

## Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024

**Submission No:** 4  
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Committee Secretary  
Housing, Big Build and Manufacturing Committee  
Parliament House  
George Street  
**BRISBANE QLD 4000**

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Dear Committee Secretary

**Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024**

1. Thank you for the opportunity to provide this submission to the Housing, Big Build and Manufacturing Committee (the **Committee**) in relation to the Residential Tenancies and Rooming Accommodation and Other Legislation Bill 2024 (the **Bill**).
2. Overall, we commend the Queensland Government on its commitment to the implementation of measures designed to strengthen renters' rights, support private investment, provide better pathways to resolve issues in tenancies and stabilise rents in the private rental market.<sup>1</sup>
3. While commending the overall purpose of the Bill, we seek to provide feedback to improve aspects of the Bill, as detailed in these submissions.

**Background**

**LawRight**

4. LawRight is a not-for-profit, community-based legal organisation that coordinates the provision of pro bono legal services to disadvantaged Queenslanders.
5. LawRight operates different legal programs in strategic partnership with our 30 member law firms and over 40 barristers, including:
  - Court and Tribunal Services;
  - Community and Health Justice Partnerships (incorporating Homelessness Law and Multicultural Law); and
  - Pro Bono Connect (incorporating the Public Interest Referral Scheme, QLS Referral Scheme and Bar Association Referral Scheme).

**LawRight's Homelessness Law program**

6. Established in 2002, LawRight's Community & Health Justice Partnerships | Homelessness Law program (**Homelessness Law**) is Queensland's free specialist legal service for people experiencing or at risk of homelessness.

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<sup>1</sup> Explanatory Notes, Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) 1.

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7. Homelessness Law implements an outreach-based, trauma informed model, with staff lawyers fully embedded in frontline homelessness and health agencies in both Brisbane and Cairns. Through this program, we provide early intervention, integrated and holistic legal supports to prevent and end homelessness by resolving legal issues connected to a person's housing, money, and experience of violence.
8. We have a focus on key priority cohorts including women and their families with an experience of violence, children and young people, and people in or exiting prison. In our experience, these clients frequently experience multiple, intersecting forms of disadvantage connected with their experience of domestic and family violence, homelessness and housing instability, mental illness, severe financial hardship, addiction, physical or intellectual disabilities and complex family backgrounds.
9. An example of Homelessness Law's early intervention assistance is our *Homelessness Consumer Advocacy Project*, which helps keep people safely housed by resolving consumer debts. Our staff and volunteer lawyers work collaboratively with frontline workers to address financial products targeted at people in financial hardship, to stabilise their financial position and to empower them moving forward.<sup>2</sup>
10. In the 2022 – 2023 financial year, Homelessness Law:
  - met with 470 new and returning clients attending a community or health justice service in Brisbane or Cairns;
  - provided legal services in 969 matters, including 100 tenancy legal services and 11 high intensity representation to defend unlawful evictions;
  - resolved \$934,020 in consumer debts; and
  - addressed \$272,380 in fine and infringement debts.<sup>3</sup>
11. Homelessness Law's *Your Own Home Project* assists women and their families, particularly those with an experience of family violence, to avoid homelessness. Working closely with frontline homelessness and family violence workers, particularly from Anglicare Women's Hostel and Micah Projects, we provide ongoing representation to ensure women and their children remain safely housed or can access safe and secure housing, free from violence.<sup>4</sup>
12. Since 2021, the *Your Own Home Project* holistically helped 124 women and their 132 children facing homelessness to resolve almost 500 distinct legal issues. Of these 124 women:
  - 95% received government benefits or had no income;
  - 90% experienced family violence, often directly connected to their experience of homelessness;
  - 37% identified as having a disability;
  - 18% identified as First Nations; and

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<sup>2</sup> LawRight, [Annual Report](#) (2022–2023) 43–5.

<sup>3</sup> LawRight, [Annual Report](#) (2022–2023) 36.

<sup>4</sup> LawRight, [Annual Report](#) (2022–2023) 37–8.

- 19% identified as being from a CALD background.<sup>5</sup>
13. Homelessness Law also works to resolve legal issues connected to an experience of violence through our extensive casework in assisting victim-survivors to access financial assistance from Victim Assist Queensland. For example, from July 2023 to present, Homelessness Law has already helped victim-survivors access over \$700,000 in victim assistance from Victim Assist Queensland.
  14. Homelessness Law scales the impact of our frontline, client-centred work by stakeholder engagement and advocating for better laws and policies. In the tenancy landscape, LawRight is involved in the RTA Stakeholder Working Group and RTA Stakeholder Engagement Forums. LawRight is also a member of the *Making Renting Fair in Queensland Alliance*.<sup>6</sup>
  15. With that background in mind, LawRight's submissions have been informed by our work providing legal services to vulnerable Queenslanders in the Greater Brisbane region and Cairns region, particularly people experiencing or at risk of homelessness.

#### **LawRight's Court and Tribunal Services**

16. LawRight's Court and Tribunal Services assist individuals, primarily self-represented litigants, with proceedings in the District Court, Supreme Court, the Court of Appeal, the Federal Court and Federal Circuit and Family Court of Australia, and the Queensland Civil and Administrative Tribunal (**QCAT**).
17. Our QCAT Court and Tribunal Service office assists with several specialist areas of law including residential tenancy law matters and appeals of residential tenancy matters.

#### **LawRight's position on the changes proposed by the Bill**

18. LawRight generally supports, and welcomes, the proposed changes in the Bill.
19. Although there are many clauses in the Bill that LawRight would like to comment on or to spend more time reviewing, given the short timeframe for feedback on the Bill we have not had capacity to do this work.
20. From the outset, we wish to voice our support and echo concerns raised in previous submissions and statements by our colleagues in the community and community legal sectors, particularly Tenants Queensland, Queensland Council of Social Services (**QCOSS**) and the Making Renting Fair Alliance in Queensland, relating to the urgent need to end arbitrary evictions in the form of the ability for lessors to end a tenancy simply due to the 'End of a Fixed Term'.<sup>7</sup> Against the backdrop of and compounding housing and costs-of-living crises, LawRight is increasingly concerned about the prevalence in vulnerable clients reporting they have received Notices to Leave due to the end of a fixed term tenancy given the relatively short period since its introduction in the Stage 1 Rental Reforms. This ground is effectively a 'without grounds' notice leaving the

<sup>5</sup> LawRight, [Annual Report](#) (2022–2023) 37–8.

<sup>6</sup> See [Make Renting Fair in Queensland](#) (Web Page) <<https://makerentingfairqld.org.au/>>.

<sup>7</sup> See especially Tenants Queensland, Submission to Queensland Government, *Stage Two Rental Reform Consultation Paper* (May 2023) 6–7 [5.3] <<https://tenantsqld.org.au/wp-content/uploads/2023/06/Submission-Stage-Two-Rental-Reforms-May-23.pdf>>; Queensland Council of Social Services, Submission to Queensland Government, *Stage Two Rental Reform Options Paper* (29 May 2023) 6 <<https://www.qcoss.org.au/wp-content/uploads/2023/06/20230512-Stage-2-Tenancy-Reforms-Submission.pdf>>; [Make Renting Fair in Queensland](#) (Web Page) <<https://makerentingfairqld.org.au/>>.

tenant without any genuine options to dispute any such notice and often leading to the practical consequence of pushing some vulnerable Queenslanders into homelessness.

