Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024

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Committee Secretary
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Dear Committee Secretary

Submission - Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Qld)

Thank you for the opportunity to make submissions on the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024* (Qld) (**Bill**), amending the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (**Act**) among others.

McCullough Robertson act for a number of community housing providers (**CHPs**), specialist disability accommodation (**SDA**) providers, private developers, build-to-rent (**BTR**) developers, purpose built student accommodation (**PBSA**) providers, as well as many other property owners. We regularly advise clients on residential tenancy matters, particularly in the social and affordable housing and SDA spaces.

We note the objectives of the Bill, including to help stabilise the private rental market (by applying the annual limit for rent increases to the rental property not the tenancy) and make the rental application process fairer and easier.

Executive summary

While we are generally supportive of the Bill (including the above objectives), we have concerns on a number of provisions and the impact these may have, particularly on CHPs and SDA providers.

Our key recommendations as follows:

(a) expand the definition of 'exempt lessor' to ensure that this concept captures all appropriate entities and scenarios, and also applies to rooming accommodation provisions;

(b) tailor the rent increase provisions to address additional specific circumstances, and also ensure that lessors are able to comply;

(c) ensure that the requirements of any other person with an interest in the property are appropriately considered in relation to attaching fixtures or making structural changes; and

(d) clarify the protection of personal information provisions, to ensure that they adequately cover necessary arrangements and do not prejudice lessors' interests at law.

Our detailed summary of each of these issues is set out below.

1 Meaning of 'exempt lessor' (clause 12)

(a) In our view, the proposed definition of 'exempt lessor' (as inserted by clause 12 of the Bill, for the purposes of Division 1 of Part 2 of the Act) is too narrow to fully support the objectives.

(b) In particular, the definition of 'exempt lessor' fails to capture:

(i) social and affordable housing providers (including CHPs) who receive funding for the relevant premises other than under the *Housing Act 2003* (Qld), including for example funding provided by Housing Australia under the *Housing Australia Future Fund Act 2023* (Cth);

(ii) circumstances where rent is determined with regard to household income, but where this is not the sole determinant (for example, affordable housing provided where the rent is set at 74.9% of market rent, but not exceeding 30% of household income); and

(iii) SDA providers, where 'reasonable rent contribution' is determined by reference to pension and Commonwealth Rent Assistance (but not, strictly speaking, household income).

(c) By linking the 'exempt lessor' concept to a particular premises also has a potentially significant impact on accommodation providers (including CHPs, but also other providers who receive a subsidy or other funding arrangements from the State or Commonwealth) in being able to reallocate social or affordable premises within a development. We are aware of providers (who are not a CHP) that, under their subsidy arrangements with the State, may or must reallocate the dwellings within a building that are eligible for a rental subsidy, in order to preserve the tenant mix and overall subsidy offering for the building. By linking 'exempt lessor' to a particular 'premises', this arrangement would become impossible and the provider would be required to offer only certain preset premises for subsidised rent arrangements (or otherwise be potentially prevented from increasing the rent notwithstanding a reallocation of the subsidised dwelling), undermining the objective of ensuring that there is no delineation between property types.

(d) We are also aware of CHPs who offer affordable housing (or even market rent housing) who limit increases to rent during a tenancy to ensure that tenants are not adversely impacted, but take the opportunity of a change in tenancy to 'reset' the rent to the current affordable or market rate.

(e) CHPs are registered and regulated under the National Regulatory System for Community Housing, and accordingly are already subject to strict compliance and performance requirements. They are also, by virtue of their constitutional objectives, dedicated to providing appropriate housing for those in need. The imposition of additional restrictions, designed to address concerns experienced in the private rental market, have the potential to significantly impact their financial position despite an absence of the underlying policy driver.

(f) Ideally, 'exempt lessor' should be expanded so that it includes:

(i) all registered CHPs and SDA providers;

(ii) lessors who receive funding under any State or Commonwealth arrangements, where the amount of rent payable for the premises is determined by (or with reference to) household income; and

in each case without reference to 'premises'. Alternatively, it should be clarified to ensure it allows for flexibility in reallocating certain premises between social/subsidised rent and affordable/market rent, without those then falling outside the 'exempt lessor' definition.

2 Application of 'exempt lessor' provisions to rooming accommodation

(a) We note with concern that no analogous 'exempt lessor' provisions have been included in respect of providers of rooming accommodation, including (for example) at sections 105B (or Division 2 of Part 2 of the Act) (clauses 19 and 20 of the Bill) and in respect of new sections 76C to 76E (clause 51 of the Bill).

(b) We are not aware of any policy objective in excluding rooming accommodation from such arrangements, and propose that these provisions be updated to incorporate 'exempt provider' provisions on terms consistent with the 'exempt lessor' provisions.

3 Minimum period before rent can be increased (clauses 15, 16, 19 and 20)

(a) In our view, sections 93(2) and 105B(2) can be tailored to better support the objectives.

(b) In particular, as currently drafted, the concept of 'increase' in rent would apply to increases for properties:

(i) coming out of NRAS (or any other subsidised rent arrangement) and on to the private market; and

(ii) where material improvements have been made.

(c) Ideally, these circumstances would be excluded from the concept of 'increase' at sections 93(2) and 105B(2), so that the rent can be increased notwithstanding any potential increase in the past 12 months.

