property markets are completely different. Rural property has been sold under replacement cost for many years, and rental prices have often been capped by the market.
- Jobs in rural Queensland (especially in tourism and accommodation) have been decimated by lockdowns and isolation from international tourism. Paradoxically, businesses have experienced increased difficulty in bringing in staff during the increased Federal support for the unemployed. With the reduction in such support, many renters are suffering rental stress, as their income drops, and the percentage of income dedicated to rent exceeds 30%.
- There are four trends influencing the rental market:
 - The COVID exodus of renters and owners from cities (and in some cases States) has pushed up Queensland immigration.
 - Returning ex-pats (again, driven out by COVID) are returning to their retained properties, pushing out renters, or competing with renters while they look to buy.
 - After years of negligible property value growth in rural areas, some rental property owners are selling into a rising market.
 - Whilst there has been some offset as Federal and State incentives encourage renters to purchase property, there are signs that the property sector is straining to keep up with demand, as supply chains narrow and snap under the demand. Smaller developers and builders are being swept away as they cannot access materials.
- Ironically, the nature of the support for low-income purchase of property with low deposits and low rates mirrors the seeds of the housing crisis in the US between 2007 and 2010.
- The growth in demand for Social Housing has not been fulfilled by an increase in State-provided accommodation.
- Rents are strongly correlated to house prices. Rural rents have risen to the point that the number of properties under the threshold of 30% for a Centrelink recipient has radically decreased. There are signs of displacement, as renters move to cheaper areas.

- Around ten per cent of the housing waiting list is victims of domestic violence, and it is by no means clear how the increased risks and costs that DV necessitates (increased security, locks, accesses, early release from leases) can be accommodated.

[End of repeated section]

Ms MacMahon's Bill attempts to address aspects of inadequate Social Housing by seizing control of the private rental sector. Contract Law has a fairly narrow 'grey area' in which reconciliation or judgement is required.

- Providing any party with the ability to infinitely extend a contract without agreement is unprecedented. Doing so whilst controlling the price of the contract whilst ignoring cost factors is ridiculously disadvantageous to the Lessor.
- Whilst attempting to provide the Lessee with security, it completely ignores the possibility that the Lessor might enter financial hardship.
- Few would be comfortable with an investment from which they could not withdraw, and which steadily becomes more unprofitable.

I would like to comment on the key new points of the legislation as it is proposed:

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

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

The assumption that the costs to Landlords are in any way related to the rise in CPI is risible, and combined with other proposals is tantamount to seizing control of the housing asset. Decoupling cost from price is a recipe for a disastrous withdrawal from the market.

- Insurance is a major component of cost, and has been rising at multiples of the CPI.
- There are mechanisms which allow Rates to rise above CPI, and in recent years certain Council Rates have also risen precipitously.

Contrary to the baked-in assumptions, a large segment of Landlords is already delivering rental properties below cost – some in ignorance, some as a tax strategy. With interest rates hovering close to zero, tax benefits have evaporated

Lessor must not request particular information

Before entering into a residential tenancy the Landlord or Agent is prohibited from enquiring about the following:

- Whether the applicant has previously taken legal action, has been a respondent to legal action, or has had a dispute;
- The prospective tenant's rental bond history, including whether or not the prospective tenant has had a claim made on their bond.

All of this is germane to making a decision on an applicant's suitability.

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

Rent bidding conjures the concept of an 'auction'. Existing legislation already covers unfair increases in advertised rentals – it appears the problem is one of enforcement and comprehension, rather than additional legislation.

The RTRA Act Section 57 requires rent be advertised at a fixed amount. Advertising cannot legally contain words such as 'negotiable' and price ranges are prohibited. Property managers cannot encourage or solicit offers from prospective tenants. Section 57 has a penalty unit provision, which can endanger an Agent's licence.

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

Section 217 to 219 of the RTRA Act currently cover tenants making fixture or structural changes to the property. There is no need to further regulate as these provisions adequately cover the rights of either party in this instance.

The right to minor modifications can result in repair costs greatly exceeding the value of the bond. Potential problems include:

- A DIY shelf that punctures a water pipe and damages the flat below, or which causes injury to a resident when it collapses;
- A poor painting job which costs more to remedy than if the job had been done professionally in the first place.
- Fixing a flat screen television to a party wall may breach the fire code. How is this to be covered by legislation? This is especially germane in council flats.
- More guidance and enforcement leads to higher costs, which lead to increased rent.
- This right would need to be accompanied by a substantial increase in the rental bond, and probably the requirement for the tenant to hold property and liability insurance.