21. LawRight's submission targets key aspects of the Bill that we consider may impact vulnerable Queenslanders – first, the clauses aimed at helping to stabilise the private rental market and second, the clauses aimed at improving the rental bond process.
22. This submission contains detailed consideration of the following clauses of the Bill:
  - **Clauses 14 to 21** relating to stabilising the private rental market; and
  - **Clauses 22 to 25** relating to payment or refund of rental bond; and
  - **Clause 54** relating to the requirement for lessors to substantiate bond claims.
23. This submission also contains high-level feedback on clauses relating to prescribing a rental application form, limiting break lease fees and timing requirements for lessors to pass on documents about general service and water service charges.
24. In relation to rent increases, the Bill proposes to:
  - tighten the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (**Act**) relating to rent increases<sup>8</sup> by ensuring the annual limit on rent increases is tied to the *property* rather than the *tenancy agreement*.
    - This has the effect that if the rent for a property under a residential tenancy agreement with Tenant A is increased on 1 November 2024, and a new residential tenancy agreement with Tenant B for the same property commences on 1 February 2025, the rent for that property cannot be increased until 1 November 2025,<sup>9</sup> unless an order by a tribunal permits an increase.<sup>10</sup>
  - facilitate transparency for tenants regarding previous rent increases by requiring disclosure of the date of the last rent increase in a rental agreement prior to it being entered into and allowing a tenant to request evidence of the last rent increase (such evidence includes a copy of a previous tenancy agreement, a written rent increase notice or a copy of the rent ledger for the premises).<sup>11</sup> Additionally, making failure to disclose an offence.<sup>12</sup>
25. In relation to these specific aspects, LawRight submits:
  - The amendments to the Bill that ban all forms of rent bidding and impose an annual limit for rent increases tied to the rental property and not to the tenancy, represent some of a suite of measures that could assist in stabilising rents in the private rental market. However, we note at the outset that stabilising rents in the private rental market is a considerable task that will require a range of both legal and economic interventions, with coordination across local, State and Federal Government – undoubtedly, this is not achievable under one singular piece of legislation. We

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<sup>8</sup> *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) ss 93, 105B ('Act').

<sup>9</sup> Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) cl 15(1) ('Bill').

<sup>10</sup> Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) cl 16.

<sup>11</sup> Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) cl 16.

<sup>12</sup> Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) cl 16.

commend the Queensland Government for acknowledging this reality in the Explanatory Notes to the Bill.<sup>13</sup>

- Specifically, we consider that the rent increase amendments should be further amended so that the amounts of rent increases are tied to economic indicia and market forces such as Consumer Price Index (**CPI**). This may ensure that any rent increases that are lawfully made at the end of each 12-month period are proportionate to the increased costs borne by landlords in connection with the relevant property during that 12-month period. This refinement of the amendments should target one of the pieces of ‘mischief’ that the Bill aims to address, which is preventing property owners or their agents from ending tenancies in order to enter into new agreement with a new, higher rent.<sup>14</sup>

26. In relation to improving the rental bond process, the Bill proposes to:

- improve the rental bond process by ensuring that bond reforms are fair and transparent by requiring that claims against rental bonds by lessors are genuine and substantiated with evidence to justify the claim;
- provide a maximum bond amount (an amount equal to no more than 4 weeks of rent) for all residential tenancy and rooming accommodation agreements;
- include a head of power to establish a portable bond scheme or rental bond roll-over scheme. The intention of this proposed amendment is to create a more affordable bond process for renters by allowing bonds to be transferred when relocating from one rental property to another. The specific operation would later be prescribed in regulation;
- allow the RTA to refund bonds directly to renters who use commercial bond products; and
- pay rental bonds in circumstances where QCAT has dismissed an application about a bond dispute.

27. In relation to these specific aspects, LawRight submits:

- The proposed amendments are welcomed as a step in the right direction. However, they would require further amendment to address certain legal loopholes and inefficiencies.
- The currently proposed amendments require the lessor or their agent to substantiate their claim against the tenant’s rental bond, failing which they would be subject to a penalty. However, with the exception of a penalty, there are no other consequences should the lessor or their agent fail to substantiate their claim. This means that the lessor’s claim remains valid, and the tenant would still be required to go through the conciliation process, and potentially also be required to file an

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<sup>13</sup> Explanatory Notes, Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) 5.

<sup>14</sup> Explanatory Notes, Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) 16.

application with QCAT to get their money back (and bear the financial burden of doing so).

- There are also no provisions indicating what would satisfy the legislative requirement for evidence substantiating a bond claim. The current drafting only provides a few examples of “evidence” such as “receipts, quotes to repair damage, records of unpaid rent”.<sup>15</sup> In the absence of further guidance, hypothetically, it would be possible for a lessor to obtain a quote for cleaning services that far exceeds the market rate for the same work.
- While the proposed amendments address several concerns in relation to the bond refund process, there is still more that could be done to improve the fairness and accessibility of the process.

28. Our detailed submissions are set out below.

### **Impact of instability of the private rental market on vulnerable Queenslanders**

29. In order to understand the potential impact of the Bill, it is important to understand the impact of instability of the private rental market generally on vulnerable Queenslanders.
30. With over 20 years of experience working with vulnerable Queenslanders, Homelessness Law recognises that financial difficulties and compounding housing and costs-of-living crises are the most common reasons Queenslanders facing homelessness seek help from our service. Community legal services, including LawRight, are subject to increasing pressure and demand with more people than ever before connecting to request legal help to resolve intersecting issues putting their housing at risk.
31. We echo the recognition in the Explanatory Notes to the Bill that vulnerable Queenslanders rely on the private rental market for sustainable and long-term housing.<sup>16</sup> This statement is consistent with our experience working with vulnerable Queenslanders.<sup>17</sup>
32. LawRight’s Homelessness Law provides a range of assistance for tenancy law matters including discrete advice and tasks to ongoing, integrated legal representation to help vulnerable Queenslanders. Implementing a best practice, trauma-informed approach, between July 2018 and June 2023:
- Homelessness Law helped 467 clients experiencing or at risk of homelessness with nearly 700 legal issues relating to tenancy law;
    - over one third of these clients were in private rentals;
    - close to 15% of these clients were in social housing;
    - the remainder of the clients labelled their housing situation as sleeping rough, boarding house, emergency hostel, caravan, squatting, couch surfing, in hospital or in prison; and

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<sup>15</sup> Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) cl 54.

<sup>16</sup> Explanatory Notes, Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) 4.

<sup>17</sup> Please refer to paragraph [8] above for a description of the demographics of our client base.