(d) An alternative would be to expand sections 93B(1) and 105E(1) to allow lessors to apply to the tribunal if the lessor believes the circumstances otherwise justify the rent increase (rather than the current ground which is limited to the absence of rent increase causing 'undue hardship'). However, given this would potentially take up additional tribunal resources (and, from a policy perspective, the increase is not the type that the objectives seek to address), we suggest instead that these simply be excluded from 'increase' as noted above.

4 Notice and evidence of rent increases (clauses 14(2), 16 and 20)

(a) The amendments to sections 91(3)(c), 93A and 105C require lessors to state the date of the last rent increase in a notice to increase the rent, as well as providing evidence of that on request.

(b) We have two primary concerns with this.

(c) First, for lessors generally, they may not have this information where the property has been recently purchased. This is particularly the case for the evidence of the last increase, which may have been undertaken by the previous owner. One option to address this would be to have these provisions commence at a later date (by proclamation) so there is sufficient time for the industry to commence collecting this information.

(d) Second, where the lessor is an 'exempt lessor', these provisions should not apply (given the restriction on rent increases does not apply), and we are concerned that their application may lead to confusion among tenants.

5 Application forms and processes (clauses 50 and 51)

(a) We note firstly that the definition of 'exempt lessor' in the new section 57B(7) is different to the definition that applies to Division 1, Part 1 Chapter 2 (as contained in the new section 82A), particularly in respect of limb (a). This has the potential to cause significant confusion.

(b) We propose that the amendments to 'exempt lessor', as noted at paragraph 1 above, be made to the definition at new section 57B(7). As noted at paragraph 2 above, we also propose that the 'exempt lessor' concept be extended to the rooming accommodation provisions.

(c) We also strongly recommend that 'exempt lessors' be excluded from the new sections 57C and 76D, which relate to information that can be requested from prospective tenants.

(d) For CHPs (and other providers receiving funding, either under the *Housing Act 2003* (Qld) or a Commonwealth or other scheme), they may be required to collect information relating to the household income. We have reviewed a number of funding agreements (and other subsidy arrangements), including with the State of Queensland, which include obligations to collect information which would be prohibited under the Act were the Bill to pass in its current form.

(e) This is also particularly important in respect of SDA providers, who may necessarily collect additional information from a prospective tenant to ensure that the accommodation is appropriate for them.

(f) We also note that this section may present challenges for PBSA providers, who again may collect additional specific information about prospective tenants. While we appreciate that it may not be appropriate to add these providers as an 'exempt lessor' for all purposes (particularly in respect of rent increases), we would propose considering a separate exemption for them for these provisions.

6 Attaching fixtures and making structural changes (clauses 64, 65, 67 and 68)

(a) New clauses 207(6) and 254(6) should be amended so that the tenant must also comply with the body corporate's agreement (and any conditions).

(b) For new sections 208(4) and 255(4), it should ideally be clarified that it is not unreasonable for a lessor to refuse a request where the lessor requires the consent of any other person (including, for example, a mortgagee or headlessor) and that other person refuses the request.

(c) We similarly recommend that the interests or requirements of any other person with an interest in the property (for example, a mortgagee or headlessor) be expressly required to be considered by the tribunal under the new sections 209C and 256AB.

7 Protection of personal information (clause 80)

(a) The limited grounds for collecting personal information from applicants or tenants may pose significant issues for CHPs (and other entities receiving funding for the premises), who are commonly required to assess not only 'suitability' but also 'eligibility'.

(b) It may also be that personal information needs to be collected from a tenant or resident as to the ongoing suitability of the premises. This is particularly the case for SDA, where a persons needs may change over time.

(c) Ideally:

(i) the new sections 457D(2)(a) and (b) should be expanded to each include 'eligibility'; and

(ii) the new section 457D(2)(b) should be expanded to also include 'ongoing suitability'.

(d) For CHPs (and other entities receiving State or Commonwealth funding), additional information may also need to be collected (and reported) including, for example, demographic information or other survey data, in accordance with the requirements of the applicable funding agreement or the National Regulatory System for Community Housing.

(e) Ideally, such arrangements should be expressly contemplated at the new section 457D(3) (which would ideally also be clarified to apply to section 457E as well).

(f) The new section 457E creates similar issues, and we recommend that sections (1)(b) and (2)(b) be expanded consistent with our comments above.

(g) The requirements for destruction of personal information at the new sections 457E(1)(c) and 457E(2)(c) also introduce issues.

(h) For section 457E(1)(c), this would prevent CHPs, SDA providers and PBSA providers maintaining wait lists for their accommodation, resulting in unnecessary duplication of work for both parties.

(i) For section 457E(2)(c) (and potentially both sections), funding agreements commonly require that information be kept for a longer period, and (for State agreements) commonly provide that all records in respect of the funded property are 'Public Records' for the purposes of the *Public Records Act 2002* (Qld), which may create conflicting obligations. Destruction of these records at 3 years may also prejudice a lessor's ability to commence proceedings (or take other action). Ideally, this time frame should be amended to a longer period, for example 7 years (or such longer period required by law).

We again thank the Committee for the opportunity to make this submission, and for their consideration of this and the Bill.

Yours faithfully

[redacted]

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Yours faithfully

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