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

The provisions regarding pets are both impracticable and unreasonable. Additional factors that have been ignored include:

- Existing body corporate laws.
- Existing Council pet limitations.
- Practicality. Breeding Bull Terriers in a single bedroom apartment on the sixth floor of a building is obviously problematic.
- Neighbour's rights to quiet enjoyment.
- Potential damage to the building that exceeds the rental bond.
- Provision of fencing.

At the very least, the tenant must be obligated to carry insurance.

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

Section 185 of the existing RTRA Act already sets out Lessor obligations. Making section 17A mandatory addresses a problem for a small percentage of Tenants by increasing the cost to all Tenants.

There are many factors to consider:

- The cost to Landlords will inevitably rise, both directly (modifications to existing non-conforming homes), and indirectly (costs of inspections). The debacle that is the constantly-changing Pool legislation is a case in point.
- Contractors are not predictably available. The recent demand has both undermined the delivery chains (certain items such as construction timber are in critical supply) and potentially will put a number of operators out of business. All of this means that it can be several months before a job can be undertaken.
- This proposed provision has added a complexity that is totally unnecessary.

Improve lease security by removing the ability for “no grounds” evictions or evictions for sale contract by the lessor, and limiting the grounds available to the Lessor

Section 291 of the RTRA Act already clearly sets out when a notice to leave without reason cannot be given to a tenant. Section 292 protects tenants who believe a lessor has contravened the provision.

Investors should always have the right to lawfully terminate a tenancy without reason. If investors comply with legislation, a lessor should have the right of possession without having to state a reason. Tenants are protected if lessors act outside the legislation. This is fair and balanced for all parties.

[The following section appears in both submissions]

The ‘no grounds’ end of a tenancy has been misrepresented in various ways including conflating it with ‘eviction’. It must be remembered that the Landlord takes a financial hit every time a tenant leaves, through Agent fees, advertising and loss of rent, so when a tenant is not given a renewal, there is usually a compelling reason.

Landlords may have insurance problems if a fixed-term leases lapse to periodic leases; as a result, many now avoid running out a fixed term lease without agreeing a renewal outside the notice period. Best practice is for the offer of a new fixed-term lease prior to the sixty-day notice period (the asymmetry of notice periods is problematic). At present, a tenant electing to go periodic may cause the landlord to issue a notice to leave. Consideration should be given to removing periodic leases. It is possible that the issue of periodic leases is driving a large percentage of ‘no grounds’ non-renewals.

- Periodic leases can invalidate Landlord insurance.
- The nature of a periodic lease runs contrary to the Governmental research findings that tenants are seeking increased security and longer leases.

- Avoidance of periodic leases by the Landlord (or failure for a Tenant to accept a new fixed-term lease in the window afforded by the legislation) may be a major driver in 'no grounds' evictions.
- The additional provisions for tenants to end tenancies in combination with the removal of the rights of landlords further tips an already unbalanced situation. Allowing tenants to end a tenancy because the property is not in good repair is open to dispute and or misuse. "Good repair" should be clearly defined.
- Ironically, closing the 'no grounds' option to Landlords is more likely to result in Tenants being identified for poor behavior, poor payment history, or unnecessary expenses. Failing to provide an exit mechanism after a contract is completed is dangerously close to controlling the asset, which is completely inappropriate.

One approach is to afford both parties the same rights to end a tenancy contract by giving the appropriate notice without grounds. It seems reasonable to recognise and add a clause in the tenancy agreement stating that the Landlord is willing or unwilling to countenance a periodic lease.

[End of repeated section]

Lessor must give information to prospective tenant

There is the danger that certain clauses may be 'weaponised' by a tenant. If the lessor is obligated to report a notice to remedy breach for mould or damp in relation to the premises within the last three years, context is important. If a previous tenant has inappropriately used a shower head to rinse off plaster, fails to ventilate the space, fails to report the growth of mould until the problem becomes massive, and then serves a breach notice, where does the fault lie?

In the tropics, it is common for tenants who have moved from temperate area of the country to fail to understand that mould thrives if ventilation is ignored and humidity allowed to build up. The tenant's failure to clean areas of mould can mean that a small problem turns into a large one quite rapidly.

In summary, some rental property owners will perceive the new Bill as an amplified risk, with the potential to lock their investment in place with a negative return. This view will be especially prevalent amongst investors who are borrowing money at historically low rates. They may choose to take a modest profit now and discard a potentially damaging loss in future.

Despite Ms MacMahon's statements, the market reaction may be enough to trigger a market exit in sufficient quantity to put numerous additional suburbs into rental squeeze. Rental availability is already well below 1% for large swathes of the East Coast, with numerous areas approaching zero.

In conclusion, the very existence of this bill, let alone its passage, might be sufficient to exacerbate the problems that the bill supposedly addresses. The likely outcome is both a reduction in supply (biased to the lower end) and an increase in rental rates.

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

Sent via email [REDACTED]

Yours sincerely

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