- 82% of these clients were receiving Centrelink payments as their only source of income.
33. The need for our client base to rely on the private rental market is particularly critical in the context of alarming public and social housing waitlists, with data released by QCOSS in November 2023 for the June to September 2023 period showing 43,074 Queenslanders were on the waitlist for social housing – a rise of 1,600 since the quarter prior.<sup>18</sup>
  34. Further, QCOSS found in its 2023 Report *Living Affordability in Queensland* that the housing crisis in Queensland is causing people financial stress, with people on low incomes struggling to acquire and maintain tenancies in the private rental market, and with low-income households modelled in the Report spending approximately 40 per cent or more of household incomes on rent.<sup>19</sup>
  35. From our casework and longstanding partnerships with frontline homelessness and health agencies, we know that being confronted with a sizeable and unexpected rent increase can be a significant factor pushing our clients into homelessness as rental costs become unsustainable and the struggle to preserve their housing security and avoid falling into rental arrears can often come at the cost of affording other everyday necessities.
  36. Homelessness Australia, the national peak body for homelessness in Australia, reported a 6.3% increase in the number of people accessing homelessness assistance for reasons relating to financial stress, housing crisis or accommodation issues in 2023 compared to the same period in 2022.<sup>20</sup> We note that this figure is likely an underestimation as it does not include those people who sought services but were turned away due to lack of resources (e.g. in 2021-22, homelessness services had to turn away 71,962 people).<sup>21</sup>
  37. Data from the Australian Bureau of Statistics (**ABS**) shows a median increase in all general tenancy rents in Queensland of over 18% from June 2018 to February 2023. This is the increase in rents for new tenancies, based on an index of actual prices paid in a dataset comprised of information about 600,000 rental properties across Australia as entered by property managers.<sup>22</sup>
  38. In 2019-20, nearly half (45%) of all low-income Queensland renter households faced unaffordable housing costs, with the number of households affected rapidly increasing over the previous four years. Among low-income households in the private rental market, 57% faced unaffordable housing costs, with 15% under severe housing affordability stress (rent accounting for more than half of total income).<sup>23</sup> Further, research conducted by QCOSS found a marked decline in rental affordability for low-income households from 2017-22, most particularly in regional Queensland.<sup>24</sup> Similarly, the equivalent series for Greater Brisbane demonstrated a reduction from 19% of lettings being affordable to low-

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<sup>18</sup> 'Almost 1,600 Queenslanders added to the state's social housing waitlist in just three months', *Queensland Council of Social Services* (Web Page, 17 November 2023) <<https://www.qcoss.org.au/almost-1600-queenslanders-added-to-the-states-social-housing-waitlist-in-just-three-months/>>.

<sup>19</sup> Queensland Council of Social Services, *Living Affordability in Queensland* (Report, 2023) 5.

<sup>20</sup> Homelessness Australia, *Housing Crisis: Homelessness Emergency* (Report, December 2023) 1.

<sup>21</sup> Homelessness Australia, *Housing Crisis: Homelessness Emergency* (Report, December 2023) 1.

<sup>22</sup> Australian Bureau of Statistics, *New Insights into the Rental Market* (Web Page, 24 April 2023) <<https://www.abs.gov.au/statistics/detailed-methodology-information/information-papers/new-insights-rental-market>>.

<sup>23</sup> Hal Pawson et al, *A Blueprint to Tackle Queensland's Housing Crisis* (Report, 2023) 50.

<sup>24</sup> Hal Pawson et al, *A Blueprint to Tackle Queensland's Housing Crisis* (Report, 2023) 53.



income renters in Q1 2020, to 10% in Q2 2022.<sup>25</sup> Across Queensland, the proportion of tenancies affordable to low-income households halved to 13% from 2017 to 2022.<sup>26</sup>

39. Without significant improvements to the accessibility and affordability of the private rental market, we believe that vulnerable Queenslanders will continue to be excluded from entering the private rental market, be unable to sustain their tenancies due to financial hardship or be forced into housing situations that are insecure and unsafe.

## **Feedback in relation to proposed amendments to stabilise the private rental market**

### ***The surrounding debate on rent control***

40. Unsurprisingly, there are opposing legal and economic interests on the need to stabilise the private rental market. As such, a balanced approach is required to both minimise unintended negative effects on the housing supply, whilst also increasing housing security. Importantly, it is not only the design and type of rent regulation that determines success but how that design fits local conditions. The Pawson Report (2023) emphasises the importance of establishing the objectives and intended effects at the outset. For example, whether the policy objective is to provide short term cost of living relief, to limit inflation, to improve long term affordability, or to provide market stability.<sup>27</sup>
41. The commentaries underscore the need for any attempt to introduce rent stabilisation policies to take into account:
- the need for significant data monitoring to understand the effects of the scheme; and
  - the dangers of “half-hearted implementation”, particularly around monitoring and compliance.<sup>28</sup>
42. There are also some criticisms in the literature both within Australia and in other jurisdictions to the effect that rent control, and specifically governmental regulation of rent prices, may have a suite of unintended consequences which in the long term have detrimental impacts to vulnerable people. The current literature suggests that rent regulation may have significant effects on supply through lower maintenance investment and more rental properties exiting the private rental market.<sup>29</sup> For example, Pinto writing in the context of Florida's housing market in the United States suggests that there are a range of economic risks associated with rent control, primarily risks related to the reduction of supply of rental properties such as:
- reduced incentives for landlords to supply rental units due to potential limitations on rental profits that landlords can yield from renting their units, and lower vacancy levels because current tenants do not want to move out so as not to incur a rent increase in a new property or tenancy, and landlords waiting to repair units until the end of leases;<sup>30</sup> and

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<sup>25</sup> Hal Pawson et al, *A Blueprint to Tackle Queensland's Housing Crisis* (Report, 2023) 54.

<sup>26</sup> Hal Pawson et al, *A Blueprint to Tackle Queensland's Housing Crisis* (Report, 2023) 52.

<sup>27</sup> Hal Pawson et al, *A Blueprint to Tackle Queensland's Housing Crisis* (Report, 2023) 86 – 7.

<sup>28</sup> See, eg Centre for Equitable Housing, *Regulating Rentals in Australia: What Works?* (Report, 2023) 58.

<sup>29</sup> Cathal Coffey et al, Economic and Social Research Institute, Department of Housing, Local Government, and Heritage, *Rental Inflation and Stabilisation Policies: International Evidence and the Irish Experience* (Research, April 2022) vii, 6.

<sup>30</sup> Talya Pinto, 'Why Florida Municipalities Should Not Report to Rent Control: A Comparative Analysis and Alternative Solutions' (2023) 31(1) *University of Miami International and Comparative Law Review* 143,166.

