



Tenants Queensland Inc

Submission to

***Health, Communities, Disability Services and Domestic and
Family Violence Prevention Committee***

On

The Queensland Government's Response to COVID-19

July, 2020

About Tenants Queensland

Established in 1986, 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 including renters in private market, social and community housing as well as those in marginal tenures such as caravan and manufactured home parks and boarding houses.

TQ is the manager and lead provider of the Queensland Statewide Tenant's Advice and Referral Service (QSTARS) in Queensland. QSTARS provides quality, free, independent tenant advisory services to renters across Queensland. Through QSTARS and our Community Legal Centres Program work, TQ assists tenants to understand and exercise their legislative rights and responsibilities, and ultimately to manage and sustain their tenancies.

TQ has been at the forefront of tenancy law reform and policy development since its establishment and conducts research into a range of tenancy issues and contributes to the development of legislation and policy in Queensland and nationally.

About this submission

The terms of reference for this Inquiry are very broad. This submission focuses on the changes to Queensland tenancy laws following the National Cabinet announcement of an evictions moratorium.

The decision taken by both National Cabinet and the Queensland government directly impacted on renters' ability to meet the challenges and threats of this pandemic, and their ability to sustain their homes during the immediate period as well as the recovery phase. All of these issues impact on people's health.

This submission provides background relating to the Australian housing system and private rental sector, and how this interacts with the public health imperatives and restrictions, as well as broader community well-being.

This submission does not provide commentary on all of the temporary COVID-19 changes to tenancy law. Rather, it focused on those we consider to have the strongest inter-relationship with health outcomes.

Recommendations

We recommend, in the current pandemic as well as any similar future events, the Queensland government:

- ❖ Continues to work productively with and through the National Cabinet structure to ensure no one is left behind during this health, economic and social crisis and the period of recovery leading out of it.
- ❖ Work to extend the existing evictions moratorium to ensure:
 - That all renters are supported to stay safe in their homes through the crisis, and as our communities enter into a recovery period.
 - The removal of the additional grounds for eviction by lessors provided in the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*
- ❖ Consider what measures or relief are required to support renters with debts accrued while waiting for rent negotiations to complete, or because of failed rent negotiations to ensure they

do not come out of the crisis burdened with unmanageable debt as a result of deferred and/or unaffordable rents.

- ❖ Provide timely, appropriate monitoring of COVID-19 impacts in relation to renting households and consideration of what further response/s will be required after the moratoriums lift.
- ❖ Work with the Federal government to ensure significantly increased public investment in social and affordable housing to assist in Australia's economic and social recovery from the COVID-19 pandemic.

Overview of the Queensland temporary COVID-19 residential tenancy protections

The following is a summary of the changes made by the Queensland government addressing issues in the residential tenancy market.

Protections provided for all tenancies and rooming accommodation included measures:

- Allowing tenants and residents to end their fixed term agreement with capped lease break costs (one week) when:
 - their income has reduced by at least 75% and they have savings less than \$5,000 (income loss and savings include all named on the lease); or,
 - they can no longer safely occupy the premises due to domestic violence.
- Allowing vulnerable tenants and residents to refuse physical entry for non-essential reasons, whilst including an obligation for them to facilitate virtual inspections if a physical one cannot take place.
- Relaxing owner obligations for routine repairs and inspections while maintaining regulatory obligations that ensure tenant and resident safety continue to apply.
- Giving landlords and providers new powers to end fixed term tenancies during the lease if they wish to prepare the property for sale, (whether or not either party is in 'COVID hardship').
- Retaining the ability for landlords and providers to apply directly to the Tribunal to end a lease early for hardship (i.e. conciliation is not required).

In addition when tenants and residents meet a prescribed threshold of 'COVID excessive hardship' protections introduced under the moratorium:

- Require the parties to undertake conciliation:
 - to resolve disputes (including rent arrears, reductions, deferrals); and,
 - if the tenant or resident wants to end their lease in the Tribunal for hardship (which imposes an additional step for them).
- Protect tenants and residents from eviction and tenancy database listings due to rent arrears caused by being in 'COVID-19 excessive hardship'.
- Prevent the use of without ground notices to leave by landlords and providers, extend fixed term tenancies due to expire during the COVID-19 emergency to at least 30 September 2020 unless the tenant requests a shorter term.
- Require landlords and providers to end leases only with approved reasons.

Our housing system and private rental sector

Issues of housing security and affordability are particularly acute for those who rent their homes. On average residential renters earn lower income than lessors and/or homeowners. They are also more

likely to have precarious employment - many on casual contracts in hospitality, tourism and the arts. Low income renters are particularly vulnerable.

