



Tenants Queensland

Submission to the

Economics and Governance Committee

on the

State Penalties Enforcement (Modernisation) Amendment Bill 2022

April 2022

Contents

1	About Tenants Queensland	2
2	This submission	3
3	Summary of our response.....	3
3.1	TQ recommendations:	3
4	Background	3
5	Tenants' bonds are unique	4
5.1	Value of an individual's bonds declines	5
6	Contribution of tenants to the industry.....	6
7	Concerns about what the changes will mean	6
8	Lack of consultation and transparency	6
9	The proposals and rational do not make sense	6
10	Alternate considerations.....	7

1 About Tenants Queensland

Tenants Queensland (TQ) is a statewide community and legal service providing free tenant advisory services for residential tenants. TQ aims to protect and improve the rights of all people who rent their home in Queensland. This includes renters in private rental accommodation or social housing and renters in more marginal tenures such as caravan parks and boarding houses.

TQ is the manager and lead provider of the Queensland Statewide Tenant Advice and Referral Service (QSTARS) program initiated by the Queensland Government in 2015. QSTARS provides quality, free, independent advisory services to tenants across Queensland. Through QSTARS and our Community Legal Centre's Program work, TQ assists renters to understand and exercise their legislative rights and responsibilities, and ultimately, to manage and sustain their tenancies. Our services are directed to those most in need.

TQ operates a range of other projects. Our Domestic and Family Violence Sector Capacity Building Project supports DFV workers when working with clients with renting issues. Our Financial Counselling Project recently commenced to provide additional support for renters, particularly those whose financial situation was impacted by COVID -19.

Since forming in 1986 around the need for the centralised collection of tenant bonds, TQ has been at the forefront of all the State's progressive tenancy law reforms.

TQ operates a statewide network of tenant advisory services and speaks to tens of thousands of renting households every year. Our policy positions are developed by drawing on the knowledge and understanding of the situation for renting households, as well as other research and policy development.

2 This submission

TQ thanks the Economics and Governance Committee for the opportunity to comment on the *State Penalties Enforcement (Modernisation) Amendment Bill 2022*. This submission only responds to the proposed amendments the *Residential Tenancies and Rooming Accommodation Act 2008*.

TQ notes the brief timeframe for submissions.

3 Summary of our response

TQ is strongly opposed to these changes. They will result in undermining a legacy which should be provided to tenants, they remove the autonomy of the industry regulator and a self-funded model which make financial sense. They also lacked consultation prior to being tabled.

3.1 TQ recommendations:

1. The change to the *Residential Tenancies and Rooming Accommodation Act 2008* are not progressed and the Residential Tenancies Authority's (RTA) current self-funding financial arrangements are retained.
2. The RTA should remain a self-funded, independent authority where investment returns from tenants' bonds are applied only to the administration of the RTA and to establishing and delivering tenant advisory services.
 - a. Amendments should be made to section 153 of the *Residential Tenancies and Rooming Accommodation Act 2008* limiting grants provided by the RTA to sub-section (a) for 'establishing or administering rental advisory services'. Sub-sections (1)(b)-(d) should be removed.
 - b. Over time as interest rates rise and RTA cash reserves increase, tenant advisory services should again be funded through the interest generated on bonds held.
3. Should government proceed with pursuing the changes, they should be delayed by 12 months to allow for detailed consultation on the government's articulated concerns. This would allow for possible solutions which retain the important aspects outlined above and implementation to be explored. Options for government might including limiting the risk profile of investments made by the RTA if this is the key concerns.

If the changes are made, that they be modified to include the following:

4. A legislated requirement for transparency over the interest generated on tenants' bonds and a requirement that the interest be returned to tenants either through individual interest or independent tenant advisory services.
5. That the RTA be allowed to invest a percentage of the bonds they hold in an investment vehicle rather than a simple interest-bearing account with a bank.

4 Background

Tenants' bonds have generated millions of dollars in interest since the establishment of the Rental Bond Board in 1989 and transition to the Residential Tenancies Authority in 1994.

In 1996 the RTA board stated:

'...the Authority's administration costs should be jointly funded from sources attributable to consumers and from those which more clearly connected with lessors and the real estate industry. The situation is clearly inequitable and further consideration should be given to the

potential for additional funding source more closely associated with industry to supplement finds from rental bond interest'. (RTA Board, Rules for Renting, 1996, p236-7)

Despite this, tenants' bond interest has been the sole way in which RTA has been funded throughout its history (with the exception of a \$425,000 start-up grant in 1995 from the Auctioneers and Agents Fidelity Guarantee Fund). Bond interest has also been used to fund independent advice services for tenants, as well as numerous other initiatives, including social housing build, funding for the Lady Musgrave Trust, Hostel Industry Development, housing policy and flood related assistance.