- manipulating the market's ability to correct supply and demand to respond to overly high or overly low rent prices.<sup>31</sup>
43. The above referenced commentaries suggest that incentivising landlords to purchase and maintain rental properties in the aggregate in turn benefits tenants, by increasing the supply of rental properties and therefore driving down market rent prices.<sup>32</sup>
  44. We acknowledge such risks but consider the effect of these criticisms does not outweigh the desirability of introducing rent control, rather they highlight the need for a careful balancing exercise and monitoring of effects of the proposed reforms to ensure they are fit for local conditions and minimise and guard against any such unintended negative impacts. This is particularly important as bolstering housing supply will remain a critical part of the picture in the introduction of the proposed reforms, particularly in the context of "[r]enting [being] an important housing solution in Queensland with around one third of the state's households renting their home."<sup>33</sup>
  45. Therefore, any rent stabilisation method must take into account any unintended reduction in the supply, quality and/or availability of rental properties it may cause. In this regard, we note that the Queensland Government is alive to this issue, with page 13 of the Explanatory Notes to the Bill referencing independent economic analysis of potential reform impacts having been undertaken by Deloitte Access Economics and as outlined in the Consultation Report: *Proposed Stage 2 rental reforms in Queensland*. We also commend the Homes for Queenslanders announcement, for its bold delivery target of 53,500 social homes by 2046 with significant financial backing.
  46. We submit that the Queensland Government should continue to closely evaluate what other measures could be introduced to operate in tandem with its proposed amendments to the Act, to encourage private investors to build, purchase and/or maintain private rental properties. Some commentators suggest further complementary measures such as implementing tax incentives or subsidies for property owners and developers of residential properties, and relaxing zoning regulations that restrict developers' ability to create more rental stock, would potentially assist in neutralising increasing rent prices in the long-term and therefore facilitate a more robust solution to the issue.<sup>34</sup>
  47. There is also literature in favour of rent control. For example, the Centre for Equitable Housing in its 2023 Report *Regulating Rentals in Australia: What works?* praised the utilisation of a variety of rent control measures in most Canadian provinces, including limitations on rent increases tied to CPI, limitations on the frequency of rent increases (as is proposed in the Bill), and notably, setting rent at the commencement of a new tenancy according to market price.<sup>35</sup> The report drew upon the work of commentators Martin and

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<sup>31</sup> Talya Pinto, 'Why Florida Municipalities Should Not Report to Rent Control: A Comparative Analysis and Alternative Solutions' (2023) 31(1) *University of Miami International and Comparative Law Review* 143, 167.

<sup>32</sup> Talya Pinto, 'Why Florida Municipalities Should Not Report to Rent Control: A Comparative Analysis and Alternative Solutions' (2023) 31(1) *University of Miami International and Comparative Law Review* 143, 146–7, 169.

<sup>33</sup> Explanatory Notes, Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) 4.

<sup>34</sup> Talya Pinto, 'Why Florida Municipalities Should Not Report to Rent Control: A Comparative Analysis and Alternative Solutions' (2023) 31(1) *University of Miami International and Comparative Law Review* 143, 169–71. See also Michael Bleby, 'Scape Closes Third Joint Venture with \$1B Student Housing Fund', *Australian Financial Review* (online, 9 April 2024) <<https://www.afr.com/property/commercial/scape-closes-third-joint-venture-with-1b-student-housing-fund-20240408-p5fi6o>>. This is a recent example of recent foreign investment in private student housing in Australia (a joint venture with Scape Australia involving \$1 billion in equity).

<sup>35</sup> Centre for Equitable Housing, *Regulating Rentals in Australia: What Works?* (Report, 2023) 59.

Pawson, who put forward an argument for regulating rent increases during tenancies due to the legal and administrative simplicity of this approach.<sup>36</sup>

48. We understand Martin and Pawson's argument to be that regulating rent increases is a useful and administratively simple tool for making *existing* rental properties more affordable and indeed rented at an objectively fair price, but that allowing the market to dictate the initial rent charged for a new rental property strikes an appropriate balance between incentivising investment and shielding tenants from "short run price hikes".<sup>37</sup>
49. The Australian Housing and Urban Research Institute (**AHURI**) is also in favour of *meaningfully* regulating rent increases as a mechanism to promote housing security, and Martin, one of the co-authors of an AHURI report, suggests that regulating rent increases may be a more effective means of promoting housing security than the use of longer term fixed term tenancy agreements.<sup>38</sup> This may well be true in Queensland as there is currently no provision or proposed amendment to the Act that prevents landlords from increasing rent by an amount not tied to CPI or market forces at the end of a long term lease.<sup>39</sup> AHURI's report is supportive of rent regulation in principle, critiquing negative econometric evaluations of rent regulation as follows:
  - they deliberately overlook the fact that there are a diverse range of rent regulation methods available and that well-designed methods have plausible benefits; and
  - they fail to give a balanced critique of rent regulation, which can have a positive, negative or neutral effect on one or more aspects of housing and related markets, depending on modelling assumptions.<sup>40</sup>
50. We consider that the amendments to the Act as currently drafted present some of a variety of measures that may assist in stabilising rent prices in the private rental market. However, we consider that concerns such as those outlined in the above literature can be offset and mitigated by the Queensland Government's continued evaluation of balancing measures to incentivise investment in the private rental market.

***The annual limit on frequency of rent increases tied to property does not go far enough***

51. We consider that the proposed annual limit on the frequency of rent increases being tied to properties and not to tenancy agreements represents a significant step towards protecting vulnerable tenants from exploitation by landlords.
52. However, we recommend that additional restrictions on rent increases should be imposed to prevent landlords from exploiting a loophole in the proposed amended laws on rent increases. Namely, that the amended rules do not currently prevent landlords from increasing rent annually by a very large margin that is disproportionate to the increased costs borne by landlords in relation to the property.
53. Data from the ABS has highlighted that rent increases tend to be higher where there are changes in tenants as opposed to rent increases within a tenancy.<sup>41</sup> Further, actual rents

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<sup>36</sup> Centre for Equitable Housing, *Regulating Rentals in Australia: What Works?* (Report, 2023) 59.

<sup>37</sup> Centre for Equitable Housing, *Regulating Rentals in Australia: What Works?* (Report, 2023) 59.

<sup>38</sup> Chris Martin, 'Improving Housing Security through Tenancy Law Reform: Alternatives to Long Fixed Term Agreements' (2018) 7 *Property Law Review* 184, 185, 189.

<sup>39</sup> Or, if the proposed amendments to the Act are implemented, at the end of a 12-month period for any given property.

<sup>40</sup> See Chris Martin et al, Australian Housing and Urban Research Institute, *Regulation of Residential Tenancies and Impact on Investment* (Final Report No 391, 2022) 6.

<sup>41</sup> Australian Bureau of Statistics, *New Insights into the Rental Market* (Web Page, 24 April 2023)

<<https://www.abs.gov.au/statistics/detailed-methodology-information/information-papers/new-insights-rental-market>>.

paid by new tenants increased by 14% over the year to February 2023, which is 9% higher than the increase in the monthly CPI - therefore indicating a price-setting behaviour of drastically increasing rent when opportunities to do so lawfully arise.

54. We submit that a further amendment to close this loophole would be to cap the percentage amount of an annual rent increase for a given property by an amount referable to the percentage increase in the Consumer Price Index (**CPI**), meaning household inflation, for that year (**CPI Rent Cap**).