The precariousness of low-income renters is evident in the latest data in the Australian Bureau of Statistics' Housing Costs and Occupancy seriesⁱ, and the detailed analysis by the Productivity Commissionⁱⁱ:

- Just over 1 million low-income households lived in the private rental sector at 2017- 18 (ABS, 2019).
- Two-thirds (66%) of low-income private renters (Australia-wide) pay more than 30 per cent of their income in rent ('rental stress'), with almost one-quarter (24%) paying more than 50 per cent (Productivity Commission, 2019: 53).
- Almost half (47%) have less than \$500 per week left after paying rent, and 18 per cent have less than \$250 per week left, for other expenses (2019: 54).
- Thirty percent of all low-income private renters do not have \$500 saved for use in an emergency – while the average rent paid by low-income private renters is \$339 per week (ABS, 2019).

Moreover, the Productivity Commission's analysis show that amongst low-income private renters in rental stress, households with certain other characteristics are disproportionately represented relative to their share of all low-income private renter households:

- Households with older persons are in rental stress at more than twice the rate of their share of all lower income private renter households;
- Households with disabled persons are in rental stress at a 50 per cent higher rate; Households with persons with low educational attainment are in rental stress 34 per cent higher (2019: 67).
- Households with Aboriginal or Torres Strait Islander people are both more likely to be renting and face a range of health vulnerabilities as a community. Aboriginal and Torres Strait Islander people are three times more likely to be living in overcrowded homesⁱⁱⁱ.

Each of these factors compounds the difficulty of dealing with affordability problems and the risk posed by evictions. Mounting debts and eviction for these renters may lead to homelessness and long term poverty.

Queensland specifically has the second highest percent of renters of any Australian jurisdiction other than the North Territory (which is small in numbers). The Queensland Government's Regulatory Impact statement^{iv} (RIS) noted that 34.2% of the 1.65 million Queensland households are renters, although the latest figures quoted by the ABS being 36%. The RIS also highlights that about a fifth of those renting in 2016 had an income less than \$650 per week, about half with less than \$1250 per week and a median of \$1402 per week.

The COVID19 pandemic has highlighted and exacerbated the existing inequalities of our housing system.

A home is the first line of defense

"This is the success we're seeking, to be able to have the protections in place, to enable Australians to go back to as normal a life and an economy as possible. And to be able to achieve that as soon as we possibly can and so it is important that we remain focused on the challenge ahead. We don't want to just win the battle against COVID-19 but lose a broader conflict when it comes to our economy and the functioning of our society. That is why we remain focused on the

road ahead. The road back, the restoration of key elements of our economy and to ensure that the broader health needs of Australians are also being addressed."^v (The Prime Minister, 29 April 2020.)

As noted by the Prime Minister, the objectives of response and regulation around a pandemic are broad and extensive because they are fundamental to ensuring the ongoing functioning of our society and facilitate a return to normal life as soon as possible once the health objectives are realised. Those who rent have a unique set of issues for consideration.

Although restrictions are easing, the COVID-19 pandemic has caused, and continues to cause significant economic harm through the cancellation of events, closure of workplaces and schools, the disruption of supply chains etc. Many workers, especially contractors and casual workers, have suffered lost income or employment. The role of government during this time must be to support households navigate through health crises limiting financial and health impacts as much as possible. The COVID-19 pandemic public health crisis will only be exacerbated by evictions and forced moves.

At a time when all community members were being told to stay at home and avoid contact, renters have been facing the health implications of being forced to move because they can't afford the rent, negotiations have failed, they are accruing debt, they have no other options or otherwise through no fault or decision of theirs.

In addition and despite the evictions moratorium, vulnerable tenants have faced eviction during the pandemic because of the limited focus of the moratorium. The ability to evict was further expanded in Queensland, by the introduction of additional grounds for lessors to end tenancies during COVID-19. We speak more about this below.

Keeping people in place and isolated in their homes obviously supports the desired public health outcomes, but is also important to allow people to continue to participate and contribute to their community. This social impact of stability is important in a time of crisis; all steps should be taken to maintain cohesion and minimise stress on individuals and families by keeping them in their homes.

The pandemic has brought concerns over the imbalanced nature of the renting system into sharp focus. Petitions calling for rents and mortgages across Australia to be reduced or waived attracted hundreds of thousands of signatures^{vi}. Local campaigns attempting to prevent evictions of especially vulnerable people also received media attention. These actions, particularly at this scale, were unlikely to occur and speak to the level of distress the community felt and the lack of confidence in a negotiation process.

