



Housing Legislation Amendment Bill 2021

Report No. 7, 57th Parliament
Community Support and Services Committee
August 2021

Community Support and Services Committee

Chair Ms Corrine McMillan MP, Member for Mansfield

Deputy Chair Mr Stephen Bennett MP, Member for Burnett

Members Mr Michael Berkman MP, Member for Maiwar

Mr Jon Krause MP, Member for Scenic Rim

Ms Cynthia Lui MP, Member for Cook

Mr Robert Skelton MP, Member for Nicklin

Committee Secretariat

Telephone +61 7 3553 6623

Fax +61 7 3553 6699

Email cssc@parliament.qld.gov.au

Technical Scrutiny Secretariat +61 7 3553 6601

Committee webpage www.parliament.qld.gov.au/CSSC

Acknowledgements

The committee acknowledges the assistance provided by the Department of Communities, Housing and Digital Economy.

All web address references are current at the time of publishing.

Contents

Abbreviations	iii
Chair’s foreword	v
Recommendations	vi
1 Introduction	1
1.1 Role of the committee	1
1.2 Inquiry process	1
1.3 Policy objectives of the Bill	2
1.4 Government Consultation on the Bill	2
1.4.1 Amendments to <i>Residential Tenancies and Rooming Accommodation Act 2008</i>	2
1.4.2 Amendments to <i>Retirement Village Act 1999</i>	4
1.5 Should the Bill be passed?	4
2 Background to the Bill	5
2.1 Rental sector in Queensland	5
2.2 Current legislation	6
2.3 Queensland Housing Strategy 2017-27	7
3 Examination of the Bill	8
3.1 Shared experiences of renting in Queensland	8
3.2 Managing tenancies and ending tenancy agreements	9
3.2.1 Existing legislation	9
3.2.2 What does the Bill propose	10
3.2.3 Stakeholders’ views and department’s response	12
3.3 Protections for vulnerable tenants and residents	18
3.3.1 Existing legislation	18
3.3.2 What does the Bill propose	19
3.3.3 Stakeholders’ views and department’s response	20
3.4 Establishing Minimum Housing Standards and maintenance and repair	24
3.4.1 Existing legislation	24
3.4.2 What does the Bill propose	25
3.4.3 Stakeholders’ views and department’s response	26
3.5 Keeping pets at a premises	29
3.5.1 Existing legislation	29
3.5.2 What does the Bill propose	29
3.5.3 Stakeholders’ views and department’s responses	31
3.6 Estimated cost of implementing reforms in Bill	35
3.7 Impacts on housing affordability and supply	35
3.8 Amendments to the <i>Retirement Villages Act 1999</i>	36
3.8.1 Existing legislation	36
3.8.2 What does the Bill propose	38
3.8.3 Stakeholders’ views and department’s response	39

3.9	Reforms not included in the Bill	43
3.9.1	Minor modifications	44
4	Compliance with the <i>Legislative Standards Act 1992</i>	46
4.1	Fundamental legislative principles	46
4.1.1	Rights and liberties of individuals	46
4.1.2	Clause 103 – retrospectivity	52
4.1.3	Institution of Parliament	53
4.2	Explanatory notes	54
5	Compliance with the <i>Human Rights Act 2019</i>	56
5.1	Human rights compatibility	56
	Appendix A – Submitters	67
	Appendix B – Officials at public departmental briefing	81
	Appendix C – Witnesses at public hearing	82
	Statement of Reservation	
	Dissenting Report	

Abbreviations

AWLQ	Animal Welfare League Queensland
BCCM	Body Corporate and Community Management
Bill	Housing Legislation Amendment Bill 2021
CHIA Queensland	Community Housing Industry Association Queensland
Committee	Community Support and Services Committee
COTA	Council on the Ageing
COVID Regulation	Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020
C-RIS	Better Renting Future – Safety Security and Certainty Consultation Regulatory Impact Statement
CSSC	Community Support and Services Committee
DCHDE / department	Department of Communities, Housing and Digital Economy
DFV	Domestic and Family Violence
D-RIS	A Better Renting Future – Safety, Security and Certainty Decision Regulatory Impact Statement
ECHR	European Convention on Human Rights
HLA	Housing Legislation Amendment Bill 2021
HRA	<i>Human Rights Act 2019</i>
LSA	<i>Legislative Standards Act 1992</i>
NAHP	National Affordable Housing Providers
NRAS	National Rental Affordability Scheme
OQPC	Office of the Queensland Parliamentary Counsel
QCAT	Queensland Civil and Administrative Tribunal
QLS	Queensland Law Society
REIQ	Real Estate Institute of Queensland
RTA	Residential Tenancies Authority
RTRA Act	<i>Residential Tenancies and Rooming Accommodation Act 2008</i>

RTRA Regulation	Residential Tenancies and Rooming Accommodation Regulation 2009
RV Act	<i>The Retirement Villages Act 1999</i>
The Housing Strategy	The Queensland Housing Strategy 2017-2027

Chair's foreword

This report presents a summary of the Community Support and Services Committee's examination of the Housing Legislation Amendment Bill 2021.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The Queensland rental market continues to experience difficult times. This is not unique to Queensland, in fact nor to Australia. Annual price growth and yield is also reaching record highs in areas of the United States, New Zealand and Europe.

In November 2019, the Queensland Government released the A Better Renting Future Reform Roadmap. The Government set out a two-stage reform pathway. Stage 1 of the reform focuses on tenants and residents to enforce their existing rights and ensure all Queensland rental accommodation is safe, secure and functional. During the consultation process for the Stage 1 reform and the Housing Legislation Amendment Bill 2021, there was widespread support for the establishment of minimum housing standards, maintenance repairs in Queensland and for Queenslanders who are renting, as well as for the introduction of protections for vulnerable tenants and residents.

Where views were diverse, particularly the managing and ending of tenancy agreements and the keeping of pets at a premise, this Bill seeks to strike the appropriate balance between the rights of the tenant and the rights of the lessor. I trust that some of the issues raised during the consultation process for this Bill, and the submitters' comments on those issues raised during this inquiry, will further inform Stage 2 of the Government's renting reforms.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and who provided evidence at the public hearing. I also thank our Parliamentary Service staff and the Department of Communities, Housing and Digital Economy.

I commend this report to the House.



Corrine McMillan MP

Chair

Recommendations

- Recommendation 1** **4**
The committee recommends the Housing Legislation Amendment Bill 2021 be passed.
- Recommendation 2** **15**
The committee recommends that the Department of Communities, Housing and Digital Economy develop a framework for data collection about how residential tenancies are managed and ended.
- Recommendation 3** **16**
The committee recommends that the Department of Communities, Housing and Digital Economy work with community housing providers to ensure head leasing contractual practices align with the amendments in the Bill.
- Recommendation 4** **29**
The committee recommends that the Department of Communities, Housing and Digital Economy closely monitor and evaluate, in consultation with relevant stakeholders, implementation of the minimum housing standards reforms, to inform consideration of whether stronger compliance mechanisms are required.
- Recommendation 5** **43**
The committee recommends that the Department of Communities, Housing and Digital Economy ensure that accessible advice is provided to eligible retirement villages to ensure that they can navigate the exemption process efficiently and effectively.

1 Introduction

1.1 Role of the committee

The Community Support and Services Committee (committee) is a portfolio committee of the Legislative Assembly established on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's areas of portfolio responsibility are:

- Communities, Housing, Digital Economy and the Arts
- Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, and
- Children, Youth Justice and Multicultural Affairs.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019*, and
- for subordinate legislation – its lawfulness.²

The Housing Legislation Amendment Bill 2021 (Bill) was introduced into the Legislative Assembly and referred to the committee on 18 June 2021. The committee is to report to the Legislative Assembly by 16 August 2021.

1.2 Inquiry process

On 25 July 2021, the committee invited stakeholders and subscribers to make written submissions on the Bill. Almost 900 submissions were received. See Appendix A for a list of submitters.

The committee also received 9 separate 'form' submissions (Forms A-I), that is, submissions which are identical in content from 15, 86, 124, 100, 245, 815, 21 and 5 submitters respectively. All submissions and forms authorised for publication by the committee are available on the inquiry webpage.

It is standard practice for committees to publish the names of submitters, unless they have indicated that they wish to keep their names withheld or the committee determines otherwise due to the content of the submission. During the inquiry the committee was made aware that some submitters engaging through third party campaign portals, had been advised that names would not be published. Given the personal and sometimes very sensitive nature of information shared with the committee, the committee decided to anonymise submissions generated through campaign portals to ensure that the stories shared could be published promptly. These are identified as campaign submissions.

The committee received a public briefing on the Bill from the Department of Communities, Housing and Digital Economy (department) on 20 July 2021. A transcript is published on the committee's web page. See Appendix B for a list of officials.

The committee also received a written briefing on the Bill on 7 July 2021, and written advice from the department in response to matters raised in submissions.

The committee held a public hearing on 15 July 2021. See Appendix C for a list of witnesses.

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

² *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

Inquiry documents, including submissions, forms, correspondence from the department, transcripts of the briefing and hearing and answers to questions on notice are available on the committee's webpage.

1.3 Policy objectives of the Bill

The Bill's objective is to deliver key elements of the government's Queensland Housing Strategy 2017 – 2027. The Bill aims to do this by amending the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act), Residential Tenancies and Rooming Accommodation Regulation 2009 (RTRA Regulation) and Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020 (COVID Regulation) to:

- support tenants and residents to enforce their existing rights by removing the ability for lessors and providers to end tenancies without grounds
- provide an expanded suite of additional approved reasons for lessors/providers and tenants/residents to end a tenancy
- ensure all Queensland rental properties are safe, secure, and functional by prescribing minimum housing standards and introducing compliance mechanisms to strengthen the ability to enforce these standards
- strengthen rental law protections for people experiencing domestic and family violence, and
- support parties to residential leases reach agreement about renting with pets.

The Bill also amends the *Retirement Villages Act 1999* (RV Act) to:

- provide certainty, security, and peace of mind to residents of freehold resident-operated retirement villages
- implement the intent of recommendations made during an independent review of timeframes for payment of exit entitlements in Queensland retirement villages, and
- create a framework to exempt freehold resident-operated retirement villages from the 18-month mandatory buyback requirements under the *Retirement Villages Act 1999*.³

1.4 Government Consultation on the Bill

1.4.1 Amendments to *Residential Tenancies and Rooming Accommodation Act 2008*

During 2018, the Queensland Government undertook the *Open Doors to Renting Reform* consultation program (Open Door Consultation). The explanatory notes state that 'more than 135,000 responses were received during the Open Door consultation and these were analysed to identify priority issues for reform'.⁴

The department advised that:

Feedback from the Open Doors consultation demonstrated that renting is an important issue for the community and a common set of issues are important for all stakeholders. Renters and property owners agreed that rental laws need to strike an appropriate balance for renters and property owners to feel safe and secure about their tenancy arrangements.

Overall, about one quarter of all Queenslanders participating in the consultation process felt the current laws achieve a balance between property owners and renters. Despite the different perspectives of

³ Explanatory notes, pp 1 and 5.

⁴ Explanatory notes, pp 17-18.

renters and property owners, many recognised the different needs for safety and security of the other party.⁵

The department stated that:

Common renting issues of interest to the Queensland community emerged from the consultation, including certainty about when tenancy arrangements can end, property condition and minimum housing standards, renting with pets, supporting vulnerable renters, minor modifications, entry and privacy, rent and bonds, and accountability of property managers. Of these themes, pets garnered particular attention, with the ability for a renter to keep a pet the most discussed topic accounting for more than a quarter of responses. Minimum housing standards were the focus of approximately 30 per cent of all written responses, with diverse views expressed by renters and property owners. Notices and evictions, especially the matter of issuing a notice to leave without grounds, were also the subject of many responses, more often as the subject of a comment made by property owners and managers.⁶

In November 2019, the Queensland Government released *A Better Renting Future Reform Roadmap* in which it outlined its response to the outcomes of the Open Doors consultation. The government also set out a two-stage reform pathway to improve renting in Queensland:

- Stage 1 – progress immediate actions to support tenants and residents to enforce their existing rights and ensure all Queensland rental accommodation is safe, secure and functional, and
- Stage 2 – consult stakeholders to design workable solutions to issues where views are diverse.⁷

On 16 November 2019, the Queensland Government released *the A Better Renting Future – Safety Security and Certainty Consultation Regulatory Impact Statement (C-RIS)*. The C-RIS set out detailed reform options to address Stage 1 renting reform areas and an assessment of the impacts and potential consequences of these options.

Community feedback was sought on the proposed reform options to identify whether the recommended solutions would achieve the intended outcome and what the potential impacts and unintended consequences for the sector may be.

The department advised that over 15,210 survey responses to the C-RIS were received, as well as a further 638 written submissions, including many comprehensive submissions from peak bodies and community organisations⁸ The department stated that:

Feedback received through the C-RIS process and learnings from implementing the COVID-19 response for residential tenancies has informed the measures implemented in the HLA Bill to ensure Stage 1 rental law reforms are proportionate and reflect the needs of Queenslanders now and into the future.⁹

The explanatory notes state that the department ‘... engaged an external specialist organisation to undertake a comprehensive economic analysis of reform impact’ and ‘The Queensland Government also carefully considered stakeholder feedback and adjusted the recommended reform options to respond to concerns raised by stakeholders’.¹⁰

⁵ Department, correspondence, 7 July 2021, p 7.

⁶ Department, correspondence, 7 July 2021, p 8.

⁷ Explanatory notes, p 18.

⁸ Department, correspondence, 7 July 2021, p 8.

⁹ Department, correspondence, 7 July 2021, p 8.

¹⁰ Explanatory notes, pp 18-19.