#### *Domestic comparisons*

55. There is precedent for this approach domestically. By way of comparison, the Australian Capital Territory recently amended their rental laws so that rent increases may only occur every 12 months and are generally limited to a "prescribed amount".<sup>42</sup> The "prescribed amount" is currently calculated as 110% of inflation as measured by the CPI.<sup>43</sup>
56. Further, the Manufactured Homes (Residential Parks) Amendment Bill 2024 (Qld) introduced on the same day as this Bill proposes a cap on the amount by which rent for sites in residential parks can increase annually "to ensure greater clarity and predictability for home owners".<sup>44</sup> The proposed s 69B of the *Manufactured Homes (Residential Parks) Act 2003* (Qld) would prohibit a park owner from increasing a site's rent by more than the greater of the CPI increase for the relevant period or 3.5%.<sup>45</sup>
57. These amendments were prompted by concerns about site rent increases and the high number of unsold homes in residential parks, which impose significant hardship on many manufactured home owners in residential parks who are often "pensioners on low, fixed incomes" with "limited capacity to move or downsize if rents become unaffordable".<sup>46</sup> As discussed earlier in these submissions, many of LawRight's clients who live in private rental properties also share these vulnerabilities, so LawRight considers that similar rent increase rules that adopt a CPI Rent Cap should be incorporated into the Act.

#### *International comparisons*

58. Internationally, a similar rule to this effect exists in the Netherlands: "as of 2023, the maximum rent increase is inflation + 10%, or wage development +1% when the wage development is lower than the inflation rate".<sup>47</sup> Talya Pinto, a legal scholar from the University of Miami School of Law in the United States suggests that the Netherlands' rent control laws are effective because they "implement systems to protect tenants experiencing unfair treatment by landlords".<sup>48</sup> Regulating rent increases by reference to an objective measure such as inflation or CPI offers tenants one such protection from arbitrary rent increases. Pinto also notes that other European nations such as Belgium tie rent increase rules to inflation, though specifically recommends that Florida's rent increase regulations be modelled on those in the Netherlands.<sup>49</sup>

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<sup>42</sup> Residential Tenancies Amendment Bill 2023 (ACT) pt 2, cl 6.

<sup>43</sup> *Residential Tenancies Regulation 1998* (ACT) s 5A.

<sup>44</sup> Explanatory Notes, Manufactured Homes (Residential Parks) Amendment Bill 2024 (Qld) 1.

<sup>45</sup> Manufactured Homes (Residential Parks) Amendment Bill 2024 (Qld) cl 15(2).

<sup>46</sup> Explanatory Notes, Manufactured Homes (Residential Parks) Amendment Bill 2024 (Qld) 2.

<sup>47</sup> Talya Pinto, 'Why Florida Municipalities Should Not Report to Rent Control: A Comparative Analysis and Alternative Solutions' (2023) 31(1) *University of Miami International and Comparative Law Review* 143, 156.

<sup>48</sup> Talya Pinto, 'Why Florida Municipalities Should Not Report to Rent Control: A Comparative Analysis and Alternative Solutions' (2023) 31(1) *University of Miami International and Comparative Law Review* 143, 172.

<sup>49</sup> Talya Pinto, 'Why Florida Municipalities Should Not Report to Rent Control: A Comparative Analysis and Alternative Solutions' (2023) 31(1) *University of Miami International and Comparative Law Review* 143, 155.

*Provision made for undue hardship applications to QCAT*

59. We note that clause 16 of the Bill (proposed s 93B of the Act) provides landlords with a mechanism to increase rent in circumstances where being prohibited from doing so would impose undue hardship on them and therefore ultimately have a 'chilling' effect on residential housing supply in the rental market.
60. If the Act were to be further amended to introduce a CPI Rent Cap, we consider that a similar qualification should be included such that if a landlord needed to increase rent in a way that exceeds the CPI Rent Cap, the landlord would need to apply to a tribunal and prove this on hardship grounds.

***Practical issues regarding the implementation of the amendments***

61. However, we note that allowing landlords to make an application to QCAT to approve a rent increase that exceeds any cap will necessarily prolong the reaching of a 'fair' rent and increased pressures on renters would exist in the meantime, with renters potentially forced into an 'accept the rise' or 'move out' scenario.
62. Further, ss 92 and 105A of the Act are unchanged by the amendments proposed in the Bill and substantiate that in Queensland, the onus is on the tenant to make a 'non-urgent' application to QCAT if a tenant believes an increase to rent is excessive or is non-compliant with the rental increase provisions in the Act. This categorisation of such applications as 'non-urgent' may also push vulnerable tenants into an 'accept the rise' or 'move out' scenario due to barriers or disadvantage meaning they cannot go through the QCAT process.<sup>50</sup> This reinforces the power imbalance between tenants and landlords insofar as reaching a fair rental amount is concerned. LawRight submits that section 415(5) of the Act should be amended to include reference to ss 92 (Tenant's application to tribunal about rent increase) and 105A (Resident's application to tribunal about rent increase). We would also recommend future consideration of other more accessible mechanisms for complaints around rent increases such as a consumer affairs agency (as is the case in Victoria).<sup>51</sup>
63. The Queensland Government should bear in mind these practical barriers to the amendments to the rent increase rules achieving their policy objective and the important role of enforcement in safeguarding the objective. In LawRight's experience, our client base has a general reluctance to question or challenge lessor behaviour that may breach the Act due to various factors including for example:
  - lack of awareness, understanding or experience of the legal options available where they believe a lessor is non-compliant with the Act;
  - less resources and bargaining power;
  - individual vulnerabilities and disadvantage that impact their ability to take forward any such options; and

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<sup>50</sup> See also s 415 of the Act which defines the meaning of an "urgent application" to QCAT. Even if the proposed amendment to s 415 of the Act stipulated in cl 74 of the Bill is made, applications under ss 92 and 105A cannot be "urgent applications" within the meaning of the Act and therefore there is probably limited capacity to have QCAT's consideration of such applications expedited on hardship grounds.

<sup>51</sup> Chris Martin et al, Australian Housing and Urban Research Institute, *Regulation of Residential Tenancies and Impact on Investment* (Final Report No 391, 2022) 62.

- concerns of consequences, retaliation or being pushed into homelessness given the current compounding housing and costs-of-living crises.<sup>52</sup>
64. We acknowledge the key role of the RTA's Compliance and Enforcement team in investigating such behaviour on complaint.<sup>53</sup> However, in practice, we have seen a reluctance of tenants to consult with the RTA in relation to compliance issues they encounter. While the RTA has signalled that investigating landlords' compliance with the rent increase provisions in the Act will be a priority area for the RTA in 2024,<sup>54</sup> the efficacy of the RTA's investigation efforts will still largely depend on tenants' appetite to engage with the body. Having said this, we echo the recommendation of our colleagues at Tenants Queensland that the RTA administer and maintain a "simple register of landlords for both short- and long-term rentals" to provide current and prospective tenants with ongoing transparent information about the rental market, as well as compliance issues with properties such as outstanding Repair Orders.<sup>55</sup>
  65. Lessons can be drawn from the experience in Ireland and the ACT where commentators have noted problems arising from limitations and deficiencies in data collection on compliance.<sup>56</sup> As noted above at paragraph 41, to avoid the dangers of "half-hearted implementation", strong enforcement action is integral to the efficacy of any rent regulation method in practice.
  66. Regarding the proposed obligation on the lessor to state the date of last increase in the written tenancy agreement, we consider that education campaigns by the RTA, proposed introduction of CPD requirements for real estate agents and a continued role of community legal centres (**CLCs**) in awareness-raising will be important to ensure that tenants understand their tenancy rights and protections. Hypothetically, we can foresee scenarios where the proposed changes are not complied with by some lessors (eg no date is included or the incorrect date is included) and the tenant, rather than raising these concerns with the lessor directly, making a complaint to the RTA or engaging with CLCs, instead falls into rental arrears and faces a real risk of eviction.