The RTA self-funding model delivers an Authority which remains financially and operationally independent and, protects a legacy due to tenants. Governments in perpetuity should deliver tenancy advisory services funded by bond interest, and if not, return interest back to tenants.

Individual tenants have forgone access to interest on their bonds for the universal benefit to tenants, i.e., access to independent tenant advisory services. Except for the last six years, tenant advisory services have been funded from bond interest. The RTA board when discussing this issue in *Rules for Renting*, said:

'The approach in Queensland to date has been not to make interest payments to individual tenants on the bonds they have lodged with the Authority but instead to fund the Housing Resources Services Program which provides advice and advocacy services to tenants generally' (p239).

The intent from the early 1990's was to, in addition to bond interest, gain another source of real estate/lessor related income to support the administration of the independent and self-funding statutory authority. In the first instance independent services would be provided for tenants, and later, interest would be returned to tenants to maintain the value of their bonds. These issues are important when making decisions about how bonds are managed into the future and are discussed in more detail below.

5 Tenants' bonds are unique

Tenants' bonds are held in trust by government in case there is a claim of damages at the end of a tenancy. They are unlike any other trust account in the state. The Queensland government [defines trust accounts as](#):-

'A trust account is an account where you (as a trustee) can hold money in trust on behalf of someone else (a beneficiary). A trustee can be an accountant, solicitor, licensee or other person who receives money on behalf of another person and is required to account to that person. Trust accounts operating in Queensland have reporting requirements under Queensland legislation depending on the type of trust account.'

The Queensland government is explaining trust accounts whereby a consumer, purchasing a product or service, provides a payment or part there of (a deposit) into the provider's account. In most circumstances, if not all, the interest generated on those accounts support consumer advisory services or engagement processes.

This is not the case for tenants with their bond. Tenants' bonds are not down payments for products or services, or transactions. They are security deposit taken at commencement of a tenancy, held in trust by a government authority, to be returned when the tenancy ends. Clearly, bonds held by the

RTA are tenants' money. The interest generated by the RTA is a direct result of the Authority holding tenants' money in the form of bonds.

Since 1989 the returns on tenants' bonds have been used to the broad benefit of the residential tenancy industry. Until 2012, when the tenant advisory program was defunded by the Newman government, tenants' bond interest funded both the operations of the RTA and these services for tenants. Since re-establishing the tenancy advisory program (QSTARS) in 2015, the Palaszczuk government has funded these services from consolidated revenue. Currently there is no connection between the funding of tenant advisory services and bond interest. For now, this important link has been lost.

As expected, tenants and their advocates have a legitimate interest in what happens to the returns on their bonds and, conversely, their interests should be considered when determining what happens to bond investment and returns. The topic was of significant importance when the Residential Bond Board was established in 1989, as it was when the RTA was established in 1994. It should continue to be of primary importance when considering how bonds are held, and how and what bond interest and returns are applied to.

It is TQ's adamant view that a clear connection between bond interest and the provision of tenant advisory services (consumer advice) should be re-established. This would take time but is possible with the continuation of current RTA self-funding arrangements, as interest rates rise and RTA cash reserves increase. Increased limitation on what payments can be made from the rental bond interests account will provide a sharper focus on a return to tenants as consumers (tenancy advisory services) while still supporting the administration of the RTA.

Tenants should not have to forsake the interest on their bonds, to then see the returns used to pay for industry regulation and support as well as other services more appropriately funded from taxation income. Past Queensland Governments have requested, and been provided, bond interest funding for the provision of social housing and charitable support to homeless people. While these are important and legitimate issues, tenant bond interest and returns should not fund them. Therefore, TQ advocates for change to section 153, of the *Residential Tenancies and Rooming Accommodation Act 2008*. Sub-sections (1)(b)-(d) should be removed, limiting payments to 'establishing or administering rental advisory services'.

The RTA would currently have greater cash reserves if Queensland governments had not requested monies from the RTA to fund such a broad array of activities when investment returns were good. The fact their reserves are more limited is not a reflection that the self-funding model is not working, rather, the intervention by governments requesting those reserves to be applied to non-core purposes.

5.1 Value of an individual's bonds declines

The importance for tenants to collectively benefit from bond interest is underscored by the fact that, without receiving interest on their bond, the value of their bond declines by the time it is returned to them.

Individually, tenants give up their bond interest for the collective good of tenants. This philosophy was argued by our organisation in the mid to late 80's when lobbying for the centralised collection of bonds, the formative issue for Tenants Queensland. Put in action over time, this gave rise to consecutive tenant advisory programs (the Housing Resource Service, the Tenancy Advice and

Advocacy Service and QSTARS). These services are effectively self-funded services which keep people housed (largely) in the private rental market.

As noted above, they were funded in addition to the operations of the RTA.