The government outlined its final reform positions in A Better Renting Future – Safety, Security and Certainty Decision Regulatory Impact Statement (the D-RIS). The D-RIS also included a comprehensive cost-benefit analysis of the recommended final Stage 1 proposals.¹¹

1.4.2 Amendments to *Retirement Village Act 1999*

The explanatory notes stated that in preparing the Interim Report, an independent review panel sought to consult with seven villages that were potentially resident-operated (and the village residents and residents' families). Two of these retirement villages and their residents did not participate in the consultations for the review.

The independent review panel also consulted the Queensland Resident-Operated Retirement Village Support Service, the Queensland Retirement Village and Park Advice Service, as well as industry and consumer peak groups.

Targeted consultation occurred with the same group of stakeholders on a legislative proposal to exempt resident-operated retirement villages from the 18-month buyback provisions in the RV Act, including:

- seven retirement villages identified as potentially resident-operated
- Association of Residents of Queensland Retirement Villages
- Caxton Legal Centre (operating the Queensland Retirement Villages and Parks Advice Service)
- Council on the Ageing (COTA)
- Leading Age Services Australia
- National Seniors
- Property Council of Australia
- Queensland Law Society, and
- Urban Development Institute of Australia.¹²

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed. The committee recommends the Housing Legislation Amendment Bill 2021 be passed.

Recommendation 1

The committee recommends the Housing Legislation Amendment Bill 2021 be passed.

¹¹ Department, correspondence, 7 July 2021, p 8.

¹² Explanatory notes, p 19.

2 Background to the Bill

2.1 Rental sector in Queensland

The Queensland rental market consists of private, government and community organisations owned rental properties. The explanatory notes state that over a third of the estimated 1.65 million households in Queensland rent.¹³

The department advised that families with children are the largest renting cohort followed by lone persons and couples without children.¹⁴ While less than 14 per cent of Queensland renters were aged 55 years or older in 2016, the number of renters in this age group increased by 42 per cent between 2006 and 2016.¹⁵

The explanatory notes state that ‘Rental accommodation will continue to grow in importance as a sustainable housing solution for many Queenslanders, particularly as the population continues to grow and home ownership rates decline’.¹⁶

Many Queenslanders also invest in rental properties. In 2018-19, 13 per cent of Queensland taxpayers reported having a stake in a rental property, increasing by 18 per cent since 2008-09.¹⁷ The highest increase over this period was among individuals with interest in one, two or three rental properties (27.28 per cent, 26.61 per cent, and 26.82 per cent respectively).¹⁸ Around three-quarters (73 per cent) of Queensland investors own one rental property, with 18 per cent having an interest in two rental properties.¹⁹

The median tenancy length in Queensland is less than 18 months for all housing options but has increased or remained steady over the previous five years.²⁰

Over the last quarter, Queensland’s interstate migration rate has been at a 20-year high and this has contributed to an increase in house prices and rents. Rental property vacancy rates have tightened across almost every council or region in Queensland with vacancy rates in most regions below 1.5 per cent. A rental market is considered tight when the vacancy rate is below 2.5 per cent.²¹

¹³ Explanatory notes, p 2.

¹⁴ Department, correspondence, 7 July 2021, p 6.

¹⁵ Australian Bureau of Statistics, 2011 Census Quickstats, available at https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/3?opendocument, 2011, accessed 21 June 2019; Australian Bureau of Statistics, ‘2016 Census’, Census of Population and Housing, 2016, Table Builder, available at <https://www.abs.gov.au/websitedbs/censushome.nsf/home/tablebuilder?opendocument&navpos=240>, 2016, accessed 3 April 2019; Australian Bureau of Statistics, ‘2006 Census’ & ‘2016 Census’, Census of Population and Housing, 2016, Table Builder, available at <https://www.abs.gov.au/websitedbs/censushome.nsf/home/tablebuilder?opendocument&navpos=240>, 2016, accessed 3 April 2019.

¹⁶ Explanatory notes, p 2.

¹⁷ Australian Taxation Office, Taxation Statistics 2018-19, available at <https://www.ato.gov.au/About-ATO/Research-and-statistics/Indetail/Taxation-statistics/Taxation-statistics-2018-19/>, accessed 27 June 2021.

¹⁸ Australian Taxation Office, Taxation Statistics 2018-19, available at <https://www.ato.gov.au/About-ATO/Research-and-statistics/Indetail/Taxation-statistics/Taxation-statistics-2018-19/>, accessed 5 July 2021.

¹⁹ Australian Taxation Office, Taxation Statistics 2018-19, available at <https://www.ato.gov.au/About-ATO/Research-and-statistics/Indetail/Taxation-statistics/Taxation-statistics-2018-19/>, accessed 5 July 2021.

²⁰ Residential Tenancies Authority, Annual Report 2019-20, 2020, available at https://www.rta.qld.gov.au/sites/default/files/2020-10/RTA_Annual_Report_2019-20_Full.pdf, accessed 21 June 2021, p. 11.

²¹ Real Estate Institute of Queensland, (2021), Queensland market monitor: March 2021, <https://www.reiq.com/articles/queensland-marketmonitor/>, as cited in Deloitte Access Economics, Updated economic analysis of Queensland residential renting reforms, June 2021.

2.2 Current legislation

The RTRA Act regulates the residential rental market and sets out the rights and obligations of renters and property owners or their agents in their tenancy arrangements in Queensland. The RTRA Act applies to both the private rental market and social housing delivered by, and on behalf of, the Queensland Government through public and community housing.

The RTRA Act applies to all tenancy agreements across a range of housing options with variations depending on the type of property and agreement:

- Residential tenancy agreements – fixed term or periodic - between tenants and lessors (property owners) or their agents (property manager) in freestanding homes, townhouses, apartments, and houseboats. This includes social housing provided by, and on behalf of, the Queensland Government and government employee housing
- Rooming accommodation agreements - between residents and providers, or their agents, for occupation of a room and shared access with other residents to facilities outside their room (e.g. in some instances a kitchen, bathroom, and other common areas) in premises, such as student accommodation and boarding houses, and
- Moveable dwelling agreements - between tenants and lessors to rent either a moveable dwelling (e.g. caravan) and the site, or only the site, in a moveable dwelling park. These agreements can be for a short term of up to 42 days with more flexibility or a long term of more than 42 days and similar requirements to a residential tenancy agreement apply.²²

The RTRA Act provides a framework for managing tenancy arrangements in Queensland across a broad range of issues and may apply differently depending on the housing sector in which the tenancy arrangement is in place. The RTRA Act:

- establishes the rights and responsibilities of parties to tenancy agreements
- regulates the making, content, operation and ending of tenancy agreements
- provides for dispute resolution about tenancy arrangements, and
- provides for monitoring and enforcement of compliance with the Act.

The RTRA Regulation provides:

- a schedule of standard tenancy agreements and prescribed standard terms
- approved reasons for listing renters on a tenancy database, and
- information that is to be prescribed by Regulation under the RTRA Act (such as water efficiency requirements, house rules and service charges).

The RTRA Act also establishes the Residential Tenancies Authority (RTA) to administer the Act and to receive, hold, and pay rental bonds.

On 24 April 2020, the Queensland Government made the COVID Regulation to implement a range of measures to support Queensland renters, property owners and property managers manage COVID-19 pandemic impacts on their tenancy arrangements. These temporary measures created new and modified existing tenancy rights, protections and responsibilities and have been regularly reviewed to ensure they continue to be ‘well-targeted and meet the needs of the residential rental sector’.²³

²² Department, correspondence, 7 July 2021, p 5.

²³ Department, correspondence, 7 July 2021, p 4.

While the RTRA Act regulates the tenancy arrangements between renters and property owners, other legislation may also affect these arrangements. For example, property owners must comply with any laws about the health and safety of the rental property, including:

- *Building Act 1975*
- *Plumbing and Drainage Act 2018*
- *Electrical Safety Act 2002*, and
- *Fire and Emergency Services Act 1990*.

Property owners may also need to consider specific regulatory requirements for the type of housing or community their rental property is provided in, such as the *Residential Services (Accreditation) Act 1997* and *Body Corporate and Community Management Act 1997*.

Property managers must also comply with the *Property Occupations Act 2014*, which regulates the activities, licensing and conduct of property agents and resident letting agents and their employees and protects consumers against particular undesirable practices.²⁴

2.3 Queensland Housing Strategy 2017-27

The *Queensland Housing Strategy 2017-2027* (the Housing Strategy) is a 10-year framework which aims to ensure that Queenslanders have access to safe, secure, and affordable housing. The Housing Strategy aims to ensure confidence in housing markets, improve protections and certainty for consumers and industry by reforming and modernising the housing legislative framework.

The department advised that the Housing Strategy is committed to regulatory reforms to improve consumer protections for all Queenslanders accessing housing in the rental market, retirement villages, manufactured (residential park) homes and residential services and provide greater certainty for industry providing accommodation within these housing sectors.

On 15 June 2021, the Queensland Government released the *Queensland Housing and Homelessness Action Plan 2021 – 2025*, which reaffirmed the government’s commitment to:

- deliver rental law reform, including minimum housing standards, that better protects renters and property owners and improves stability in Queensland’s rental market, and
- finalise implementation of retirement village reforms to village financial statements and contract requirements and implement its response to the independent panel’s Interim Report in relation to timeframes for payment of resident exit entitlements and buyback requirements.²⁵

The explanatory notes state that the Bill aims to deliver the following Housing Strategy objectives:

- Modernisation – reviewing and modernising rental laws to better protect renters and property owners, and improve stability in the rental market
- Connections – ensuring vulnerable community members are supported to sustain tenancies in appropriate and secure housing that facilitates social, economic, and cultural participation
- Confidence – supporting a fair and responsive housing system through reforms to legislation and regulations that enhance the safety and dignity of all Queenslanders and

²⁴ Department, correspondence, 7 July 2021, p 5.

²⁵ Department, correspondence, 7 July 2021, p 3.

promotes the provision of a range of housing options that meet the diverse needs of Queenslanders.²⁶

3 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

3.1 Shared experiences of renting in Queensland

Over the course of the inquiry, the committee received hundreds of submissions from renters, lessors, and property managers who shared their experiences of the rental sector in Queensland. A number of common themes were shared with the committee.

For renters, themes included calls for accessible, sustainable and affordable housing and certainty in tenure; the ability to rent with pets and better housing standards. Many submitters expressed their wishes to make minor modifications to their homes and better support the most vulnerable groups in society. Submissions also talked about the actions of property managers and landlords and management practices including entry and privacy issues, notices and evictions and dispute resolution processes.²⁷

Hundreds (around 800) of these submissions outlined their support for the following actions:

- A genuine end to 'no grounds' evictions – providing tenants with long-term security in their homes without the risk of an unfair eviction at the end of their lease
- Allowing tenants to make minor modifications, like hanging picture frames or installing furniture safety anchors
- A real ban on rent bidding - banning agents and property owners from accepting amount above the advertised rent for a property
- Expanding minimum standards to include ventilation, cleanliness and insulation
- Stopping unreasonable rent increases by tying rent increases to general inflation (CPI)
- Ensuring prospective tenants have fair and honest information about the property
- Banning inappropriate or discriminatory questions by lessors
- Make it easier for tenants to have pets – by flipping the onus on property owners/agents to demonstrate why it's unreasonable for a tenant to have a pet.²⁸

Over 800 form submissions were also received from Queensland property owners. These submissions told the committee that they were not against reform but called for legislative changes to be fair - not only for tenants but also mum and dad property investors who had invested for their retirement while providing accommodation for those who need to rent. These submitters outlined the following concerns and suggested amendments:

- Lessors will be prevented from terminating a tenancy without grounds and required to rely on an expanded suite of specific stated grounds in the legislation to end the tenancy.

While the inclusion of 'a fixed-term tenancy agreement is due to expire' as additional grounds to end a tenancy available to lessors is welcomed, it was always a contractual right that should be protected. Any calls to remove this basic right should be opposed by the committee. ...

²⁶ Explanatory notes, p 1.

²⁷ See for example, Campaign submission nos. 20, 25, 30, 35, 40, 45, 50, 55, 60, 65, 70, 75, 85, 95, 110, 120, 130, 140, 150, 200, 250, 300, 350, 400, 450, 600, 650, 700, 800 and 900.

²⁸ See for example, Form Submission G – From Queensland property owners – From 815 submitters.

My concern is about the ending of periodic leases that were automatically reverted from fixed term leases, rather than not allowing lessors to end periodic lease without grounds, and the tenant not willing to switch back to a fixed term lease as a result ...

- Ensure certain inclusions in regulations made regarding minimum standards for rental homes.

While it is agreed that we need to ensure properties continue to be safe and fit to live in, consideration must also be given to the financial status of investors, costs, availability of contractors if and as needed. ...

- Support parties to residential leases reach agreement about renting with pets.

Damages by pets are of great concerns to investors, pet odour can be very costly and difficult to remove. A pet bond in addition to the standard 4 weeks rental bond should be allowed ...

- Tenant authorised emergency repairs.

The cost of emergency repairs that can be authorised by the tenant will be increased from the equivalent of two weeks' rent to the equivalent of four weeks' rent, and property managers can arrange repairs to an amount agreed in writing with the owners. There should also be measures that allow the landlords to dispute any excessive expenditures that is more than market costs, the tenants should first attempt to use the repairers recommended by the landlords/agents rather than forcing the landlords to pay more than they have to.²⁹

3.1.1.1 *Committee comment*

At the outset, the committee acknowledges the many individuals from across the State who have shared their stories of what it is like to be a renter, lessor and property manager in Queensland. The committee has gained a comprehensive and sometimes confronting insight into the challenges faced by the rental sector.

The submissions clearly demonstrate that the rental market is difficult. The submissions also demonstrate that views about the proposed reforms are not aligned. But what is clear, is that rental reform is needed to ensure that every Queenslanders has access to a safe and stable home.