Ensuring that people can stay safe in their homes as we emerge from the pandemic will be equally important as it has been for the duration of public health orders and restrictions.

Evictions

Evicted persons and households, and/or those at high risk of eviction, are less able to take actions required to minimise transmission of COVID-19, particularly where they become homeless. They are more likely to contract the virus and more likely to spread it. This issue was acknowledged by the Queensland government (and most other jurisdictions) who effectively supported rough sleepers to find secure housing during the crisis.

In response to eviction, a person or household may have to couch-surf with families and friends – interrupting self-isolation and increasing the risk of transmission through overcrowding.

This issue was highlighted to us by Margaret's story.

Margaret rented a property in regional Queensland. She is a disability support pensioner (DSP) with a serious illness and compromised immune system, and supplemented her income with a market stall. When COVID hit, her income declined when the markets closed. As a DSP recipient, she is not entitled to the Corona Virus supplement (once announced) and her \$300/week rent became unachievable. With the help of an advocate, Margaret tried to negotiate a rent reduction. At the time, the Queensland regulations had not been made and the only guidance provided was the idea of an evictions moratorium.

The landlord refused a rent reduction. Concerned about a mounting debt resulting from rent arrears, Margaret decided her only option was to seek an early termination of the agreement. She felt this very unfair, since she'd been a good tenant and had lived in the premises for a number of years. She then endured an emotional and stressful legal battle to end the lease early and leave her home. After moving a couple of hundred kilometers away, she became homeless after that option did not work out. She moved again, even further from her home town, into a boarding arrangement, again hundreds of kilometers away. Some months later, with the promise of some essential services casual work, she returned to her home town and secured a new home.

In Margaret's words, "I remember seeing a bridge and someone was living under it, and I thought, what do I pack if I have to do that?"

The little people like me have no options at a time like this. We can't call the bank or our accountant. We can't defer payments. As pensioners, we don't qualify for additional government payments. There's nothing we can do. I have no home and no income and I did nothing to deserve it."

A person facing eviction during the pandemic will be attempting to find a new home. To do this, they will need to be out in public, visiting homes, and acting as a potential vector for spreading the virus. It is unlikely online inspections can be of sufficient quality to avoid this and to make an application for another property or housing assistance, the evicted person may have to attend the offices of real estate agents or support agencies. They will have less access to facilities for handwashing and for cleaning personal effects.

They may also feel greater pressure to continue to be in public attempting to find work or make money in some other fashion. Even before rental arrears and termination arises the fear of eviction for renting households, especially those at high risk of falling into arrears, will decrease the likelihood of households practicing effective self-isolation.

The Queensland government response

Following the Prime Minister's announcement of the evictions moratorium, the Queensland government moved quickly to announce their intent to regulate protections for residential renters.

In a media statement^{vii} on April 9, 2020, the Queensland government stated:

"It's not in the interest of anyone to have tenants left without a place to go when we are fighting to prevent the spread of a deadly disease". "We will not allow anyone to be evicted because they can't pay their rent as a result of this crisis."

Further, the statement announced:

- It would prohibit agreements requiring renters to draw on superannuation, or sell basic personal assets.
- An evictions freeze backdated to March 29.
- '.....property owners will be prohibited from evicting a tenant if their lease expires during COVID-19 public health crisis'. (Minister de Brenni)
- Requirements for a property owner to offer of an extension of the lease for at least a further six months if the lease ended during COVID-19. The tenant was also required to demonstrate respect for the property and neighbours, in line with tenancy agreement requirements.
- Alternatively, for tenants who could not pay the rent due to impacts of coronavirus, allowing an early release from the agreement.
- Implement protections to allow those experiencing DFV to end an agreement quickly or change locks without approval.

TQ considered the announcements represented a strong position, protecting renters and the community at large from unnecessary moves, and sharing the burden arising from COVID between renters, agents and owners.

Compared to other jurisdictions, the Queensland government were quite early movers in implementing state regulations, which were eventually put in place on April 24 by regulation.

Unfortunately between the positive announcement of April 9 and the passage of the Queensland *COVID-19 Emergency Response Act 2020* and the *(COVID-19 Emergency Response) Regulations 2020*, the government watered down their proposals following a rigorous campaign by the real estate lobby.

Around April 13, the Real Estate Industry of Queensland (REIQ) launched a campaign called [Everybody Matters](#) in opposition to the government's proposals. TQ considers much of the campaign information was incomplete and ill-informed. However, on April 17 the Minister for Housing indicated a watering down of the proposals.