### **Impact of rental bond process on vulnerable Queenslanders**

67. To understand the potential consequences of the Bill, it is important to analyse the current rental bond process and the impact it can have on vulnerable Queenslanders.

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<sup>52</sup> See Centre for Equitable Housing, *Regulating Rentals in Australia: What Works?* (Report, 2023) 59.

<sup>53</sup> Queensland Government, Residential Tenancies Authority, 'Overview - RTA Compliance and Enforcement' (Web Page) <<https://www.rta.qld.gov.au/compliance-enforcement/overview-rta-compliance-and-enforcement>>. See also s 468 of the Act which outlines the functions of the RTA, which notably include administration and enforcement of the Act, providing conciliation services to parties to tenancies disputes, and intervention in proceedings under the Act.

<sup>54</sup> Queensland Government, Residential Tenancies Authority, 'Overview - RTA Compliance and Enforcement' (Web Page) <<https://www.rta.qld.gov.au/compliance-enforcement/overview-rta-compliance-and-enforcement>>.

<sup>55</sup> Tenants Queensland, Submission to Queensland Government, *Stage Two Rental Reform Consultation Paper* (May 2023) 9 [5.7.4].

<sup>56</sup> Guowen Liu, Inmaculada Arnedillo-Sánchez and Zhenshuo Chen, 'Identification of the Breach of Short-Term Rental Regulations in Irish Rent Pressure Zones' (2022) <<https://arxiv.org/abs/2211.16617>>; Greater Canberra, Submission No 15 to Standing Committee on Economy and Gender and Economic Equality, ACT Legislative Assembly, *Inquiry into Housing and Rental Affordability* (11 August 2022) <[https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0011/2059517/015-Greater-Canberra.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0011/2059517/015-Greater-Canberra.pdf)>.

68. With over a third of Queenslanders being renters<sup>57</sup> and with compounding housing and costs-of-living crises, having an effective and efficient mechanism to resolve bond disputes is critical.

#### **Overview of current bond process**

69. Currently, when a tenancy comes to an end, the bond claim process is as follows:
- 1) The lessor, agent or tenant can request a bond refund using the Refund of Rental Bond Form (Form 4) or the RTA's Bond Refund Web Service.
  - 2) If all parties have agreed to the request, the RTA can process the bond refund request.
  - 3) If the parties have not agreed to the request, the RTA will advise the party who has not agreed that a refund request has been received and will issue a Notice of Claim.
  - 4) Within 14 days of receiving the Notice of Claim, that party must then notify the RTA whether it wishes to dispute the refund request by disagreeing digitally via Web Services or submitting a Dispute Resolution Request (Form 16).
  - 5) If no response is received, the RTA will pay the bond refund as per the original request (being the first claim they received).
  - 6) If a response is received advising that the party wishes to dispute the request, the dispute will go through the RTA's conciliation process to be commenced as soon as practicable.
  - 7) If the conciliation process is unsuccessful in resolving the dispute, the RTA will then issue a Notice of Unresolved Dispute. Within seven days, the party disputing the bond claim may apply to QCAT for an order that the bond dispute be resolved and must notify the RTA in writing that they have lodged the tribunal application by the due date.
  - 8) If no QCAT application is lodged (or the RTA does not receive notice to this effect), the RTA will pay the bond as per the original refund request.
  - 9) If the QCAT application is lodged (and the RTA is advised of this lodging), the RTA will continue to keep the bond on hold until resolution of the QCAT dispute.

#### **Frequency of bond disputes**

70. Bond disputes arise frequently due to the nature of the current bond refund process, which is legislated in the Act. According to the RTA's 2023 Annual Report, bond disputes are by far the most prevalent reason for disputes through the RTA's dispute resolution centre, with 71.8% of disputes relating to bonds.<sup>58</sup> In addition, bond disputes (specifically those relating to bond refunds) have increased significantly since 2020 – from around 5,000 bond disputes recorded in the 2019–2020 financial year to between 13,000 and

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<sup>57</sup> Australian Bureau of Statistics, *Housing Occupancy and Costs* (Catalogue No 4130.0) 25 May 2020.

<sup>58</sup> Residential Tenancies Authority, *Annual Report 2022–23* (Report, 12 September 2023) 20  
<<https://www.rta.qld.gov.au/sites/default/files/2023-09/RTA-Annual-Report-2022-23.pdf>>.

15,000 consistently recorded during the financial years since.<sup>59</sup> In 2022-23, tenants and residents were refunded an average of 74.5% of their bond.<sup>60</sup>

71. Based on our experience with our client cohort, we observe that people experiencing or at risk of homelessness are less likely to not participate in the rental bond dispute process or not feel able or empowered to dispute a bond claim by a lessor. It is not uncommon for a client to seek legal assistance about a bond refund without any knowledge of whether or why the bond was claimed by the lessor. For vulnerable Queenslanders, there are common reasons for this, including:
- a person may be transient or have no fixed address to receive written correspondence relating to their bond;
  - a violent partner or family member may be collecting a person's mail;
  - if notice is provided by email correspondence, a person may not regularly monitor their email address or may not have a device (smart phone or laptop) with this functionality;
  - a person's correct forwarding address details may not have been recorded on the Refund of Rental Bond Form (**Form 4**), or incorrect or outdated details were recorded on the Form 4;
  - a person may be illiterate or not read English; or
  - a person's mental or physical health concerns may impact their ability to engage or respond to a Notice of Claim from the RTA, with any subsequent RTA conciliation process or QCAT claim.

#### **Feedback in relation to proposed amendments to rental bond process**

72. Overall, we support the improvements relating to the rental bond refund process proposed by the Bill. However, we submit that some of the amendments should go further to make the bond refund process more accessible and fairer for vulnerable tenants.
73. We are concerned that the legal and administrative complexity of the bond process may limit its accessibility and fairness for vulnerable tenants and recommend continued monitoring of the efficacy of and compliance with the legislative provisions relating to bond. The starting position should ideally be a presumption in favour of the bond being returned to a tenant unless the lessor substantiates their claims towards a bond, both at the RTA conciliation stage and if RTA conciliation is unsuccessful, at the QCAT stage.