3.2 Managing tenancies and ending tenancy agreements

3.2.1 Existing legislation

The RTRA Act provides for approved grounds to end tenancy arrangements, including by mutual agreement, for specified reasons or an order from QCAT. The required notice periods for ending an arrangement also vary depending on whether the notice is issued by the property owner to the renter, or vice versa, and by the type of agreement.

For example, the notice periods for rooming accommodation agreements are usually shorter than those required for residential tenancy agreements to reflect the different tenure type. Fixed term agreements can currently only be ended at the end of the fixed term by one party giving the other a notice to leave 'without grounds', unless there has been a breach of the agreement.³⁰

The COVID Regulation introduced temporary additional grounds to end tenancy arrangements between 24 April 2020 and 29 September 2020, including: if the premises is being sold; owner occupation and if the premises is needed for State government properties. An offence was also introduced to prevent misuse of these additional grounds.³¹

²⁹ See for example, Form Submission G – From Queensland property owners – From 815 submitters.

³⁰ Department, correspondence, 7 July 2021, p 9.

³¹ Department, correspondence, 7 July 2021, p 9.

The RTRA Act also prohibits retaliatory evictions, but this is limited to where a renter is given notice to leave without grounds.³²

3.2.2 What does the Bill propose

The Bill provides that lessors would be prevented from terminating a tenancy without grounds and, instead, must rely upon an expanded suite of approved grounds to end an agreement.

The department advised that the policy intent of this part of the Bill:

... is to require owners to have an approved reason for ending a tenancy arrangement with a renter, regardless of whether the arrangement is a fixed term or periodic agreement.³³

3.2.2.1 Proposed grounds for ending an agreement

The new grounds are:

- fixed term tenancy agreement is due to expire
- the premises is to be vacated so that redevelopment (eg conversion from a house into flats) or demolition of the property can be undertaken
- the premises is to be vacated to allow significant repair or renovation works to be undertaken
- the premises is subject to a change of use (such as changing from long-term accommodation to short stay accommodation or holiday lettings)
- the owner or their immediate family needs to move into the premises
- the premises has been sold and vacant possession is required
- the premises is to be vacated so that it can be prepared for sale.³⁴

In each case, the lessor would be required to give the tenant two months' notice. However, a fixed term agreement could not be ended before the contracted end date, unless the tenant agrees.

The Bill includes an additional ground to end a tenancy specific to Queensland Government-owned rental accommodation, namely that the rental accommodation is required for a public or statutory purpose.³⁵

3.2.2.2 For lessors

The Bill provides that the lessor must provide specified information to accompany the approved form for ending a tenancy agreement. The Bill provides that it is an offence, attracting a maximum of 50 penalty units, for a lessor to provide information that the lessor knows is false or misleading in a notice.³⁶

In addition, the lessor must not let the premises for six months after an ending a tenancy on the grounds that the premises was being sold, there would be a change of use or owner occupation.³⁷

The lessor would also be able to apply to QCAT to end a tenancy on the following grounds in case of breach of the agreement by the tenant:

³² Department, correspondence, 7 July 2021, p 9.

³³ Department, correspondence, 23 July 2021, p 3.

³⁴ Housing Legislation Amendment Bill, cl 56, 58, 59, 61, 63, 76, 77 and 80 and cl 88.

³⁵ Explanatory notes, p 9.

³⁶ Housing Legislation Amendment Bill, cl 75, inserts new section 365A into the RTRA Act.

³⁷ Housing Legislation Amendment Bill, cl 75, inserts new sections 365B to 365D into the RTRA Act.

- there has been a significant breach, such as the use of the premises for an illegal activity, intentional or reckless destruction or damage of the premises, endangerment of another person in the premises or a premises nearby, or significant interference with the reasonable peace, comfort or privacy of another tenant by a tenant, occupant or guest, or
- there have been repeated breaches of by-laws or park rules by the tenant.³⁸

A lessor would also be able to apply to QCAT for a warrant of possession, where a person is occupying the property without consent and there is no tenancy agreement for the premises. For example, squatters at the property.³⁹

3.2.2.3 For tenants

The Bill provides that tenants will continue to be able to end a tenancy without grounds if the required two weeks' notice period is observed. The Bill also provides for additional grounds for tenants to end an agreement:

- at the commencement of the tenancy, if the rental property is not fit for the renter to live in, is not in good repair or if the premises does not meet the prescribed minimum housing standards
- the lessor has not complied with a repair order of QCAT within the 14 day notice period
- a co-tenant or co-resident dies.⁴⁰

A tenant would also be able to apply to QCAT to terminate an agreement on the grounds of misrepresentation where the lessor has given false or misleading information about the premises, including the condition of the property, the services to be provided, a matter relating to the quiet enjoyment or the rights and obligations of the renter.⁴¹

3.2.2.4 Moveable dwellings

The Bill provides that similar grounds to end a tenancy would apply to moveable dwelling agreements and rooming accommodation agreements, adjusted as appropriate. For example, notice periods to end rooming accommodation agreements would be shorter than general tenancies to reflect the different tenure type.⁴² For purpose-built student accommodation, both the renter and property owner would be permitted to end a tenancy agreement, if the renter was no longer entitled to reside at the student accommodation.⁴³

3.2.2.5 Retaliatory actions

The Bill also provides additional safeguards and protections from retaliatory actions. Under the Bill, a tenant would be able to apply to QCAT to have an action set aside if they believed the property owner had taken the action, eg issuing a notice to leave, notice to increase rent or notice to remedy a breach, in retaliation for the tenant taking steps to enforce their rights.⁴⁴

³⁸ Housing Legislation Amendment Bill, cl 79.

³⁹ Housing Legislation Amendment Bill, cl 72-74.

⁴⁰ Explanatory notes, pp 8-9.

⁴¹ Explanatory notes, p 59.

⁴² Explanatory notes, p 9.

⁴³ Department, correspondence, 7 July 2021, p 10.

⁴⁴ Explanatory notes, p 4.

The department stated that the ‘... changes would provide greater transparency and accountability about lessor-initiated tenancy terminations and support tenants to enforce their rights without fear or retaliatory action’.⁴⁵

3.2.3 Stakeholders’ views and department’s response

Strong and sometimes opposing views were expressed by inquiry participants about proposed amendments to manage and end tenancies. Key issues identified are discussed below.

3.2.3.1 Support for removal of ‘without grounds’

There was much support for the removal of ‘without grounds’ as an approved termination reason for lessors for fixed term tenancies and the replacement with new grounds from inquiry participants including Tenants Queensland, Q Shelter, Queensland Human Rights Commission, Real Estate Institute Queensland, Lawright and Queensland Law Society.⁴⁶ Many acknowledged that the removal of evictions without grounds was core to improving the situation for renters. However, some also called for the removal of “end of fixed term” agreements, which is discussed further in the section below.

For example, Queensland Law Society stated:

QLS welcomes the decision not to prohibit a lessor from bringing a tenancy to an end for “no reason” other than reaching the end of the contractual lease period. This is consistent with the fundamental nature of a contract, under which the parties reach agreement at the outset that the contract is for a specified period.⁴⁷

Tenants Queensland stated:

TQ strongly supports the stated aim of removal of without ground notices, however, this is not achieved because under clause 59, s 291 has not been removed, it has merely been reworded from “without ground” to “end of fixed term agreement”. The end of a fixed term is too generic and broad to provide any protection for tenants. ‘End of a fixed term’ is without reason and maintains the impact and effect of a without grounds termination, as well as the status quo.⁴⁸

The Human Rights Commission submitted a similar statement recommending that the government consider adopting the Victorian approach, or remove section 291 entirely:

The Bill inserts new sections 290B-290G which will require lessors to provide specific reasons, such as planned demolition or redevelopment, or significant repair or renovations. Retention of Notice to Leave without reasons 16. However, section 291 (Notice to Leave without ground) is retained and merely reworded as a Notice to Leave ‘for end of fixed term agreement’.⁴⁹

The Human Rights Commission recommended:

The government consider alternative approaches that may be more likely to meet the policy objective and fairly balance human rights, either by:

- adopting the approach in the Victorian Residential Tenancies Act 1997 which requires reasons for termination at the end of second, and subsequent fixed term leases, or
- removing section 291 entirely.⁵⁰

⁴⁵ HLA Bill, explanatory notes, p 8.

⁴⁶ See for example, submissions 661, 708, 713, 716, 723, 741.

⁴⁷ Queensland Law Society, submission 708, p 1.

⁴⁸ Tenants Queensland, submission 723, p 6.

⁴⁹ Queensland Human Rights Commission, p 7.

⁵⁰ Queensland Human Rights Commission, p 23.

3.2.3.2 *Inclusion of 'end of fixed term' ground*

The Bill provides that a property owner may end a tenancy at the end of a fixed term agreement. This ground was not included as a proposed additional ground in the C-RIS.⁵¹

Many submissions from renters and those representing their interests called for the proposed ground for 'end of a fixed term' to be removed, particularly in the context of the current market where vulnerable households are finding it difficult to secure housing in the rental market. Some of these submissions emphasised the importance a home has in protecting renters' human rights.

For example, Tenants Queensland submitted:

We oppose the inclusion of this as a reason. Its inclusion in the new laws was clearly considered in the Consultation RIS 4 and not recommended. This is TQ's core concern with the Bill. 'End of a Fixed Term' is merely a new mechanism for no-cause termination albeit only applicable during a fixed term agreement. Its inclusion will result in even fewer people having any option but to sign back to back fixed term agreements.⁵²

Tenants Queensland predicted that if the Bill is passed in its current form, the practice of issuing the offer of a new fixed term agreement at the same time as a Notice to Leave End of a Fixed Term would become common practice, resulting in a 'take it or leave it' situation for tenants.⁵³

Tenants Queensland also advised that tenant fears about retaliatory eviction if they enforce their tenancy rights would not be addressed if owners could rely on the expiry of a fixed term to end the tenancy without providing any other reason.⁵⁴

The Queensland Human Rights Commission submitted that the inclusion of the 'end of fixed term ground' might have the perverse consequence of encouraging lessors to end tenancies at the end of the fixed term period:

Lessors may be minded to avoid periodic tenancies, since they carry the risk of needing to later justify the reason for the tenancy being ended. This would have the effect of reducing, rather than increasing, housing stability for tenants.⁵⁵

Several other submissions, including from Make Renting Fair in Queensland (made up of 14 organisations from the community sector and over 50 supporter organisations across Queensland), Q Shelter, Queensland Youth Housing Coalition, and Queenslanders with Disability Network, also called for removal of the 'end of fixed term' ground from the Bill.⁵⁶

Conversely, submissions and evidence received from rental property owners and managers and those representing their interests generally supported the inclusion of the 'end of a fixed term' ground. These submissions emphasised the fundamental nature of these tenancy arrangements as contracts where both parties have agreed to the term of the tenancy.⁵⁷

3.2.3.3 *Removal of owner-initiated without grounds notices for periodic agreements*

Several industry and professional association groups raised concerns about the removal of owner initiated without grounds notices to leave for periodic tenancies having unintended consequences, including encouraging greater use of fixed-term agreements in the industry, creating a lease "in

⁵¹ Department, correspondence, 7 July 2021, p 13.

⁵² Tenants Queensland, submission 723, pp 6-7.

⁵³ Tenants Queensland, submission 723, p 7.

⁵⁴ Tenants Queensland, submission 723, p 7.

⁵⁵ Queensland Human Rights Commission, submission 716, p 6.

⁵⁶ Make Renting Fair in Queensland, submission 720, p 2; QYHC, submission 710, p 4; Queenslanders with Disability Network, submission 638, p 4.

⁵⁷ Department, correspondence, 23 July 2021, p 3.

perpetuity” and creating a registrable interest that may complicate the owner’s future use or disposal of the property.⁵⁸

The Real Estate Institute Queensland (REIQ) submitted, that while it supports the removal of ‘without grounds’ terminations for fixed term tenancies and its replacement with new grounds, it was opposed to proposals relating to the termination of periodic tenancies:

We are unequivocally opposed to the proposed abolishment of current periodic tenancy termination rights. The introduction of the new termination rights is purported to be based on the need for improved transparency and improved certainty for tenants. On that basis periodic tenancies should be quarantined from this process. Due to their very nature, periodic tenancies offer no certainty. They are ‘rolling agreements and therefore an update to periodic termination rights is not justified or warranted.’⁵⁹

REIQ submitted that in effect, the Bill ‘inexplicably creates a higher form of security for tenants who are in a periodic agreement over those who are in a fixed term tenancy agreement’. REIQ contended that this would create *in perpetuity* leases that provide unilateral termination rights to tenants and would prevent lessors having control in relation to the length of tenancy agreements and would severely impact the lessor’s right to tenant selection.⁶⁰

REIQ submitted that the inclusion of this ground would result in the majority of Queensland periodic tenancy agreements being terminated, and lessors offering only fixed term tenancy agreements.⁶¹

Queensland Law Society (QLS) also submitted that the Bill appeared to omit any provision for a lessor to give notice to leave “without ground” for a periodic agreement:

Periodic agreements generally arise following the end of a fixed term agreement and are for the convenience of both parties. We recommend that the Bill be amended to permit a lessor to give notice to leave “without ground” for a periodic agreement. A reasonable time would appear to be 2 months after the notice is given to the tenant, similar to the notice to leave period for the end of a fixed term agreement. The current Bill will have the effect that periodic tenancies can only be brought to an end for the specified reasons in sections 281 to 291. This is contrary to the general understanding of a periodic tenancy, which is a “rolling tenancy”.⁶²

QLS suggested a number of alternative options including that landlords be encouraged to consider offering longer fixed term leases to tenants from the outset.⁶³

REIQ also submitted that the proposed amendments may have the unintended consequence of creating a registrable interest over a property, which may complicate the ability of the owner to sell a property.⁶⁴

In response, the department advised that the additional grounds proposed for owners to end agreements, in addition to the existing grounds retained in the Act, recognises a range of circumstances in which the owner may need to regain possession of the rental property and apply to both fixed term and periodic agreements. The department advised that it does not consider a periodic agreement would continue in perpetuity due to the reforms as a range of existing and additional grounds are available for owners to end these agreements.⁶⁵

⁵⁸ Department, correspondence, 23 July 2021, p 3.