The Queensland government's initial intentions are to be commended. They seemed genuinely aimed at protecting the community in the public health emergency by limiting forced movements (of renters). The proposed broad-based prevention of evictions, had it been enacted, would have shown a core focus on the public health issues.

Evictions loopholes

The moratorium on evictions was welcomed, however, its limited extent left people vulnerable to eviction without grounds as well as for new reasons introduced with the COVID 'protections'.

The moratorium on evictions applied:

- To a prescribed group of renters who were 'COVID-impacted' (as per the definition in section 6 of the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*); and,
- Who were, as a result, in rent arrears.

The lack of broad based protection from forced moves during a pandemic is concerning. TQ asserts that the primary purpose of the protections should have been to maintain people in place and exceptions stringent. Exceptions should be limited to, for example, if the property is in danger of being damaged by the tenants, perpetrators of violence, and willful non-payment of rent.

Of great concerns was the introduction of two new grounds for lessors to end tenancies, which applied whether or not the lessor or tenant was affected by COVID. One of the new grounds allowed for the ending of a fixed term agreement during the term. This is a first for Queensland tenancy law and significantly undermines real and perceived stability for renters.

TQ is currently aware of a number of cases where it appears the new grounds are being used unscrupulously against tenants who requested rent reductions. In addition to being unfair and retrograde, TQ considers the introduction of these new grounds failed to take adequate account of the pandemic and the need to maintain people in place as far as possible.

David's story

In March of this year, David was unable to work because of COVID-19 restrictions. With two young children to care for, David's priority was keeping a roof over their heads. He asked for a rent reduction, but his request was denied. In response he gave almost every cent he had to his real estate agent, and caught up on his payments with the small lump sum he received from the government. Despite his best efforts, David felt bullied and targeted for falling behind on his rent in the first place. By April he was issued a Notice to Leave without grounds.

With the support of a tenant advice service, David lodged a request for dispute resolution with the Residential Tenancies Authority (RTA). He knew he met the criteria for protection under the evictions moratorium and had provided that information to his agent. He had nowhere to move to with his young children, and he needed a safe home for them all. He depended on the moratorium to protect his family.

The RTA discussed with David and the agent that he qualified for protection, and could not be evicted during the emergency period unless he damaged the property or the owner needed to move in. Later that same day, David's agent gave him a new Notice to Leave, this time stating the owner was moving in.

Considering it unfair for the agent to use the new laws against him, David took his dispute to QCAT.

"I'm not asking for any favours," says David. "I don't want a rent reduction, and I've caught up on my payments. I just need an extension on this notice to leave until September 30, when the moratorium ends. That will give me time to prepare financially and to find a new house. I met all the criteria, but everything was denied. I have no place to go with my kids if we are evicted."

Unfortunately David lost his QCAT hearing, where he asked for the Notice to Leave for the owner moving in to be overturned. He's been left with the distinct feeling that those new grounds to end a tenancy have been used maliciously against him.

Amaya's Story

Amaya was a sole trader whose income severely declined due to COVID-19 related reduction in work. As soon as she realised the extent of her loss of income, she approached her real estate agent. From the start, the agent refused to negotiate a rent reduction. Amaya continued to show evidence of the situation but to no avail.

Soon after Amaya was informed retrospectively that the lessor had put the property on the market and that it had sold in less than a week. With no entries for a valuation or to show the property to prospective purchasers, and the emergence of COVID as strange time for property to sell so quickly, Amaya wondered if the new COVID related changes which allow a lessor to end a tenancy if they are preparing to sell the property or have entered a sales contract were being mused. Amaya requested evidence of the sale but to date none has been forthcoming. A title search has failed to show there is a new owner. Amaya is now being taken to QCAT for a termination order during the evictions moratorium.

Prima facie, the issue appears to be a retaliatory eviction following the tenant's request for a rent reduction.

In effect, the changes made to protect the community during the public health emergency have led to greater insecurity and stress for tenants by both introducing new grounds to end tenancies as well as allowing landlords to interrupt a tenancy during a fixed term. This seems a perverse outcome.

Once the emergency period ends, it will be important to continue to protect vulnerable renters. Many may face eviction as the current protection, the evictions moratorium for rent arrears, is lifted.

The severe stress of renters, visible to TQ staff as jobs were lost, may re-emerge with a number of changes converging. In addition the end of the moratorium, some renters will suffer the loss of supplementary income - JobKeeper, Corona Virus Supplement – and have to commence paying back rent if they did not successfully negotiate a genuine rent reduction, rather a rent deferral. Employment opportunities are also likely to recover slowly for those. The situation for these renters should be continually reviewed. Without further support and extended protections, for some the crisis may be extended and recovery stunted.