#### ***Onus should remain on the lessor to dispute a bond claim at QCAT***

74. Currently, if there is a disputed bond refund process, as mentioned above at paragraph [69] at the seventh step, the party disputing the bond claim must lodge the application with QCAT within seven days should the conciliation process fail. Given that the proposed amendments in relation to substantiating bond claims place the onus on lessors to prove

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<sup>59</sup> Residential Tenancies Authority, *Annual Report 2022–23* (Report, 12 September 2023) <<https://www.rta.qld.gov.au/sites/default/files/2023-09/RTA-Annual-Report-2022-23.pdf>>.

<sup>60</sup> Residential Tenancies Authority, *Annual Report 2022–23* (Report, 12 September 2023) 17 <<https://www.rta.qld.gov.au/sites/default/files/2023-09/RTA-Annual-Report-2022-23.pdf>>.



claims, rather than requiring tenants to disprove claims against their rental bond, we submit that further consideration should be given to simplifying processes further. For example, consideration should be given to extending the onus to be on the lessor to dispute bond claims at the QCAT stage within 7 days where there is an unsuccessful conciliation (even in scenarios where the tenant initiated the bond claim or dispute). Where there is an unsuccessful conciliation, we are concerned about scenarios where a tenant cannot proceed to QCAT to further dispute the bond claim due to barriers outlined at [71] above and because of this, a tenant's bond may be paid to the lessor even where a dispute exists and their claims remain untested in QCAT.

***Time period to substantiate claims against the bond should be reduced***

75. It is proposed that lessors will have a 14-day period within which to provide evidence substantiating their claim against a bond.<sup>61</sup> The relevant "period" for the purposes of this amendment is as follows:
- 14 days after the day an application for payment of a rental bond is made (ie after the first step above); or
  - 14 days after a dispute resolution request is submitted (ie after the fourth step above), if submitted by the lessor or provider.<sup>62</sup>
76. This is illustrated in a diagram at **Annexure A** (changes against the current process are shown in orange).
77. We submit that the proposed 14-day period during which the lessors must substantiate their claims against the rental bond may be excessive. Ideally, any claim against the rental bond should be accompanied by evidence substantiating the claim at the same time the claim, or the dispute resolution request (if the claim was made by the lessor or provider), is made. However, we acknowledge there may be difficulties in obtaining various quotes at short notice due. We recommend this proposed amendment be reduced to a timeframe of seven days.
78. There are no legislative amendments proposed to the timing aspects of section 136A of the Act (ie step 4 of the process at paragraph 69 above), which currently requires that the dispute resolution request be made within 14 days after receiving the written notice of an application for payment of the rental bond. Section 403 of the Act (ie step 6 of the process at paragraph 69 above), which states that RTA must start a conciliation process for the parties to the dispute as soon as practicable after receiving a dispute resolution request, similarly remains unchanged.
79. LawRight submits that there should be further amendments which clarify that in circumstances where a lessor claims against a rental bond, the 14-day period for a tenant to make a dispute resolution request to the RTA should not begin to run until *after* the claim has been substantiated by the lessor with evidence. This would help avoid scenarios where a tenant receives the evidence substantiating the claim on the same day as the deadline for submitting a dispute resolution request, particularly when provision of this information is key for a tenant to feel empowered to challenge such claims. This

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<sup>61</sup> Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) cl 54.

<sup>62</sup> Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) cl 54.

could be achieved through for example, amending s 403(3) of the Act to clarify that the obligation for a tenant to submit a dispute resolution request should run from the date when they receive the evidence substantiating the bond claim or, if the lessor does not substantiate the bond claim with evidence within the statutory timeframe, the last possible date for the lessor to provide such evidence. We acknowledge the need for oversight by the RTA on whether the lessor has complied with the requirement to provide evidence substantiating the claim to the tenant. This could potentially be achieved for example, by revisions to the Form 16 Dispute resolution request to include details on whether the evidence has been received and on what date or if completed by lessor, the proposed date for provision of the evidence. Further, s 136C of the Act could be amended to expressly include non-receipt of evidence substantiating the claim as a sufficient reason for an extension of time to apply to QCAT.

#### **No specified threshold for evidence required to substantiate a bond claim**

80. Currently, there is limited indication as to what would satisfy the legislative standard for evidence that would 'substantiate' a bond claim.<sup>63</sup> Hypothetically, it would be possible for lessors to gather quotes or invoices to repair damage that far exceed the market rate for the same work that is to be done or has been done. Given the financial burden would likely be borne by the tenant if the claims are substantiated, we submit lessors should be required to obtain at least two quotes or invoices for a particular item to safeguard against quotes exceeding the market rate being provided. This would be in keeping with the legislative intent of encouraging greater transparency and fairness in the bond claim process.
81. We recommend that publicly available guidelines be prepared by the RTA clarifying the threshold for the evidence to ensure bond claims are legitimately substantiated with sufficient and fair evidence.

#### **Bond roll-over scheme**

82. A rental bond is often a substantial amount of money that, should it get caught up in a dispute, could be inaccessible by the tenant for weeks or often months. In such cases, tenants moving to a new property may be required to save the whole amount for the new bond while their current bond is in dispute.<sup>64</sup>
83. In addition to this, the cost of living has been rising in recent years and many renters are forced to find cheaper places to rent.<sup>65</sup> There are also other reasons why people may be forced to move from one rental property to another, including vulnerable tenants who may need to move due to experiences of violence.<sup>66</sup>
84. We welcome the introduction of a head of power allowing a bond roll-over scheme and believe this will help ease the financial burden on renters experiencing financial hardship.

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<sup>63</sup> Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) cl 54.

<sup>64</sup> Tenants' Union of New South Wales, *Eviction, Hardship, and the Housing Crisis* (Special Report, February 2022) 23 <<https://files.tenants.org.au/policy/2022-Eviction-Hardship-and-the-Housing-Crisis-TUNSW.pdf>>.

<sup>65</sup> Nalini Agarwal, Robert Gao and Megan Garner, 'Renters, Rent Inflation and Renter Stress' [2023] (March) *Bulletin of Reserve Bank of Australia* <<https://www.rba.gov.au/publications/bulletin/2023/mar/renters-rent-inflation-and-renter-stress.html>>.

<sup>66</sup> However, see generally *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) div 3, subdiv 3A, which allows a person terminating their tenancy due to domestic violence to apply to the RTA for a bond refund.

We support previous calls for a provisional bond roll-over to be included in any regulation for the bond roll-over scheme so that even if the bond is subject to a dispute, the tenant would not have to pay the rental bond of the new property in full simply because the rental bond from the previous property has been caught up in a dispute that may take months to resolve.<sup>67</sup>

#### ***Further gap in bond refund process***

85. In our experience working with vulnerable clients with bond matters, we submit there is a further gap relating to the scenario where a client has missed the opportunity to dispute the bond claim with the RTA and wishes to challenge the bond after its release.
86. The statutory timeframe during which a tenant must respond to the lessor's claim on the rental bond is 14 days. For rental bond refund claims made online (which is by far the more common method, with 90.3% of bond refunds in the 2023 financial year being online as opposed to being in paper form),<sup>68</sup> there is no further obligation for the lessor or the RTA to contact the tenant after sending an email, so there is no confirmation that the tenant is aware of the commencement of the bond refund process. Given that the party lodging the bond refund request is responsible for providing the email addresses of the tenants, it may well be the case that, due to a typographical error, the notice of claim for the bond may not be sent to the tenant's email address. It is also possible that the tenant does not check their email account, the email is filtered to their junk or spam folder, that they are ill, out of town or preoccupied with other commitments. In such cases, the bond is refunded to the lessor (if the lessor requested so) and there is no method for the tenant to get the bond back.
87. If the lessor has lodged for the bond to be released to the lessor and a tenant applies to QCAT to prevent the release of their rental bond instead of notifying the RTA of such within the 14-day timeframe to respond to a lessor's claim against the rental bond, the bond is nevertheless released to the lessor. However, there does not appear to be a statutory provision that allows the tenant to apply to QCAT to recoup that bond once released.
88. There should be an express provision allowing the tenant to apply to QCAT to recoup the bond in the above scenario.