⁵⁹ REIQ, submission 714, p 3

⁶⁰ REIQ, submission 714, p 3

⁶¹ REIQ, submission 714, p 4.

⁶² Queensland Law Society, submission 708, p 3.

⁶³ Queensland Law Society, submission 708, p 3.

⁶⁴ REIQ, submission 714B, p 3.

⁶⁵ Department, correspondence, 23 July 2021, p 3.

3.2.3.4 *Committee comment*

The committee supports the removal of ‘without grounds’ as an approved termination reason for lessors and the introduction of additional approved grounds. The committee believes that this will be an important step towards providing more certainty, transparency and accountability for all parties in the rental sector.

The committee acknowledges calls for the removal of ‘end of tenancy’ as an approved ground for agreement termination by organisations such as Tenants Queensland and the Queensland Human Rights Commission. The committee also acknowledges views that the removal of ‘without grounds’ for periodic agreements will result in a number of unintended consequences, including the creation of in perpetuity leases. On balance, the committee believes that amendments around managing and ending of tenancies achieve an appropriate balance between the rights of renters and lessors. That said, the committee believes that it will be important for the department to maintain a close watching brief on the impacts, intended and otherwise.

The committee also noted the evidence from the Queensland Law Society which called for the government to consider ways to incentivise the agreement of longer term leases at the outset of any contract through education and awareness.

Recommendation 2

The committee recommends that the Department of Communities, Housing and Digital Economy develop a framework for data collection about how residential tenancies are managed and ended.

3.2.3.5 *Removal of ‘without grounds’ – Community housing*

The Community Housing Industry Association Queensland (CHIA Queensland) identified a number of operational issues with the removal of ‘without grounds’.

CHIA Queensland advised of a potential conflict between the notice periods applying to tenants under the RTRA Act, and notice periods that apply under the *Property Law Act 1997* to properties head-leased by community housing organisations. CHIA advised that under the Bill, community housing organisations may find themselves in breach of either the tenancy agreement under the RTRA Act or the PLA lease, since none of the new approved notice grounds enable the community housing organisation to compel the tenant to leave in response to an owner ending a head lease.⁶⁶

In response, the department also noted the issue raised about community housing providers potentially being at risk of breaching their obligations under the head-lease if they are unable to end the sub-lease with a client to handover vacant possession when the head-lease ends. The Department considers this is a practice issue that does not require any change to the Bill, adding that it is considering potential options to avoid community housing providers being in breach of their head-lease obligations, including changes to head-leasing contractual practices.⁶⁷

CHIA also advised that the removal of ‘without grounds’ also creates an issue for owners and lessees of affordable housing properties under the National Rental Affordability Scheme (NRAS) where a tenant refuses to provide evidence of ongoing eligibility under the program.⁶⁸ CHIA Queensland submitted that ‘none of the new notice grounds would enable a community housing organisation managing a NRAS property to compel the tenant to leave unless the owner withdrew the property from the scheme completely’.⁶⁹

⁶⁶ CHIA Queensland, submission 717, p 2.

⁶⁷ Department, correspondence, 23 July 2021, p 3.

⁶⁸ Community Housing Industry Association Queensland, submission 717, p 2.

⁶⁹ Community Housing Industry Association Queensland, submission 717, p 2.

National Affordable Housing Providers (NAHP) echoed this concern, adding:

[The proposed legislation] does not cover situations where tenants refuse to provide the required documentation to assess their ongoing eligibility under the Scheme. An ineligible tenant in an NRAS property breaches NRAS regulations and results in the loss of the subsidy to the provider or owner. One outcome of this scenario is the withdrawal of the property from the scheme, reducing the limited amount of stock in the affordable housing sector.

A second unwanted outcome is that the owner/housing provider will not receive the NRAS incentive while the ineligible tenant remains in the dwelling, and denies an eligible tenant an affordable home.⁷⁰

NAHP recommended that another condition be added to Section 290 that a notice to leave can be given if the tenant, within one month of the due date, does not submit sufficient documentation to substantiate their ongoing eligibility to participate in an affordable housing program.⁷¹

In response, the department advised that section 290 of the RTRA Act provides for a notice to leave if tenant's entitlement under affordable housing scheme ends. If a tenant fails to prove their ongoing eligibility for an affordable housing scheme it would be open to the provider to issue a notice under section 290 as the tenant would no longer be eligible to continue occupying the property.⁷²

CHIA Queensland also submitted that the removal of without grounds notices would make 'management of rooming accommodation very difficult'. CHIA Queensland explained that community housing organisations have used this provision, albeit in very exceptional circumstances, to manage inter-personal dynamics within rooming accommodation that could lead to distress or damage to other residents or property, but which does not yet meet the threshold of a serious breach.⁷³

Towards the end of the inquiry, CHIA Queensland wrote to the committee to advise that it had overlooked a new provision introduced by the Bill (paragraph 376(4)(c)) that would enable a provider to apply to the Tribunal for a termination order where a rooming accommodation resident repeatedly breaches the house rules applying in their rooming accommodation. CHIA Queensland stated that this new provision addressed many of their concerns about protecting the health and safety of other residents. In the light of this, CHIA Queensland supported the removal of 'without grounds' notice to leave in both general tenancies and rooming accommodation.⁷⁴

3.2.3.6 Committee comment

The committee acknowledges the important and specialist services provided by community housing organisations to support vulnerable people access and sustain housing.

The committee recommends that the department work with community housing providers to ensure head leasing contractual practices align with the amendments in the Bill.

Recommendation 3

The committee recommends that the Department of Communities, Housing and Digital Economy work with community housing providers to ensure head leasing contractual practices align with the amendments in the Bill.

⁷⁰ National Affordable Housing Providers Ltd, submission 709, p 2.

⁷¹ National Affordable Housing Providers Ltd, submission 709, p 2.

⁷² Department, correspondence, 23 July 2021, p 3.

⁷³ Community Housing Industry Association Queensland, submission 717, p 2.

⁷⁴ Community Housing Industry Association Queensland, correspondence, 9 August 2021.

3.2.3.7 *Notice periods*

Some submissions from rental property owners and managers and those representing their interests also raised concerns about a perceived imbalance between notice periods required to be given by renters and property owners to end their tenancy arrangements.⁷⁵

In response, the department advised that the impact of receiving a notice that the tenancy arrangement will end on renters and property owners is not equal. Renters must find, secure, finance and move to suitable alternative accommodation. In contrast, an owner can decide how they want to use the property, including to relet it under another agreement or occupy it themselves. The Department considers the different notice periods required for renters and property owners to end their tenancy arrangements are equitable noting the different impact receiving the notice has on the parties.⁷⁶

3.2.3.8 *Issues affecting long terms residents of caravan parks*

A submission representing the interests of long-term residents of a caravan park raised concerns that they may be at risk of dislocation and financial loss if their right to reside in the park can be terminated under the RTRA Act.⁷⁷

In response to this issue, the Department noted concerns raised by long-term residents of a caravan park that they may be at risk of dislocation and financial loss if their right to reside in the park can be terminated under the RTRA Act. This is an issue for these residents currently and the reforms proposed in the Bill do not change this risk.⁷⁸

3.2.3.9 *Offence provisions*

The Bill introduces a number of new penalties, including penalties to include prescribed information in advertisements, failure to comply with QCAT repair orders and for false or misleading statements. A number of inquiry participants reflected on the offence provisions contained within the Bill.

Submissions from property owner groups and industry stakeholders asserted the proposed offences that prevent an owner from reletting the property after issuing notices for premises being sold, change of use and owner occupation are excessive.⁷⁹

For example, REIQ stated that offences associated with the establishment of new lessor termination grounds 'are excessive and unreasonably restrictive and unjustified', and 'will undermine the appeal of property investment and drive investors to other asset classes where they have greater freedom' to manage the asset. REIQ called for the following amendments to be made to the offence provisions:

- Section 365B which prevents a lessor from renting the premises for at least 6 months after issuing a notice to leave if premises are being sold be amended to a maximum of 90 days, which aligns with the maximum appointment allowed for a residential property sale for sole or exclusive agency appointment.⁸⁰
- Section 365D which prevents a lessor from reletting the premises for at least 6 months after issuing a notice for owner be decreased to a maximum of two months⁸¹

⁷⁵ Property Council of Australia, REIQ, Department, correspondence, 23 July 2021, p 4.

⁷⁶ Department, correspondence, 23 July 2021, p 4.

⁷⁷ Department, correspondence, 23 July 2021, p 3.

⁷⁸ Department, correspondence, 23 July 2021, p 3.

⁷⁹ Department, correspondence, 23 July 2021, p 4.

⁸⁰ REIQ, submission 741B, p 5.

⁸¹ REIQ, submission 741B, p 5.

- Section 365C which prevents a lessor from reletting the premises for 6 months after issuing a notice to leave for a change of use requirements be decreased to a maximum of one month.⁸²

Some advocacy groups representing renter interests also suggested that an offence be created for reletting a rental property within two months of issuing a notice to leave for significant repair or renovation.⁸³

In response, the department advised Clause 75 of the Bill creates an offence for false or misleading information in a notice to leave, including for significant repair or renovation, with a maximum penalty of up to 50 penalty units. The department also confirmed that offences that prevent reletting of the rental property for six months are intended to discourage the misuse of these additional grounds and to also consider the impact on renters of being asked to leave.⁸⁴

The department also advised that reasonable excuse or defence is provided for in the offence, including if the owner does not receive offers to purchase the property that they find acceptable or if their need to occupy the property ends or they become unable to occupy it.

The department considers that the impact on renters of receiving notices to leave for change of use, including to facilitate use of the property for short-term holiday accommodation, justifies the restriction on reletting the property under a tenancy agreement for six months.⁸⁵

3.2.3.10 Committee comment

The committee is satisfied that offence provisions are relevant and appropriate.

3.3 Protections for vulnerable tenants and residents

3.3.1 Existing legislation

The RTRA Act gives rights to people in a domestic relationship, including persons in an intimate relationship, eg a spouse or de facto partnership, a dating partner, a family member or an informal carer. Currently, if someone is experiencing domestic and family violence (DFV) while living in a rental property, they can apply to QCAT for an order to:

- be recognised as the renter, if they are not named on the agreement
- to restrain the person who has committed an act of domestic or family violence from causing further damage or injury in the rental property
- prevent their personal information being listed in a tenancy database where a breach of the agreement is a result of the actions of another person who has committed an act of domestic or family violence, or
- end the tenancy agreement.⁸⁶

The above provisions apply only to residential tenancy agreements and do not extend to residents in rooming accommodation. Furthermore, the RTRA Act does not permit the RTA to make part bond refunds before an agreement ends, before handover day or without a QCAT order. Renters are only permitted to change locks with the permission of the property owner, in an emergency, or with a QCAT order, and must give a copy of the keys to the owner.⁸⁷

⁸² REIQ, submission 741B, p 5.

⁸³ Department, correspondence, 23 July 2021, p 4.

⁸⁴ Department, correspondence, 23 July 2021, p 4.

⁸⁵ Department, correspondence, 23 July 2021, pp 4-5.

⁸⁶ Department, correspondence, 7 July 2021, p 19.

⁸⁷ Department, correspondence, 7 July 2021, p 19.

The COVID-19 Regulations introduced temporary measures to allow a tenant experiencing domestic or family violence, regardless of their tenancy arrangements or housing options, to:

- end their interest in a tenancy arrangement with seven days' notice, if they are unable to safely continue to occupy premises because of DFV
- leave immediately after giving notice in the approved form supported by the evidence prescribed by regulation
- have their end of lease liability capped to seven days
- access their bond contribution through the RTA
- ensure they are not liable for property damage caused by DFV (though they are still liable for any other damage they caused to the rental property)
- ensure they are not liable for reletting costs, and
- change locks in the rental property without the owner's consent to ensure their safety.

Under the COVID-19 Regulation, property owners can ask the remaining renters to top up the rental bond to the maximum amount but cannot advise the remaining renters that the vacating renter's interest in the tenancy arrangement has ended 7 days after the vacating renter's interest in the agreement ends. Property owners can apply to QCAT (within seven days) to have the notice ending tenancy set aside.

The COVID-19 Regulation includes penalties of up to 100 penalty units if the property owner, their agent, or an employee of the agent discloses the supporting evidence for a notice ending tenancy to another person.

The COVID-19 Regulation is due to expire on 30 September 2021.

3.3.2 What does the Bill propose

The Bill would make the temporary measures in the COVID-19 Regulation enduring to allow renters experiencing domestic or family violence to end an agreement quickly.⁸⁸

The department advised that 'The amendments will commence immediately on Assent to ensure continued protection'. The Bill would also repeal the existing DFV provisions in the COVID-19 Regulation.⁸⁹

The department advised that the amendments will support a renter experiencing domestic and family violence to make their rental home safer, or to leave quickly with liability for end of lease costs capped at seven days' notice.⁹⁰ The amendments also allow:

- those ending their tenancy interest to access their share of rental bonds quickly while reducing the need for contact with the perpetrator (if a co-contributor)
- property owners to require a top up of the rental bond if co-renters remain in the property and part of the rental bond has been refunded
- renters to change the locks to the rental property without requiring the owner's consent.⁹¹

⁸⁸ HLA Bill, cl 22, inserts new sections 308A to 308I into the RTRA Act, and cl 26, inserts new sections 381A to 381I into the RTRA Act.