Entry and access

During the COVID-19 pandemic everyone has been encouraged to stay safe by practicing social distancing, and generally limiting the number of visitors to their home. The ability for people to assess and exercise their own judgement regards visitors to their homes during a pandemic is vital. Renters, just like other households, should be able to restrict visitors and access and/or require minimum health and safety practice of any visitors to their home.

In this regard, the Queensland government's tenancy regulations were effective in allowing renters to manage proposed entries according to whether they or someone in the household was a vulnerable person. Despite this, TQ was aware of a number of disputes regarding entries where the owner or agent wanted to persist regardless.

Other concerns

TQ has additional concerns about the process for rent reduction negotiations. The requirement for tenants to negotiate with lessors for rent reductions put many under a great deal of pressure.

This requirement failed to adequately address the imbalance of power between tenant and lessor in negotiations. With no framework set for how these disputes would be determined in the Tribunal if negotiation failed, tenants were left in a powerless position. The lack of clarity regarding what might be considered a 'fair and reasonable' offer brought different expectations to the table as well as different negotiating power.

In contrast, the National Cabinet released a Mandatory Code of Conduct for negotiations between commercial tenants and landlords. It includes principles including the need to provide rent reductions in line with income reductions, a requirement that reductions are minimum 50 per cent waiver, and minimum timeframes for payment of any deferred rent. There is no equivalent guidance for residential tenancies.

Many tenants approaching TQ for advice were experiencing high levels of anxiety. Many had their requests for rent reductions denied or were asked on several occasions for more personal details of their situation. This stonewalling and delay increased the stress for tenants. This was particularly the case soon after 'lockdown' in early March. Many TQ clients had lost their job or were stood down overnight. Prior to the announcement of the state rental grants and the Commonwealth Corona Virus supplement and JobSeeker many renters simply did not know how they would pay their rent and feared eviction.

The Queensland residential tenancy regulations did not have a framework for resolving rent reduction disputes like the mandatory code for commercial tenancies. TQ suggests that a clear framework for deciding rent reductions would even the bargaining power and incentivise parties to settle during dispute resolution. Without this some tenants have felt cajoled into agreeing to rent deferrals rather than genuine rent reductions, leaving them vulnerable to future eviction and debt.

Lack of public health focus

This emergency has demonstrated the importance of housing as a social determinate of health – those without access to secure, affordable housing cannot maintain good health.

In TQ's view, the Queensland COVID changes don't focus enough on the public health issue i.e. reducing unnecessary moves. In some ways they make renters' housing even more insecure because they:

- Continue to allow evictions without any grounds if you don't fit the 'COVID excessive hardship' criteria
- Introduce new grounds for lessors to end a tenancy, including one new ground allowing the landlord to end the tenancy before the fixed term agreement ends. Lessors are not required to show they are in COVID hardship in order to use these new provisions and they apply whether or not the tenants is in COVID hardship. The new grounds include: the landlord intends to prepare the property for sale; and, the landlord or their family need to move in.

TQ considers a broad based evictions moratorium to align better with the desired public health outcomes.

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- i Australian Bureau of Statistics (2019) Housing Occupancy and Costs, 2017-18 – cat no 4130.0
- ii Productivity Commission (2019) Vulnerable Private Renters: Evidence and Options, Commission Research Paper, Canberra.
- iii Australian Institute for Health and Welfare (2019) Indigenous housing, accessed at 16 March, 2020
- iv A better renting future — Safety, security and certainty Consultation Regulatory Impact Statement Review of the Residential Tenancies and Rooming Accommodation Act 2008 Stage 1 Reforms November 2019
- v Prime Minister Scott Morrison MP, Press Conference Parliament House Transcript 29 April 2020, <https://www.pm.gov.au/media/press-conference-australian-parliament-house-act-290420>, accessed 9 June 2020
- vi Change.org “Freeze rents & mortgages for the duration of Coronavirus” accessed at <https://www.change.org/p/scott-morrison-freeze-rents-mortgages-for-the-duration-of-coronavirus> on 9 June 2020.
- vii <http://statements.qld.gov.au/Statement/2020/4/9/special-covid19-protections-for-residential-tenants-and-owners?fbclid=IwAR1u3LMi-Vs5yYvO5N4MaAUHkZt-XU6aMOQlo12Zg0YU-m7j8wreLu-avRE>

In writing this submission TQ has drawn upon the National Association of Tenants’ Organisations (NATO) Submission to the Senate Select Committee COVID-19’ s inquiry into the Australian Government’s response to the COVID-19 pandemic. TQ is a member of NATO.