

15 July 2021

Housing Legislation Amendment Bill 2021 submission to the Community Support and Services Parliamentary Committee

By Women's Legal Service Queensland

About Women's Legal Service

Women's Legal Service Queensland (WLSQ) is a specialist community legal centre, established in 1984, that provides free legal and social work services and support to Queensland women.

WLSQ assist women in the areas of family law, domestic violence, child protection and some aspects of sexual violence. WLSQ provide state-wide assistance through our state-wide domestic violence legal helpline, and have a designated rural, regional and remote priority line to increase women's access to our service in non-metropolitan regions. We undertake outreach work at the Brisbane Women's Correctional Centre and at Family Relationship Centres in Brisbane. We also conduct duty lawyer services at three Courts: Holland Park, Caboolture and Ipswich.

Our social workers and specialist domestic violence unit solicitors provide casework support for our most vulnerable clients experiencing domestic violence.

We thank the *Community Support and Services Committee* for the opportunity to provide this submission.

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Domestic Violence and Private Rental Accommodation

Domestic violence continues to be the leading cause of homelessness for women in Australia.¹ The link between domestic violence and homelessness in many cases stems from housing insecurity, caused by a poor rental history directly attributable to domestic violence. The inability to terminate lease agreements appropriately when fleeing and amongst other barriers, the ongoing financial liability and tenancy debts can lead to entrenched housing instability.

Housing is a key factor in determining safety when escaping domestic violence, and it is often the victim / survivor who bears the costs and upheaval of relocation in order to secure their safety. With increasing pressure on emergency and refuge accommodation and the scarcity of affordable and social housing, the private rental sector has a leading role in responding appropriately to tenants / residents experiencing domestic violence. This is consistent with the Queensland Government's *Domestic Violence Prevention Strategy*² which identifies domestic and family violence as a major cause of homelessness and housing instability and promotes community wide obligations.

Women's Legal Service QLD (WLSQ) strongly welcome the proposed domestic violence amendments in the *Housing Amendment Bill 2021* to address inherent legislative barriers in the current *Residential Tenancies and Rooming Accommodation Act 2008 (RTRA)* relevant for victims seeking to leave violent relationships and increase their safety and security at home.

We note the *Residential Tenancies and Rooming Accommodation (Tenant's Rights) and Other Legislation Amendment Bill 2021* is silent on the issue of domestic violence.

Proposed Domestic and Family Violence Amendments

This submission addresses specifically the domestic violence provisions in the *Housing Amendment Bill 2021*, noting that the relevant amendments have been tested over the past year by similar provisions in the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* introduced in April 2020. WLSQ support the notable shift towards supporting victims of domestic violence and increasing the accountability of perpetrators of domestic violence.

Clause 14 – Victims not liable for damage caused by domestic violence s188(5)

WLSQ strongly support this amendment. Exempting the victim from liability from damages caused by violence perpetrated against them sends a strong message to tenants, lessors and the wider community about perpetrator accountability. This is a positive step towards shifting the blame and financial burden of domestic violence from victim/survivors, which has too often resulted in unfair tenancy debts and ongoing housing instability.

Clause 15 – Domestic violence victims not obliged to provide forwarding address s205(3)

WLSQ strongly support this amendment. Maintaining victim confidentiality is crucial for safety especially at the time of separation, which is recognised as a time of elevated risk of intimate partner homicide³. Victims of domestic violence should not be required to disclose their

¹ 2020 AIHW, *Australia's Welfare 2019, Homelessness and homelessness services*

² 2016 Qld Gov *Domestic and Family Violence Prevention Strategy 2016 – 2026*

³ 2018-19 *Queensland Domestic and Family Violence Death Review Advisory Board Annual Report*, p32.

location particularly when their tenancy agreement or interest in the tenancy agreement has ended.

Clause 16 - Changing Locks - s211(2)

WLSQ strongly support this amendment. We noted in previous submissions (including *2018 Open Doors to Renting Consultation*) that the *RTRA 2008* is confusing and ambiguous in relation to liabilities and obligations around changing locks in circumstances of domestic violence. The proposed amendments provide victims of domestic violence and their advocates confidence that locks can be changed and provides clarity about lessor's obligations *not* to provide a set of keys to a co-tenant who may be perpetrating domestic violence.

Clauses 22 and 26 – Domestic violence victim's right to leave – Subdivision 2A

WLSQ strongly support these amendments. Timeliness is extremely important in planning to leave violence, not least because there are many factors to coordinate a safe relocation but because it takes significant courage for a victim and there is a window of opportunity when the victim may feel safe to take this step. Any delay or uncertainty can disrupt confidence and the window of opportunity is missed. The current *RTRA 2008* requires a QCAT application to amend or end tenancies under domestic violence or hardship grounds and is onerous for victims in crisis. In addition to application delays (of up to 3 weeks for urgent QCAT hearings), there is no guarantee of success which carries a financial risk to tenants. This has effectively become a deterrent for many tenants / occupants experiencing domestic violence who are wanting to end their leases.

Over the past year, the social work team at WLSQ have assisted numerous women to access the domestic violence tenancy provisions under the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* to leave their tenancies to access safety in circumstances of domestic violence.

The feedback from our social workers and clients accessing the new provisions is overwhelmingly positive. Promoting choice, self-determination and minimising uncertainty are key evidence-based practice principles in working with victims of domestic violence⁴. It is widely acknowledged that the most successful safety and exit plans are made with client-driven decision making. The subsection 2A provisions enable *the victim to decide* on a tenancy exit date, providing certainty around her financial liability and confidence to inform her decision making and coordinate her exit.