⁸⁹ Department, correspondence, 7 July 2021, p 19; HLA Bill, cl 90 to 94.

⁹⁰ Department, correspondence, 7 July 2021, p 19; HLA Bill, cl 90 to 94.

⁹¹ Department, correspondence, 7 July 2021, p 20.

To protect owners from misuse of this provision, the Bill would require renters to provide supporting evidence that they are experiencing domestic and family violence to the owner at the time of issuing the notice ending their interest in the tenancy arrangement. Renters must also use an approved form with specified supporting evidence, including:

- a protection order
- a temporary protection order
- a police protection notice
- an interstate order
- a court injunction, and
- a report, in the approved form, about the domestic violence signed by a health practitioner, social worker, refuge or crisis worker, DFV support worker or caseworker, a solicitor or an Aboriginal and Torres Strait Islander medical service.⁹²

To protect the confidentiality of the renter, property owners, managers and their employees must not disclose the above information – an offence attracting a maximum of a 100 penalty units.⁹³

The Bill provides that property owners may apply to QCAT to have the notice set aside, but must apply within seven days of receiving the notice from the vacating renter. The property owner must inform the vacating renter that any other renters will be informed that they are leaving the property, but must not inform the remaining renters until at least seven days after the vacating renter's interest ends to allow them time to leave safely.⁹⁴

Under the Bill, only the property owner or manager will be able to dispute any claims against the rental bond by the vacating renter, however, any claims cannot be for damage, reletting costs or anything associated with the DFV experienced by the vacating renter. The remaining co-renters will not be able to dispute any claim against the portion of the bond by the vacating renter through the bond refund process.

3.3.3 Stakeholders' views and department's response

There was broad support from inquiry participants for measures to support those who may be experiencing domestic or family violence.⁹⁵

For example, Tenants Queensland stated:

We are directly aware, and indirectly through our work with domestic and family violence workers supporting their clients, that these provisions are commonly used and welcomed.⁹⁶

Similarly, Q Shelter stated '[t]he improved tenancy law protections for people experiencing DFV will enhance tenants' ability to exit a tenancy quickly and safely, and with less financial hardship'.⁹⁷ As did REIQ which stated that it supports the need for appropriate safeguards to ensure people who experience domestic and family violence are able to leave a tenancy quickly and safely.⁹⁸

⁹² HLA Bill, cl 99, amends the RTRA Regulation.

⁹³ Department, correspondence, 7 July 2021, p 20.

⁹⁴ Department, correspondence, 7 July 2021, p 20.

⁹⁵ See for example: CHIA Queensland, submission 717, p 5; Queensland Youth Housing Coalition, submission 710, p 5; REIQ, submission 714B, p 5; Queensland Human Rights Commission, submission 716, p 9.

⁹⁶ Tenants Queensland, Submission 723, p 31.

⁹⁷ Q Shelter, p 741, p 5.

⁹⁸ REIQ, submission 714B, p 5.

3.3.3.1 *Notices relating to domestic and family violence provisions*

The REIQ recommended including an express provision to ensure agents are not liable civilly or under an administrative process for early termination of tenancy interests by renters experiencing DFV. This submission also suggested that the effect of the renter's notice ending tenancy interest should clearly state the rights and obligations of the vacating renter pass to any remaining renters, preserve any right or liability of the vacating renter immediately before they leave and should be drafted in a manner similar to section 244 about the death of a co-tenant.⁹⁹

3.3.3.2 *Bond process*

The Bill sets out a process whereby victims of DFV may claim a bond refund from the RTA. REIQ called for more clarity relating to the interconnection between the notice to end a tenancy under section 308A, the rental bond refund process and the application to the QCAT about the notice to end the tenancy based on DFV. REIQ requested further information on the practical application of the following circumstances:

- The process for ensuring the RTA does not issue a rental bond refund until the tenancy has actually ended pursuant to sections 308D and 308E
- The process for ensuring the RTA does not refund the vacating tenant's rental bond whilst an application to QCAT is in process under section 308H
- The impact of the rent bond refund process where the vacating tenant has received notification of the lessor's response under section 308C.¹⁰⁰

3.3.3.3 *Minimising non-compliance costs*

Some submissions from industry stakeholders raised concerns about processes to ensure the domestic and family violence provisions are implemented effectively to achieve the intended policy outcomes and minimise non-compliance risks for parties.¹⁰¹

Some submissions from renter advocates and DFV support services suggested support for reforms to make it easier for renters experiencing domestic and family violence to have the person using violence removed from the tenancy agreement, including by providing notice with supporting evidence to the property manager or owner.¹⁰²

In response, the Department advised that the RTRA Act allows a person experiencing domestic and family violence to apply to QCAT for an order to remove a person using domestic and family violence from the tenancy agreement. 'This process ensures both parties are provided natural justice in this matter taking account the evidence of the alleged domestic and family violence occurring and the impact on both parties of any orders relating to the tenancy agreement'.

The department also noted that allowing a notice with supporting evidence to remove a person from a tenancy agreement would likely raise significant fundamental legislative principle and human rights considerations.¹⁰³

The department outlined its intention to continue to work with the Department of Justice and Attorney-General and QCAT to explore options, including education and awareness strategies for the legal profession, that may support better outcomes for renters experiencing domestic and family violence in sustaining their tenancy arrangements.

⁹⁹ Department, correspondence, 23 July 2021, p 8.

¹⁰⁰ REIQ, submission 714B, p 7.

¹⁰¹ Department, correspondence, 23 July 2021, p 8.

¹⁰² Department, correspondence, 23 July 2021, p 8.

¹⁰³ Department, correspondence, 23 July 2021, p 8.

The department also undertook to continue to work with the RTA, QCAT, the Queensland Magistrates Courts Services, the Office of the Commissioner for Body Corporate and Community Management and relevant government agencies with responsibility for particular cohorts to prepare for and implement the reforms, including to develop any guidance material and other resources to support the residential rental sector and related sectors, such as community title schemes.¹⁰⁴

3.3.3.4 Committee comment

The committee supports the proposed amendments and believes they will support people experiencing domestic and family violence to access and sustain safe and stable housing in the rental market. The committee is heartened by evidence to the inquiry that demonstrates that the proposed reforms have been working on the front line and are welcomed.

The committee acknowledges the complexities associated with domestic and family violence matters. As such, the committee welcomes the department's advice that it will continue to work with relevant stakeholders to develop and support implementation of measures which support better outcomes for renters experiencing domestic violence.

3.3.3.5 Security measures

Some renter advocacy groups and other industry stakeholders recommended that renters be allowed to install security devices and measures without prior agreement from the owner.¹⁰⁵

For example, Tenants Queensland submitted:

The proposals in the November 2019 RIS included a recommendation to allow renters impacted by domestic and family violence to install security measures as well as locks without prior agreement. We consider this as an essential protection for those victim/survivor renters who wish to stay in their home. ... Under the current provisions, a tenant experiencing domestic violence requires the property owners consent or a QCAT order to install security measures. QCAT wait times can range from three weeks to 25 weeks (currently in Brisbane), failing to meet the needs of people experiencing domestic violence who often require immediate action to ensure their safety.¹⁰⁶

The Queensland Youth Housing Coalition submitted a similar request:

Everyone has the right to feel safe and live their life free from violence, abuse or intimidation. ... the ability to install security measures without prior agreement from the lessor is a vital safety protection which should be included. This was in the original recommendations and we request that it be reinstated'.¹⁰⁷

In response the department advised that the installation of security measures for domestic and family violence outlined in the Consultation Regulatory Impact Statement (C-RIS) formed part of the proposed minor modification reforms. Given the complex and evolving environment for minor modifications this reform priority will continue to be developed in future reform stages in consultation with stakeholders.¹⁰⁸

The department advised that this will allow for the outcomes of national work to be clearer and inform decisions about what is required to be achieved through rental law reform and for further work to be undertaken with stakeholders to design workable solutions that strike a better balance between lessor and renter interests across these issues.¹⁰⁹

¹⁰⁴ Department, correspondence, 23 July 2021, p 8.

¹⁰⁵ Department, correspondence, 23 July 2021, p 9.

¹⁰⁶ Tenants Queensland, submission 723, p 31.

¹⁰⁷ Queensland Youth Housing Coalition, submission 710, p 5.

¹⁰⁸ Department, correspondence, 23 July 2021, p 9.

¹⁰⁹ Department, correspondence, 23 July 2021, p 9.

3.3.3.6 *Changing locks*

Some submissions suggested that issues could be created in medium or high-density buildings with a master key system and that the actions of a tenant would be limited by proposed subsection 211(5) in build to rent schemes and multi-unit buildings with a single owner that do not have community title management policies.

CHIA Queensland explained:

‘In a medium or high density building that operates on a master key system, a lock changed by a locksmith engaged by a tenant inevitably will need to be changed again to confirm with the master key that operates across the rest of the complex. The issue arises in relation to Build to Rent or other multi-unit buildings where there is a single owner and therefore no strata or body corporate. The building management policies will not be regarded as equivalent in law to strata title by-laws and thus the actions of the tenant would not be limited by proposed sub-section 211(5).¹¹⁰

CHIA Queensland recommended that 211(5) be amended to exclude multi-unit apartment buildings owned by a single entity.¹¹¹

In response, the department confirmed that the keys may be changed by the renter under the RTRA Act as the law currently stands. The intention is to enable renters experiencing domestic and family violence to ensure they can remain safely in the rented premises by changing locks.

Owners of multi-unit buildings which are not divided by community title and which do not have a body corporate are unregulated. Any building management policies in place would need to comply with the RTRA Act and could not contain provisions which would prevent the changing of keys as permitted under the current and amended s 211 of the RTRA Act.

The owner would be given the new keys and could still access the property as required. Body Corporate By-Laws are regulated and exceptions under the RTRA Act are therefore appropriate. It would not be appropriate to exclude multi-unit building owners, who do not have the same level of regulation as body corporate managers from the operation of section 211.¹¹²

3.3.3.7 *Costs and impacts*

Some submissions from property owners and owner advocacy groups raised concerns about the financial impacts of DFV protections, suggesting that funding could be provided to cover the costs.¹¹³

For example, QLS acknowledged that the time leading up to and immediately after leaving a violent relationship can be the most dangerous for a person experiencing violence and agreed that tenancy reform is critical in increasing safety for people experiencing domestic and family violence.

QLS recommended that the consideration be given to establishing a State government fund which can recompense landlords who are adversely affected financially by these changes. QLS also recommended that the State government advocate to insurance providers to encourage the availability of landlord insurance cover for loss of rental and property damage in these situations.¹¹⁴

In addition, property management representatives identified risks for owners and managers involved in Domestic and Family Violence tenancy issues, such as safety concerns, and suggested further support and guidance will be needed in managing these issues.¹¹⁵

¹¹⁰ Community Housing Industry Association Queensland, submission 717, p 5.

¹¹¹ Community Housing Industry Association Queensland, submission 717, p 5.

¹¹² Department, correspondence, 23 July 2021, p 9.

¹¹³ Department, correspondence, 23 July 2021, p 9 -10.

¹¹⁴ Queensland Law Society, submission 708, p 4.

¹¹⁵ Department, correspondence, 23 July 2021, p 9.

In response, the department noted that significant work has been undertaken in the industry to support property managers build the skills needed to sensitively manage tenancies where domestic and family violence may be occurring, including by the Real Estate Institute of Queensland. The department noted that it will continue to work with the RTA and the sector to ensure guidance resources are available to support implementation of these reforms.¹¹⁶

3.4 Establishing Minimum Housing Standards and maintenance and repair

3.4.1 Existing legislation

The RTRA Act provides that minimum housing standards may be prescribed by regulation. The regulation may also provide for how compliance with any minimum housing standards would be enforced.¹¹⁷ The RTRA Act provides the following examples of prescribed minimum housing standards which may be included in a regulation:

- sanitation, drainage, cleanliness and repair of the premises, inclusions or park facilities
- ventilation and insulation
- protection from damp and its effects
- construction, condition, structures, safety and situation of the premises, inclusions or park facilities
- the dimensions of rooms in the premises
- privacy and security
- provision of water supply, storage and sanitary facilities
- laundry and cooking facilities
- lighting
- freedom from vermin infestation, and
- energy efficiency.

The RTRA Act outlines the rights and obligations of parties to tenancy arrangements, which include matters concerning the standard of the premises. The department advised that:

Property owners are obliged to ensure the rental property is clean, fit to live in, in good repair and is not in breach of any laws relating to the health and safety. Property owners must maintain the rental premises in good repair throughout the tenancy. Renters are obliged to keep the rental property in a clean state having regard to its condition at the start of the tenancy, must not maliciously damage the rental property or allow others to do so and must report any damage to the property owner. The renter must leave the rental property in the same condition it was in at the start of the tenancy except for fair wear and tear. If a renter or their guest damages the property, they may have to pay for repairs.

There are processes renters and property owners can follow for routine and emergency repairs and maintenance of the rental property. Processes include, in the case of non-urgent repairs, seeking resolution through the RTA conciliation process, and if unsuccessful, making an application to the tribunal. In relation to emergency repairs, renters can apply directly to the tribunal for an order.

Under the RTRA Act, the property owner can include details for a nominated repairer to contact for emergency repairs if the renter cannot contact the owner. Renters can arrange for emergency repairs up to the equivalent of two weeks rent if they are unable to contact the owner or nominated repairer.

Emergency repairs are defined in section 214 of the RTRA Act.¹¹⁸

¹¹⁶ Department, correspondence, 23 July 2021, p 9.

¹¹⁷ RTRA Act, s17A

¹¹⁸ Department, correspondence, 7 July 2021, pp 14-15.