6 Contribution of tenants to the industry

TQ notes that tenants, through their bonds, have provided exceptional benefit to the entire residential tenancies industry. Without any contribution, lessors and agents have access to free services – a dispute resolution mechanism, prescribed forms, factsheets webinars, education sessions, a free information service, bond management and industry compliance issues to maintain a fair market. This is all because of the way in which tenants' bonds have been held, invested and allocated. None of this would be possible if individual tenants did not give away their individual right to interest.

Government and the community also benefit from these arrangements. The industry is regulated without any cost to the taxpayer.

7 Concerns about what the changes will mean

The proposed change to the *Residential Tenancies and Rooming Accommodation Act 2008* will forever uncouple the connection between tenant bond interest and tenant advisory services. Currently the tenant advisory program is funded from consolidated revenue, following its previous application for a wide variety of services by previous governments. It is possible, however, to see a future where tenants bond interest can again fund the tenant advisory program. The proposed legislative changes, requiring the ultra-conservative strategy of bonds sitting in a cash account and the minimal interest returned to government, remove that opportunity forever.

In addition, by removing its self-funding model, the RTA loses its independence and autonomy by becoming reliant upon government for an annual grant from the Consolidation Fund. Without its self-funding financial model, future governments may be inclined to further erode the RTA's role by folding its functions into a government department such as the Office of Fair Trading.

8 Lack of consultation and transparency

These suggested amendments are significant and TQ is concerned with the lack of transparency regarding the proposed changes.

The government has been trusted and empowered (via the RTA) to manage the bonds of Queensland renters. Without notice, major and significant changes have been proposed to how those bonds are managed. The process lacked any stakeholder consultation, and significantly, given bond money belongs to tenants, without reference to renters or their advocates.

9 The proposals and rational do not make sense

Representatives of the Treasury Department informed TQ that the RTA have undertaken increasingly risky strategies to generate enough investment return for its operation - the proposed changes are a consequence to protect tenants' bonds. TQ understands, however, that that the RTA's investment strategies, through the Queensland Investment Corporation, are generally low risk. In their annual report, the RTA report on managing their market risks in the following way:

The RTA manages its exposure to market risk on investments through compliance with the SBFA Act Queensland Treasury Guidelines and a formal investment policy approved by the

RTA Board. The Treasurer must approve through Section 61A of the SBFA Act the strategic asset allocation parameters. The Treasurer approved the RTA to appoint QIC as its fund manager under section 59 of the SBFA Act on 23 November 2004.

Of course, the RTA's investment returns - their investment of tenants' bonds and the interest accrued - are subject to fluctuations in markets. To mitigate risk, they need to accrue cash reserves. However, previous governments have requested funds from the RTA for a variety of (lawful but unreasonable) purposes when returns were good, subsequently leaving them in a more precarious position. Without having to have relinquished these funds to governments over time, the RTA would have increased their accrued reserves, leaving them in a better financial position.

As outlined above, TQ considers grants provided from the RTA for tenant advisory services are legitimate and required. Below however, are examples amounting to \$45M where bond interest has been used to fund functions more correctly supported by consolidated revenue (i.e., taxpayers - which of course, tenants are as well):

▪ 2004-2005	funding for affordable housing	\$ 1,000,000
▪ 2013 –2016	funding for social and affordable housing	\$42,630,150
▪ 2012	funding for the Lady Bowen Trust	<u>\$ 1,000,000</u>

It makes no financial sense for government to require the RTA to take such a conservative stance as to manage bonds by holding them exclusively in a cash account. The long-term returns, on a balanced portfolio, is in excess of 10%, far and above of the returns on a government CBA cash account.

The equivalent would be to require superannuants to withdraw their superannuation from their funds provider and place it exclusively in a cash account.

In addition, TQ does not see that the proposed model provides any greater guarantee for tenants' bonds as stated by the Treasurer in his press release of March 17:

"The new laws include a statutory guarantee on the payment of rental bonds, providing greater protection on behalf of Queensland tenants."

The RTA as a Queensland Statutory Authority, represents the state, meaning that the state already guarantees them.

10 Alternate considerations

TQ observes that the self-funding model of the RTA appears viable and stable. The proposed changes rely on Treasury's argument that RTA investment strategies for bonds are too risky. If the government considers the RTA's investment management model is not "ideal", TQ recommends the specific risk issues be identified and improved through stakeholder consultation before implementing such major changes. To date this consultation has not occurred.

Risk could be reduced for example, by legislatively limiting and more sharply focussing the options for the use of bond interest, or modifying the RTA's investment parameters. To change the model in the proposed manner, removing the RTA's independence, its ability to both self-fund as well as fund tenant advisory services, is to take a sledgehammer to a nail.

Despite the potential for improvement, from TQ's perspective, the investment model has proved itself over time.