We found the RTA *Domestic and Family Violence Notice Ending Tenancy* and *Domestic and Family Violence Report* accessible, user-friendly and strikes the right balance between providing sufficient evidence to establish grounds of domestic violence and maintaining client privacy by limiting disclosure of specific details and incidents of the violence to the lessor. This process addresses another shortfall of the previous legislation where applications often contained details of violence in documents served on real estate agents and other parties, resulting in the unnecessary ventilation of traumatic and personal information about the victim.

We found that most real estate agents were initially resistant as they were unaware of the new domestic violence provisions even months after their introduction, and our social workers performed an education role with agents that may have been difficult for vulnerable clients trying to advocate for themselves.

⁴ 2020, Dept Child Safety, Youth & Women Domestic and Family Violence services: Practice principles, standards and guidance, p 4 – 5.

Unfortunately, we also heard that some women experienced adverse treatment by real estate agents after ending tenancies under the new domestic violence emergency provisions. For example, a former agent provided negative tenancy references and disclosed domestic violence about a client when she made new rental applications, making it difficult for her to obtain housing.

WLSQ recommend that the introduction of new legislation is accompanied by community awareness activities and appropriate training for real estate agents.

Further recommendations

WLSQ note that there are no proposed amendments addressing procedures around amending tenancy agreements to transferring tenancy to victim/survivors names and / or removing the perpetrators name. In circumstances where they want to remain in their rental property. The Qld Government's *Domestic and Family Violence Prevention Strategy* states a key outcome is for "All Queenslanders live safely in their own homes and children can grow and develop in safe and secure environments".⁵ The *RTRA 2008* legislation includes provisions under s245 and s246 for an occupant / co-tenant experiencing domestic violence to be recognised as the tenant and remove the perpetrator from the tenancy, however this process still requires an application to QCAT.

Currently, in Queensland, protection orders under the *Domestic and Family Violence Protection Act 2012* (DFVPA) can include a condition ordering the respondent to vacate the aggrieved's residence (ouster order) which is applicable whether or not the respondent is named on a tenancy agreement. However, the tenancy legislation still has an important role to play in ensuring the ongoing safety and wellbeing of people experiencing domestic violence who want to remain in their rental properties.

Under sections 139 and 140 of the *DFVPA 2012*, the Magistrates Court may amend tenancy agreements under the *RTRA 2008* sections 245, 321 or 323. Note this does not include section 246 relating to 'occupants' wishing to be recognised as the tenant. In theory, the intent is to remedy tenancy issues alongside protection order applications for example where ouster orders are made, or where conditions prohibiting respondents from approaching the aggrieved, or their residence. However, in practice, these provisions are rarely accessed, if at all. In 2012, a question on the protection order application about tenancy concerns was removed from the application form and there is no prompt for Magistrates, police or lawyers to turn their mind to tenancy matters beyond whether there are reasonable housing options available to the parties. If there are issues related to tenancy matters, this is usually left overlooked, unaddressed or the aggrieved party must apply to QCAT at a later stage.

WLSQ supports the introduction of simplified process to amend the *RTRA 2008* to enable tenants / residents / occupants experiencing domestic violence to remain in the rental property and amend the tenancy agreement appropriately providing evidence of domestic violence. Such amendments could mirror the subsection 2A amendments and eliminate the administrative burden of applying to QCAT, especially for those who have obtained a protection order. There are many circumstances where a tenant / occupant may be experiencing domestic violence, and there is still a benefit to removing the perpetrators name from a tenancy. For example, where

⁵ 2016 Qld Gov *Domestic and Family Violence Prevention Strategy 2016 – 2026* pg. 13

the victim / survivor is not a listed on the tenancy agreement but is an occupant. Another dynamic we have noticed is when the perpetrator is named as the tenant or cotenant, but doesn't in fact live at the premise, but as a named tenant feels entitled to "come and go" from the property, extending their control and a sense of omni-presence over the victim.

WLSQ support the submission by *Tenants Queensland* who have provided viable suggestions to incorporate amendments to address this issue:

- A tenant/resident who provides evidence of domestic violence to the lessor/provider and the former tenant/co-tenant/resident/co-resident has ceased to occupy the premises, the lessor/provider cannot unreasonably refuse to transfer the tenancy into the name/s of remaining co-tenant/s/co-residents or occupants.
- Indicators of unreasonable refusal could include – the occupant / co-tenant (experiencing domestic violence) has capacity to fulfill tenancy obligations (eg, making rent payments), and / or would experience hardship if having to relocate (eg, disruption to employment, or children's school, connection to health and community supports).
- Indicators the co-tenant (who perpetrated violence) has ceased to occupy the premises could include – a relevant protection order (with ouster, no approach conditions), police protection notice, incarceration, report by an authorised person, or no response from the former tenant / co-tenant after 7 days (similar to Abandonment Termination Notice).

Conclusion

Financial autonomy and housing accessibility are key factors determining a victims / survivors safety and sustainability following separation. Research indicates that unfortunately many victims will return to the perpetrator a number of times before a final separation. In many ways our social support systems have failed victims and blamed victims for choosing to return, when they have very few options and are forced to choose between homelessness or violence.

WLSQ welcomes the introduction of the domestic violence amendments in the *Housing Legislation Amendment Bill 2020* which remedies some the significant structural barriers embedded in the *RTRA 2008* and shifts some of the financial burden of rent and damage liability away from the victim at a time when they need the most support. The proposed bill communicates clearly that solutions to domestic violence require a community wide response, including obligations of lessors and housing providers to prioritise victim safety and confidentiality.