3.4.2 What does the Bill propose

The Bill amends the RTRA Regulation to prescribe minimum housing standards for residential premises under a residential tenancy agreement and rooming accommodation. The prescribed minimum housing standards are broken down into two categories: safety and security, and reasonable functionality.

In relation to safety and security, the prescribed minimum housing standards cover the following issues:

- weatherproof and structurally sound – premises must be weatherproof, structurally sound and in good repair
- fixtures and fittings – fixtures and fittings, including electrical appliances, for the premises must be in good repair and must not be likely to cause injury to a person through the ordinary use of them
- locks on windows and doors – premises must have a functioning lock or latch fitted to all external windows and doors to secure the premises against unauthorised entry
- vermin, damp and mould – premises must be free of vermin, damp and mould where the lessor or provider is responsible for those parts of the premises, and
- privacy – premises must have privacy coverings for windows in all rooms in which tenants or residents are reasonably likely to expect privacy, such as bedrooms.

The category of reasonable functionality covers: plumbing and drainage; bathrooms and toilets; kitchen and laundry.¹¹⁹

The above standards would be supported by several amendments to the RTRA Act to encourage compliance, clarify repair and maintenance obligations and support enforcement, including:

- extending the time the renter has to return the entry condition report from three days to seven days to allow them sufficient time to inspect the premises¹²⁰
- requiring the property owner to provide details about nominated repairers for emergency repairs¹²¹
- increasing the cost that can be authorised by the renter for emergency repairs from the equivalent of two weeks' rent to the equivalent of four weeks' rent¹²²
- allowing property managers to arrange emergency repairs to the amount allowed for renters to arrange emergency repairs¹²³
- introducing tribunal Repair Orders with a continuing penalty offence for contravening a repair order, which will be provided to the RTA for enforcement¹²⁴, and
- introducing additional grounds for renters to end an agreement in some circumstances if the property does not comply with minimum housing standards or the owner has not complied with a QCAT Repair Order¹²⁵, and

¹¹⁹ Bill, cl 31, 98 and 100.

¹²⁰ Bill, cl 34 and 36

¹²¹ Bill, cl 47

¹²² Bill, cl 48

¹²³ Bill, cl 49.

¹²⁴ Bill, cl 50 and 51.

¹²⁵ Bill, cl 63 and 80.

- allowing property owners to apply to QCAT for an extension of time to comply with the Repair Order.¹²⁶

The department advised that the proposed minimum housing standards would be phased in and would apply to premises from 1 September 2023, where a tenancy agreement starts on or after that date, and from 1 September 2024 to all other rental properties.¹²⁷

3.4.3 Stakeholders' views and department's response

A significant number of submitters, including Tenants Queensland, REIQ, CHIA Queensland, Q Shelter, PropertySafe and the Property Owners' Association of Queensland, supported the proposed introduction of the minimum housing standards.¹²⁸ LawRight stated that:

These provisions ensure that all Queenslanders, but particularly those facing poverty and other forms of disadvantage, are able to access housing which is safe, secure, and does not negatively impact their physical or mental wellbeing.¹²⁹

Submitters also raised the following issues and concerns in relation to the proposed amendments.

3.4.3.1 *Additional measures*

A number of renter advocacy groups, and some industry stakeholders, suggested several additional standards for inclusion, such as smoke alarm checks, electrical safety, ventilation, lighting, accessibility, heating and cooling, and energy efficiency.¹³⁰

CHIA Queensland stated, in relation to heating and cooling, '... a missing dimension of the housing standards relating to functionality is energy efficiency. This is a significant contributor to the total cost of housing and impacts most heavily on low-income tenants.'¹³¹ Q Shelter noted that:

Housing plays a critical role in the health and wellbeing of communities and poor quality housing can have adverse consequences, such as respiratory conditions and asthma associated with cold, damp and mould. Children and the elderly are especially at risk, particularly the health and development of children.¹³²

In response, the department advised that the D-RIS provides comprehensive information about the analysis and impact of the proposed minimum housing standards, including analysis of whether standards for ventilation, lighting, heating and cooling, and energy efficiency should be prescribed at this stage.¹³³

The department also advised that the proposed minimum housing standards focus on health, safety and functionality of the rental property and seek not to duplicate requirements under the existing regulatory schemes. Further, they largely clarify existing obligations where requirements are ambiguous or dispersed.¹³⁴

¹²⁶ Bill, cl 51.

¹²⁷ Department, correspondence, 7 July 2021, p 15.

¹²⁸ See, for example, submissions 582b, 633, 713, 714b, 723 and 741.

¹²⁹ LawRight, submission 713, p 5.

¹³⁰ See, for example, submissions 360, 633, 713, 717, 723 and 741 and Form B.

¹³¹ CHIA Queensland, submission 86, p 4.

¹³² Q Shelter, submission 741, p 5.

¹³³ Department, correspondence, 23 July 2021, p 5

¹³⁴ Department, correspondence, 23 July 2021, p 5

The department also confirmed that several of the additional standards suggested by stakeholders – including ventilation, lighting, smoke alarms and electrical safety are already covered under existing regulation, such as the *Electrical Safety Act 2002* and *Fire and Emergency Services Act 1990*.¹³⁵

3.4.3.2 Need for further clarification

Several submitters from renter and property owner advocacy groups recommended further clarification and clearer definitions were needed for minimum housing standards, including and in relation to plumbing and drainage, changing of locks and the property being free of mould, to avoid or minimise disputes.¹³⁶ For example, UDIA recommended ‘... changes to acknowledge mould can be a tenant basic cleaning issue not requiring the emergency repairs provision and/or a notice to leave’.¹³⁷

The department advised that the explanatory notes provide information to support interpretation and application of the proposed standards, including that the standard for mould excludes mould caused by the tenant.¹³⁸

3.4.3.3 Increase in costs associated with minimum standards

Property owners and owner advocacy groups raised concerns about the ongoing costs of minimum housing standards and the potential increase in unaffordable properties.¹³⁹

In response, the department noted that ‘regular maintenance and repairs are an ongoing and expected cost of owning a property, whether or not it is rented’.¹⁴⁰

Further, analysis of the expected economic impacts of the proposed minimum housing standards reform is provided in the Deloitte Access Economics Report.¹⁴¹ The report found that ‘changes to the housing quality and minimum housing standards ... increase maintenance and capital costs associated with repairs to housing stock that does meet the necessary housing standards set out in the reforms’.¹⁴²

The Deloitte Access Economics Report also estimated the aggregate cost of the minimum housing standards reform per year to be between \$4.5 million and \$55.5 million, and the estimated change per investment property per year to be between \$8 and \$99, using low/high scenarios.¹⁴³

3.4.3.4 Emergency repairs

Submissions from property owner and manager advocacy groups, such as REIQ, advocated for further amendments to be included that require the renter to make reasonable attempts to first notify owner/agent of emergency repairs needed before they contact the nominated repairer.¹⁴⁴

In response, the department noted that Clause 47 of the Bill amends section 216 of the RTRA Act to require that the residential tenancy agreement, or notice, must state the name and telephone number

¹³⁵ Department, correspondence, 23 July 2021, p 5

¹³⁶ See for example: submissions 714b and 722b; Department, correspondence, 23 July 2021, p 5

¹³⁷ UDIA, submission 722b, p 4.

¹³⁸ Department, correspondence, 23 July 2021, p 5.

¹³⁹ Department, correspondence, 23 July 2021, p 5, Form Submissions D and G

¹⁴⁰ Department, correspondence, 23 July 2021, p 5.

¹⁴¹ Department, Correspondence, 7 July 2021, enclosing Deloitte Access Economics, Updated economic analysis of Queensland residential rental reforms.

¹⁴² Department, Correspondence, 7 July 2021, Attachment, Deloitte Access Economics, Updated economic analysis of Queensland residential rental reforms, p 18.

¹⁴³ Department, Correspondence, 7 July 2021, Attachment, Deloitte Access Economics, Updated economic analysis of Queensland residential rental reforms, p 18.

¹⁴⁴ Submissions 714b and 722b.

of the nominated repairer and whether or not the nominated repairer is the tenant's first point of contact for notifying the need for emergency repairs.¹⁴⁵

REIQ and UDIA did not support the proposed extension of the emergency repair limit from two weeks to four weeks.¹⁴⁶ Submissions from property manager peak groups also noted concerns about a potential conflict between the proposed new section 219A (which allows agents to authorise emergency repairs up to the equivalent of 4 weeks rent) may be in conflict with their obligations under sections 21 and 22 of the *Agents Financial Administration Act 2014*.¹⁴⁷

In response to this issue, the department advised that it considers that the proposed new section 219A provides a statutory authorisation. The requirement for agents who exercise their authorisation under the section to report on this expenditure as soon as practicable to the owner ensures the agent is accountable for any actions taken under this authorisation. The department also advised that it will work closely with the Department of Justice and Attorney-General to consider any implementation issues required to be addressed before these provisions commence.¹⁴⁸

Some submissions recommended that the reasons for requesting an extension of time to comply with a repair order due to difficulty accessing qualified tradespeople to undertake the repairs not be limited to remote locations. These submissions noted that shortages of qualified tradespeople may not be limited to remote locations, which is outside of the lessor's control.¹⁴⁹

3.4.3.5 Compliance

Several submitters, including Tenants Queensland, highlighted the need for stronger mechanisms to monitor compliance with minimum housing standards, including regular third-party inspections and publication of repair orders. Tenants Queensland stated that '... more should be done to monitor and enforce the standards, particularly given the long lead in time. Without additional mechanisms, the existence of standards risks being largely in effective'.¹⁵⁰

Tenants Queensland made a number of recommendations to improve compliance and enforcement, including a third party regulator to inspect properties, a public register of sub-standard properties, a system of third party compliance and inspections, the disclosure of any current (non-complied with) repair orders and mandatory building and pest inspections.¹⁵¹

In response to issues raised in submissions, the department advised that no existing administrative body exists that could undertake third party inspections.¹⁵²

Clauses 32, 33 and 35 of the Bill establish new obligations for owners and agents to disclose information and documents to renters about the property or tenancy agreement when offering a tenancy arrangement. A new power to prescribe information to be disclosed by Regulation is established by these clauses to ensure both parties have access to the information they need to make informed decisions about their tenancy arrangements. The department will work with the sector to determine the information required to be disclosed before a tenancy agreement is entered, including whether the property is the subject of a tribunal repair order.¹⁵³

¹⁴⁵ Department, correspondence, 23 July 2021, p 5.

¹⁴⁶ Submissions 714b and 722b.

¹⁴⁷ REIQ, submission 714b, p 10.

¹⁴⁸ Department, correspondence, 23 July 2021, p 6.

¹⁴⁹ Department, correspondence, 23 July 2021, p 6.

¹⁵⁰ Tenants Queensland, submission 723, p 20.

¹⁵¹ Tenants Queensland, submission 723, p 20.

¹⁵² Department, correspondence, 23 July 2021, p 6.

¹⁵³ Department, correspondence, 23 July 2021, p 6.

3.4.3.6 *Committee comment*

The committee supports the proposed amendments which will provide for the introduction of prescribed minimum housing standards which will require all Queensland rental accommodation to meet minimum safety, security and functionality standards.

As with amendments relating to ending and managing tenancy agreements, the committee is of the view that the department will need to closely monitor and evaluate the implementation of these reforms. This will be important to inform consideration as to whether stronger compliance mechanisms are needed going forward.

Recommendation 4

The committee recommends that the Department of Communities, Housing and Digital Economy closely monitor and evaluate, in consultation with relevant stakeholders, implementation of the minimum housing standards reforms, to inform consideration of whether stronger compliance mechanisms are required.

3.5 Keeping pets at a premises

3.5.1 Existing legislation

Current rental laws allow property owners and renters to agree that a pet can be kept at a rental property, however, there is no guidance or framework to help the parties communicate and negotiate on these issues.¹⁵⁴

The department advised that the ability for a tenant to keep a pet in a rental property was one of the most popular topics raised during the Open Doors consultation, and feedback indicated that rental laws could do more to support renters and property owners reach agreement on renting with pets.¹⁵⁵

The department stated that:

The Government's objectives for renting with pets reform is to support parties to reach agreement about renting with pets and encourage more pet friendly rental properties in Queensland, while providing effective safeguards to protect property owners' interests.¹⁵⁶

3.5.2 What does the Bill propose

The Bill proposes to introduce a framework for keeping pets in rental properties.¹⁵⁷ Under the proposed framework, a tenant must have the lessor's written approval to keep a pet¹⁵⁸, or other animal, at the premises.

The department advised that the objectives in proposing renting with pets reforms is to encourage more pet friendly rental properties in Queensland, while providing effective safeguards to protect property owners' interests.¹⁵⁹

The Bill provides that a tenant must use an approved form to apply for approval, and the property owner must respond, in writing, within 14 days of the tenant's request. If the lessor does not respond

¹⁵⁴ Department, correspondence, 7 July 2021, p 21.

¹⁵⁵ Department, correspondence, 7 July 2021, p 21.

¹⁵⁶ Department, correspondence, 7 July 2021, p 21.

¹⁵⁷ HLA Bill, cl 44 and 54.

¹⁵⁸ Bill, cl 44, new section 184A of the RTRA Act defines *pet* as a domestic animal or an animal that is dependent on a person for the provision of food or shelter, but does not include a working dog or an animal prescribed by regulation not to be a pet.