#### **Feedback on other components of the Bill**

##### ***Prescribing a rental application form***

89. LawRight supports the introduction of a prescribed rental application form, limits to the information that can be requested of prospective renters and increased choice on how to submit rental applications.<sup>69</sup>
90. Currently, the absence of such measures disproportionately impact vulnerable members of the community and create additional barriers to entering the private rental market. For example, some prospective tenants may be unable to complete a rental application due

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<sup>67</sup> See Tenants Queensland, Submission to Queensland Government, *Open Doors to Renting Reform Consultation Program* (November 2018) 12-13.

<sup>68</sup> Residential Tenancies Authority, *Annual Report 2022–23* (Report, 12 September 2023) 16 <<https://www.rta.qld.gov.au/sites/default/files/2023-09/RTA-Annual-Report-2022-23.pdf>>.

<sup>69</sup> Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) cl 50.

to their income source being Centrelink and the form not allowing them to proceed without inputting current employment or a salary. We consider the proposed requirement that at least one of the nominated ways to provide a rental application must *not be* a "restricted way" will positively benefit prospective tenants who may have low computer literacy or skills or lack the practical access to devices to allow them to complete such forms.

91. In respect of proposed new subsection 57C(2) of the Act, we support mandatory restrictions being placed on the types of information being sought in the rental application process. We consider that such limits would bolster the prospects of successful rental applications for our vulnerable client base and have particularly seen the gathering of such information disproportionately impact clients who has recently exited custody. Currently, provision of such information without further context or explanation can introduce an unintentional bias or misunderstanding of our clients' suitability for a private rental. For example, we note that until recently, Equifax offered a separate Tenancy Check service,<sup>70</sup> which has now transitioned to a "comprehensive tenancy screening" available at cost.<sup>71</sup> The Tenant Check component of the screening states it provides "bankruptcy information, court judgments and court writs". There have been concerns raised about such checks and the impact of such information on rental applications.<sup>72</sup>
92. Further, to mitigate against a client's history of financial hardship being a further barrier to accessing the private rental market, in addition to the proposed subsection 57C(2)(e) of the Act, we propose a further subsection (f) covering "credit score or credit history" as we consider the allowance for requesting information about current employment and income is sufficient for the purposes of ascertaining a prospective tenant's financial situation.

#### **Break lease fees**

93. LawRight supports a limit being placed on break lease fees for fixed term agreements.<sup>73</sup> We note that the maximum prescribed amount proposed<sup>74</sup> may be unaffordable for some vulnerable tenants. While under s 357A of the Act, the charging of reletting costs in a break lease scenario is a discretionary and not mandatory term of any residential tenancy agreement, in practice, many agents treat the charging of reletting costs as mandatory. However, on balance, we consider the scenario of the break lease fee causing excessing hardship could be appropriately managed through existing provisions allowing a tenant applying to QCAT for a termination order made because of excessive hardship.<sup>75</sup>

#### **General service charges and water service charges**

94. LawRight supports the introduction of a requirement for lessors to pass on documents about the amount charged regarding general service charges and water service charges

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<sup>70</sup> See Equifax, 'Tenancy Check' (Web Page) <<https://www.equifax.com.au/personal/products/tenancy-check>>.

<sup>71</sup> Equifax, 'Tenancy Checks for Property Managers: National Tenancy Database' (Web Page) <<https://www.tenancydatabase.com.au/>>.

<sup>72</sup> See Jimmy Thomson, 'How Much do Landlords Really Need to Know about Their Tenants?' *Australian Financial Review* (online, 8 April 2022) <<https://www.afr.com/wealth/personal-finance/how-much-do-landlords-really-need-to-know-about-their-tenants-20220406-p5ab9c>>.

<sup>73</sup> Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) cll 72-6.

<sup>74</sup> 4 weeks' rent in circumstances where less than 25% of the fixed term had expired at the time of the break lease: Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld) cl 72.

<sup>75</sup> *The Act* s 310.

within 4 weeks and failure to do so resulting in the tenant not being required to pay such charges. We have seen numerous examples of general service charges and water service charges being collected by lessors, not passed on to the tenant and then claimed in full at the end of the tenancy which can lead to immense financial stress. There should also be a reasonable timeframe provided to the tenant to pay such charges to avoid a scenario where a lessor waits until the last opportunity to provide the bill and then demand immediate payment.

95. Separately, we would also recommend the inclusion of clarification that lessors are required to set up arrangements to receive general service charges in their name for premises that are not individually metered. We have seen examples of duplex properties having a single electricity meter and tenants being forced into undesirable situations of being required to incur electricity debts directly from the provider across the entire property and to negotiate their own arrangements for contributions from neighbours.

### **Increased pressure on CLCs**

96. The Explanatory Memorandum states that QCAT anticipates a 32% increase in the number of non-urgent residential tenancy matters lodged each year; an associated 8% increase in matters that proceed to the QCAT Appeals Tribunal and resulting increased telephone and registry enquiries and workloads. It is stated that this will be managed through "additional allocated funding". LawRight is supportive of this commitment.
97. Any increase in the workload of QCAT will also likely create increased demand for legal assistance services. The increasing and unprecedented levels of demand on CLCs has been well-documented. For example, Community Legal Centres Australia estimates that more than 350,000 were turned away from receiving legal help in 2023.<sup>76</sup>
98. LawRight is the only CLC that operates a dedicated service for self-represented litigants with current or potential matters in QCAT. The QCAT and Community and Health Justice Partnership services already supplement government funding with our own fundraising in order to meet the demand, and it is unlikely we would be able to accommodate this increased caseload without a change to our funding.
99. We submit that any increase to the workload of QCAT must be met with a proportionate increase in funding for legal assistance services to deal with the increased demand. Without such support, LawRight's Community and Health Justice Partnerships and QCAT services would not have capacity to absorb future increases in workload.

### **Contacting LawRight**

100. Thank you for considering these submissions.
101. If you would like to get in contact with us in relation to these submissions, you can call us on [REDACTED] or email [REDACTED].

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<sup>76</sup> Community Legal Centres Australia, *State of the Sector 2022-2023 survey report A sector in crisis* (March 2024) <<https://clcs.org.au/sots/>> 5, 11.

Yours faithfully



Karen Dyhrberg

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Yours faithfully



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## Annexure A