¹⁵⁹ Department, correspondence, 23 July 2021, p 9.

within this timeframe, the request to keep a pet at the premises is deemed approved. The Bill also provides that a lessor's refusal may not be on the grounds that 'no pets are allowed'.¹⁶⁰

The Bill provides a lessor may only refuse a request from a tenant to keep a pet on the following prescribed reasonable grounds:

- keeping the pet would exceed a reasonable number of animals being kept at the premises
- the premises are unsuitable for keeping the pet because of a lack of appropriate fencing, open space or another thing necessary to humanely accommodate the pet
- keeping the pet is likely to cause damage to the premises or inclusions that could not practicably be repaired for a cost that is less than the amount of the rental bond for the premises
- keeping the pet would pose an unacceptable risk to the health and safety of a person, including, for example, because the pet is venomous
- keeping the pet would contravene a law
- keeping the pet would contravene a body corporate by-law or park rule
- the tenant has not agreed to the reasonable conditions proposed by the lessor for approval to keep the pet
- the animal stated in the request is not a pet
- if the premises is a moveable dwelling premises, keeping the pet would contravene a condition of a licence applying to the premises, and
- another ground prescribed by regulation.¹⁶¹

Under the Bill, the lessor's approval can be given subject to reasonable conditions, for example:

- the pet must stay outside or be restricted to a particular part of the property
- the tenant must arrange for the premises to be professionally fumigated at the end of the tenancy if the pet is capable of carrying parasites that could infest the premises, and
- the tenant have the carpets professionally cleaned at the end of the tenancy for relevant pets allowed inside the premises.

However, the Bill provides that a rent or rental bond increase is not a reasonable condition.¹⁶²

The Bill also clarifies that:

- a property owner cannot increase rent to allow a pet, or charge (or accept) an additional pet bond above the maximum allowable rental bond
- the renter is responsible for any nuisance or damage caused by the pet and fair wear and tear does not include pet damage¹⁶³
- any breach of the conditions of approval for a pet by the renter breaches the agreement

¹⁶⁰ Bill, cl 44, inserts new section 184D into the RTRA Act.

¹⁶¹ Bill, cl 44, inserts new section 184E into the RTRA Act.

¹⁶² Bill, cl 44, inserts new section 184F into the RTRA Act.

¹⁶³ Bill, cl 44, inserts new section 184C into the RTRA Act.

- approval of the pet is subject to applicable body corporate by laws, house rules or park rules in managed communities¹⁶⁴, and
- approval is not required for working dogs as defined in relevant Queensland legislation¹⁶⁵.

3.5.3 Stakeholders' views and department's responses

Many inquiry participants, including Tenants Queensland, Q Shelter and REIQ, outlined their support for measures that make it easier for tenants to keep pets in their home.¹⁶⁶

The following additional comments were raised.

3.5.3.1 *Assumed right*

Several submitters representing renter and animal welfare interests submitted that measures in the Bill could be strengthened and called for renters to have an assumed right to keep a pet with the onus being on the owners to seek orders to refuse a request to keep a pet at their rental property.¹⁶⁷

The Animal Welfare League Queensland (AWLQ) submitted that:

It is 'inhumane to expect renters to give up their pets. Pets are considered their family. They are essential to their well-being and it is detrimental to their mental health to have to be separated from them. Often people's pets are their lifeline when they are struggling to cope with job and accommodation losses. With growing numbers of younger people and retirees who need to rent, many whom are single and depend on a pet for company, along with the increase in pet surrender due to homelessness during COVID-19.¹⁶⁸

AWLQ submitted that the Bill did not go far enough as the onus is still with the tenant to decide if the grounds the lessor provides for refusing their pet or conditions for allowing the pet are appropriate, and it is the responsibility for the tenant to take action to argue their case. AWLQ advised that many tenants feel that if they question the grounds for refusal, they may lose their accommodation.¹⁶⁹

Tenants Queensland echoed this concern, stating:

The keeping of pets should be a personal choice and renters should be able to make their own decision. The Bill proposals are based on an underlying assumption that renters cannot keep pets, or, only by exception. We accept there will be rare circumstances where good reasons exist for a lessor to exclude a pet or a certain pet, but pet exclusion should be the exception not the rule.¹⁷⁰

Tenants Queensland and AWLQ suggested that if the lessor has special circumstances for which they want to argue a pet exclusion, they should be required to argue this at QCAT (at periodic intervals) to prove their special circumstances in order to receive a pet (or specific pet type) exclusion order, and submitted that this system is working in both Victoria and the ACT.¹⁷¹

¹⁶⁴ Bill, cl 44, inserts new sections 184A and 184B into the RTRA Act.

¹⁶⁵ Bill, cl 44, new section 184A of the RTRA Act defines *working dog* as an assistance dog, guide dog or hearing dog under the *Guide, Hearing and Assistance Dogs Act 2009*; a corrective service dog under the *Corrective Services Act 2006*, schedule 4; or a police dog under the *Police Powers and Responsibilities Act 2000*, schedule 6.

¹⁶⁶ See for example: Q Shelter, submission 741, p 5; QCOSS, submission 706, p 1; Tenants Queensland, submission 723, p 25; REIQ, submission 714B, p 11.

¹⁶⁷ Department, Correspondence, 23 July 2021, p 9. See for example: AWLQ, submission 711, p 2;

¹⁶⁸ AWLQ, submission 711, p 2.

¹⁶⁹ AWLQ, submission 711, p 2.

¹⁷⁰ Tenants Queensland, submission 723, pp 27-28.

¹⁷¹ Tenants Queensland, submission 723, p 28.

In response, the department confirmed that Clause 44 of the Bill inserts new pet provisions that start from a presumption that renters should be able to keep pets. Owner discretion to refuse pets is restricted to the prescribed reasonable grounds outlined in s184E.¹⁷²

3.5.3.2 Potential for misuse of grounds and calls for further clarity

Some submitters also raised concerns around the potential misuse of grounds or conditions by the property owner, the suitability of some premises for keeping a pet, or where the keeping of a pet is in contravention of other laws. These submissions suggested that further clarification of the reasonable grounds and conditions was needed.¹⁷³

For example, the AWLQ submitted that the specific grounds that the lessor can use to refuse a pet are broad, which will continue to enable lessors to exclude pets without redress.¹⁷⁴ AWLQ used the example of; *(a) keeping the pet would exceed a reasonable number of animals being kept at the premises*, and questioned how “reasonable” would be decided.¹⁷⁵

In response, the department advised that this issue can be managed under existing processes under the RTRA Act. Property owners can refuse the request to keep a pet based on this being breach of another law or approve subject to body corporate approval to avoid the risk of deemed consent resulting in the renter keeping a pet in contravention of a body corporate by-law.¹⁷⁶

CHIA Queensland advocated for more guidance for both tenants and lessors, as the grounds for refusing pets ‘involve highly subjective decisions on suitability of premises and reasonableness of the conditions under which pets are approved’.¹⁷⁷ CHIA Queensland called for further guidance on the suitability of premises and the reasonableness of conditions under which pets can be kept in rental premises or rooming accommodation.¹⁷⁸

3.5.3.3 Working dogs

Some submissions also raised concerns about the authorisation to keep a working dog at a rental property, including that this may create confusion and inconsistency with other laws about anti-discrimination, particularly in relation to assistance animals.¹⁷⁹

For example, the Queensland Human Rights Commission submitted that inserting the words ‘working dog’ in section 184B(3) creates confusion and inconsistency with other laws. Conflating pets with assistance animals in the Bill may encourage lessors to require body corporate approval for assistance animals in circumstances where it is otherwise not required by law, or where it could amount to unlawful discrimination.¹⁸⁰

In response, the department advised that the term ‘working dog’ in the Bill is broader than the types of dogs normally dealt with in anti-discrimination legislation.¹⁸¹ Body corporate by-laws can apply to some types of working dogs, for example, corrective services dogs.¹⁸²

¹⁷² Department, correspondence, 23 July 2021, p 9.

¹⁷³ See for example: AWLQ, submission 711, pp 3-4; Tenants Queensland, submission 723, p 28.

¹⁷⁴ AWLQ, submission 711, p 3.

¹⁷⁵ AWLQ, submission 711, p 4.

¹⁷⁶ Department, Correspondence, 23 July 2021, p 9.

¹⁷⁷ Community Housing Industry Association Queensland, submission 717, p 6.

¹⁷⁸ Community Housing Industry Association Queensland, submission 717, p 6.

¹⁷⁹ Department, correspondence, 23 July 2021, p 9.

¹⁸⁰ Queensland Human Rights Commissioner, submission 716, p 14.

¹⁸¹ Working dog is defined to mean an assistance dog, guide dog or hearing dog, a corrective services dog, or a police dog under the relevant legislation

¹⁸² Department, correspondence, 23 July 2021, p 9.

3.5.3.4 *Are transitional arrangements necessary*

Some submissions suggested that transitional arrangements for pet reforms should provide for any existing approval or conditions for keeping a pet at the rental property to be preserved should the reforms commence.

For example, the REIQ stated that any pet approvals (and relevant conditions) should continue on commencement of any reforms. Similarly, any existing agreements which state that no pets are permitted should also prevail.¹⁸³

The department advised that the purpose of the transitional provision is to continue the existing approval for pets but stop any conditions attaching to that approval if those conditions would not be acceptable under the RTRA Act, as amended.¹⁸⁴

The department also advised that the proposed implementation timeframe for the renting with pets reform is expected to be 12 months from date of Assent. This is intended to provide sufficient time for parties to ensure any existing approvals or conditions are reviewed and comply with new provisions. The department also advised that it will work with the RTA, QCAT, the Queensland Magistrates Courts Services, and the Office of the Commissioner for Body Corporate and Community Management to prepare for and implement the reforms, including to develop any guidance material and other resources to support the residential rental sector and related sectors, such as community title schemes.¹⁸⁵

3.5.3.5 *Pet damage*

Several property owner advocacy groups and industry stakeholders raised concerns around the potential damage caused by allowing pets into rental properties and recommended or indicated support for a pet bond to minimise this risk.

For example, REIQ submitted that 'damage caused by pets can lead to significant repair and renovation bills and property values can be impacted by pet damages'.¹⁸⁶ REIQ also outlined issues with land lord insurance and as such recommended that owners should be able to decline a pet request for reasons outside of those listed in 184E'.¹⁸⁷

Should the Bill remain as is, REIQ recommended that clause 184E(1)(c) which provides that *keeping the pet is likely to cause damage to the premises or inclusions that could not practicably be repaired for a cost that is less than the amount of the rental bond for the premises* - be amended to state that the lessor may withhold consent if:

- Keeping the pet is likely to cause damage to the premises or inclusions that could not be properly repaired or restored to the same standard, quality or characteristic as it was at the outset of the tenancy;
- Or keeping a pet is likely to cause damage to the premises or inclusions that could not practicably be repaired or replaced for a cost that is less than the amount of the rental bond for the premises.

REIQ explained that the above amendment is designed to cater for situations where damage cannot be rectified due to the unavailability of a match or like for like repair, for example traditional character homes that contain inclusions that can no longer be sourced.¹⁸⁸

¹⁸³ REIQ, submission 714B, p 13.

¹⁸⁴ Department, correspondence, 23 July 2021, p 9.

¹⁸⁵ Department, correspondence, 23 July 2021, p 10.

¹⁸⁶ REIQ, submission 714B, p 11.

¹⁸⁷ REIQ, submission 714B, p 12.

¹⁸⁸ REIQ, submission 714B, p 12.

CHIA Queensland advised that it would have considered the inclusion of a pet bond helpful explaining:

...many private landlords will simply respond to the new 'pet provisions' by removing properties from the rental market. In a significant number of cases the bond paid by social housing tenants is already insufficient to cover the costs of damage or rent arrears owed by existing tenants' ... 'CHOs are not in a financial position to simply absorb the cost of rectifying damage caused by pets'. CHIA recommended that a lessor be able to charge an additional pet bond, not exceeding 4 weeks rent.¹⁸⁹

Property Council of Australia submitted that mandating that pets are permitted may have the adverse impact of increasing the cost of renting as it may increase costs and responsibilities associated with property insurance, maintenance and management. These costs are then likely to be informally passed on to the tenants in the form of increased rent.¹⁹⁰

In response, the department advised that pet bonds were considered in the Consultation Regulatory Impact Statement and the D-RIS provides comprehensive information and analysis about this topic.

The Deloitte report noted that the renting with pets reform is expected to increase the user cost for investors by \$3.4 million annually.¹⁹¹

The department advised that existing provisions in the RTRA Act allow a rental bond to be requested as financial security for the property owner against the renter breaching the tenancy agreement, including damage caused to the property by the renter or their pet. The maximum rental bond amount that can be requested is the equivalent of 4 weeks rent unless the weekly rent is more than \$700 per week, in which case there is no prescribed maximum amount for the rental bond.

The department also advised that 'At the end of a tenancy, the property owner can make a claim against the rental bond for the costs to repair any damage caused by the pet to the rental property. If these repair costs or the property owner's total claim exceeds the rental bond amount held for the tenancy, the property owner can apply to the Queensland Civil and Administrative Tribunal for compensation. The Bill does not propose any change to these arrangements.'¹⁹²

3.5.3.6 Automatic approval in event of failure to respond to application

A number of bodies commented on the approval process for applications.

For example, REIQ also opposed the principle of deemed consent further adding that 'the time period is not reasonable and does not take into account that the lessor or lessor's agent may need to conduct certain due diligence before responding'. In any case, we oppose the principle of deemed consent'.¹⁹³ Similarly, ARAMA submitted, 'of most concern is an automatic approval in the event of a failure to respond'.¹⁹⁴

3.5.3.7 Committee comment

The committee acknowledges the important role that pets and other animals play for many individuals and families across Queensland. The committee supports the proposed amendments in the Bill which will make it easier for people to rent with their pets.

¹⁸⁹ Community Housing Industry Association Queensland, submission 717, p 6.

¹⁹⁰ Property Council of Australia, submission no 708, p 2.

¹⁹¹ Department, correspondence, 7 July 2021, Attachment, Deloitte Access Economics, July 2021, *Updated economic analysis of Queensland residential renting reforms*, p 43.

¹⁹² Department, correspondence, 23 July 2021, p 10.

¹⁹³ REIQ, submission 714B, p 12.

¹⁹⁴ ARAMA, submission 714A, p 2.

3.6 Estimated cost of implementing reforms in Bill

According to the explanatory notes, the financial implications of amendments to the *Residential Tenancies and Rooming Accommodation Act 2008* have been modelled and estimated for affected Queensland Government agencies including the RTA, QCAT, Queensland Magistrates Court systems, and the Office of the Commissioner for Body Corporate and Community Management (BCCM).

The explanatory notes state that the full cost is based on estimates in the absence of accurate data and that it is not possible to quantify reform impacts on business and operations at this stage as reliable data is not available to predict changes in party's behaviour including their uptake of new rental rights and ancillary services.¹⁹⁵

An estimated cost is not provided in the explanatory notes.¹⁹⁶

The RTA administers the RTRA Act and will implement changes to support the reforms. The RTA estimates an initial increase in demand of approximately 20-30 per cent across all existing services.¹⁹⁷

Disputes that cannot be resolved by the RTA can be referred to QCAT. QCAT anticipates that the reforms will increase the number of non-urgent residential tenancy matters by 53 per cent, which is around 2,500 additional applications. QCAT also estimates that there may be an 8 per cent increase in matters that go to the QCAT Appeals Tribunal.¹⁹⁸

BCCM provides statutory information and dispute resolution services to Queensland's community titles sector. BCCM estimates the renting with pets reforms will increase demand for BCCM's dispute resolution and information services.

3.7 Impacts on housing affordability and supply

Many submissions raised concerns about current rental market conditions, housing affordability, inability to secure rental properties and lack of supply.¹⁹⁹

The department acknowledged that the current rental market in Queensland is very difficult for renting households, and noted that these challenges are also being experienced nationally.

The department also noted that commissioned detailed economic analysis of Stage 1 rental law reform impact implemented by the Bill concluded that impacts to rents, supply and affordability would be negligible:

Economic analysis commissioned by DCHDE concluded overall that the recommended reforms' impact on the sector were estimated to be negligible and unlikely to significantly impact rents, supply or affordability in Queensland's rental market. The social, health and economic benefits for renters, property owners and the broader community are expected to outweigh these negligible costs. The improved quality of rental accommodation in Queensland's rental market will lead to flow-on social and community benefits. The reforms will provide certainty to all parties by better assigning and clarifying risks. Certainly, security and a balance of rights and responsibilities between renters and owners could provide for a better functioning and more efficient private rental market where everyone benefits.²⁰⁰ The *Updated economic analysis of Queensland residential renting reforms*, prepared by Deloitte Access Economics, July 2021, models estimated costs of the reforms to homeowners, the broader housing market and investors and tenants.

¹⁹⁵ Explanatory notes, p 13.

¹⁹⁶ Explanatory notes, p 13.

¹⁹⁷ Explanatory notes, p 13.

¹⁹⁸ Explanatory notes, p 14.

¹⁹⁹ Department, correspondence, 23 July 2021, p 13.

²⁰⁰ Department, correspondence, 7 July 2021, pp 24-25.

A detailed discussion on methodologies, assumptions and limitations of the modelling is contained within the report. Given the degree of uncertainty around how each potential reform could take effect, a low/high scenario based approach has been taken. Summary findings include:

Before any reform in the market, the annual total cost for investors of owning a property in Queensland is around \$9.4 billion. Under the proposed reforms, the relative change to this total investor user cost under high and low scenarios are:

- In the low scenario, reforms increase the total user cost by 0.10% (or by \$9.3 million), representing an average increase of \$16 per investment property per year.
- In the high scenario, reforms increase the total user cost by 0.64% (or by \$60.2 million), representing an average increase of \$107 per investment property per year.²⁰¹

...

The key findings resulting from an increase in investor user costs on the broader housing market in Queensland are:

- Low scenario: house prices decline by a maximum of 0.01% in the first two years of the policy and stabilised at this same rate in the longer term
- High scenario: house prices decline by a maximum of 0.09% in the first two years of the policy before stabilising at a decline of 0.08% in the longer term.

Based on the average house prices, decline of 0.01% and 0.08% translates to a \$71 - \$462 decrease in value.²⁰²

...

The increase in user cost for investors due to the proposed reforms is also estimated to put a slight upward pressure on rents. Again, the estimated impacts are modest:

Low scenario: rents increase by a maximum of 0.01% in the first two years of the policy before flattening in the longer term (0.002% increase)

High scenario: rents increase by a maximum of 0.05% in the first two years of the policy before stabilising at an increase of 0.02% in the longer term.²⁰³

...

Although there are an estimated 8.7% of households in rental stress across Queensland, the negligible impact of the reform on house prices and rents is unlikely to increase this proportion. ...²⁰⁴

3.8 Amendments to the *Retirement Villages Act 1999*

3.8.1 Existing legislation

The *Retirement Villages Act 1999* (RV Act) established the regulatory framework for the operation of retirement villages in Queensland, and regulates the relationship between retirement village scheme operators and residents.²⁰⁵

²⁰¹ Department, correspondence, 7 July 2021, Attachment, Deloitte Access Economics, July 2021, *Updated economic analysis of Queensland residential renting reforms*, p 3.

²⁰² Department, correspondence, 7 July 2021, Attachment, Deloitte Access Economics, July 2021, *Updated economic analysis of Queensland residential renting reforms*, p 4.

²⁰³ *Ibid*, p 4.

²⁰⁴ *Ibid*, p 4.

²⁰⁵ HLA Bill, explanatory notes, p 5.

The department advised that there are approximately 329 retirement village schemes registered in Queensland, comprising of 31,236 units and accommodating an estimated 43,730 residents.²⁰⁶

Historically, residents of retirement villages did not receive the return of their capital investment in a retirement village until after they had moved out and their unit was sold. The department advised that in some circumstances this could take several years, and was a source of ongoing concern and uncertainty for residents:

... this could take several years in some circumstances and was a source of ongoing concern and uncertainty for residents, particularly where they needed access to their capital to fund their next place of accommodation, such as aged care.²⁰⁷

The RV Act was amended by the *Housing Legislation (Building Better Futures) Amendment Act 2017* to require scheme operators to pay residents their exit entitlements for unsold units 18 months after the resident terminates their right to reside in the retirement village. Under these provisions, a scheme operator can seek an extension of time from QCAT on the grounds of undue financial hardship, and QCAT may make such an order to extend time if this would not be unfair to the former resident.²⁰⁸

In 2019, the *Health and Other Legislation Amendment Act 2019* amended the RV Act to ensure residents of freehold retirement villages were provided with the same protections and security of exit payment as other tenure types such as leasehold or licence tenure. The department advised that:

This was necessary as freehold residents generally do not receive an exit entitlement but receive the sale price of their accommodation unit minus an exit fee payable to the scheme operator. These amendments established a framework to require a scheme operator to enter into a contract of sale to 'buyback' freehold accommodation units 18 months after the resident terminates their right to reside in the village, unless the scheme operator has a reasonable excuse or is granted an extension of time from QCAT.²⁰⁹

Currently, the mandatory buyback laws apply to all freehold retirement villages, including retirement villages that are operated and controlled by the residents (resident-operated retirement villages) rather than an independent operator.

The department stated that residents of retirement villages likely to be resident-operated expressed concern about their or their village's ability to fund mandatory buybacks required by the RV Act. Residents of these villages also expressed concern that applying to QCAT to seek an extension of time for buybacks due to financial hardship would be stressful and intimidating for the resident-operators of these retirement villages.²¹⁰

An independent review of the timeframes for paying exit entitlements was completed in November 2020. The review panel's Interim Report: Independent review of timeframes for exit entitlements in Queensland retirement villages (Interim Report) identified fundamental differences between the arrangements for resident-operated retirement villages and other retirement villages.

The Interim Report recommended that resident-operated retirement villages be exempted from the mandatory buyback requirements because this 'financially burdens residents individually and collectively. The Panel believes the financial burden on individual residents is an unintended consequence of the amended legislation in section 63 of the Act.'²¹¹

²⁰⁶ Department, correspondence, 7 July 2021, p 27.

²⁰⁷ HLA Bill, explanatory notes, p 5.

²⁰⁸ Department, correspondence, 7 July 2021, p 28.

²⁰⁹ HLA Bill, explanatory notes, p 6.

²¹⁰ HLA Bill, explanatory notes, p 6.

²¹¹ HLA, explanatory notes, pp 6-7.

3.8.2 What does the Bill propose

The Bill amends the *Retirement Villages Act 1999* (RV Act) to:

- provide certainty, security and peace of mind to residents of freehold resident-operated retirement villages
- implement the intent of recommendations made during an independent review of timeframes for payment of exit entitlements in Queensland retirement villages, and
- create a framework to exempt freehold resident-operated retirement villages from the 18-month mandatory buyback requirements under the RV Act.²¹²

To achieve its objectives, the Bill will amend the RV Act to create a power for a regulation to name specific retirement villages as exempt from the mandatory buyback requirements in the RV Act, where the Minister is satisfied of certain matters.

The amendments allow the responsible Minister to recommend to the Governor in Council that a regulation be made providing an exemption to a freehold retirement village where the Minister is satisfied doing so is appropriate, considering the extent to which:

- the residents are in a position to control or influence the affairs of the scheme operator in relation to the operation of the scheme, and
- the scheme operator's assets, and the ability to generate income, are likely to be insufficient to purchase a freehold interest in a former resident's accommodation unit.

The Bill provides that in making this decision, the Minister may have regard to any relevant matter, including:

- whether the retirement village land is included in a community titles scheme and how common property is held;
- the extent to which the scheme operator is involved in the sale of a former resident's accommodation unit other than as required by the Act;
- the extent to which the former resident is required to refurbish, reinstate, or renovate the former resident's accommodation before it may be sold, other than as required by the Act;
- the extent to which the scheme operator makes a profit from fees or charges payable by residents, and
- whether any amounts are payable to the scheme operator on the sale of a unit.

3.8.2.1 Proposed implementation arrangements

The department stated that it would contact the villages which may be eligible to obtain an exemption and help them to seek an exemption if that is their wish.²¹³ The department advised that, as part of implementing these amendments, it will develop communication materials to advise of the new legislative capacity to exempt resident-operated retirement villages from the mandatory buyback requirements.²¹⁴

The department provided advice on how the exemption process would operate in practice, noting that that once sufficient evidence had been gathered establishing the appropriateness of an

²¹² HLA Bill, explanatory notes, p 5.

²¹³ Department, correspondence, 7 July 2021, p 31.

²¹⁴ Department, correspondence, 7 July 2021, p 31.

exemption for identified retirement villages, an amendment regulation would be developed to list exempt retirement villages using the power granted by this Bill.²¹⁵

The department further advised, that exemptions would take effect once the Bill is passed and a resident-operated retirement village is named in regulation. The existing obligations for mandatory buyback will continue until this occurs and resident-operated retirement villages can seek an extension of time for a mandatory buyback from QCAT where the purchase would cause undue financial hardship.²¹⁶

At the date an exemption is granted to a village, any buyback contracts that have not been completed are ended, and if the scheme operator has paid an amount towards the purchase of the former resident's property, the scheme operator may give the seller a notice requiring repayment. Where completion of the buyback contract was required to occur before the exemption was granted, the exemption does not prevent a former resident from seeking compensation from the scheme operator for the non-completion of the contract.²¹⁷

3.8.2.2 Notifications

The scheme operator of an exempt resident-operated retirement village will have a duty to notify the chief executive of the department administering the RV Act, of any changes to the village which impact on the considerations for granting an exemption. The amendments also grant the chief executive the power to request particular information from the scheme operator of an exempt retirement village. These provisions will work in conjunction with existing requirements under Part 2 Division 5 of the RV Act which require a scheme operator to notify the chief executive when it proposes to transfer control of a retirement village scheme's operation to another person. These provisions are intended to ensure the chief executive is sufficiently empowered to monitor the circumstances of exempt retirement villages and provide advice to the Minister about whether an exemption from the mandatory buyback requirements remains appropriate.²¹⁸

3.8.2.3 Removal of exemptions

Where a retirement village is assessed as no longer being an appropriate holder of an exemption, the Minister must recommend to the Governor in Council that the exemption be removed by regulation. Where this occurs, the requirement for the scheme operator to buyback former residents' accommodation units recommences. Where a former resident has terminated their right to reside in the village while the village is exempt, but the unit has not been resold before the exemption ends, the 18-month period for the buyback starts from the date the retirement village is no longer exempt.²¹⁹

3.8.3 Stakeholders' views and department's response

Several inquiry participants, including Property Council of Australia, Queensland Law Society, Queensland Human Rights Commission, ARQRV and Council on the Ageing outlined broad support for the amendments. These inquiry participants also submitted a number of issues for further consideration which are discussed below.

²¹⁵ Department, correspondence, 7 July 2021, p 31.

²¹⁶ Department, correspondence, 7 July 2021, p 31.

²¹⁷ Department, correspondence, 7 July 2021, p 31.

²¹⁸ Department, correspondence, 7 July 2021, p 31.

²¹⁹ Department, correspondence, 7 July 2021, p 31.

3.8.3.1 Ongoing monitoring

Mr Mark Evan-Tucker, Chief Executive, Council on the Aging (COTA) expressed support for the amendments, but added that ongoing monitoring of the implementation of the impacts would be important in the longer term.²²⁰

3.8.3.2 Extension of other retirement villages

An industry representative argued that the mandatory buyback provisions in the Retirement Villages Act 1999 are causing financial hardship for retirement village operators, including corporate and not-for-profit operators. The exemption should apply to all freehold retirement villages.²²¹

In response, the department noted that the *Retirement Villages Act 1999* includes provisions for retirement villages to seek an extension of time on buybacks where payment would cause financial hardship to a scheme operator. This provides protection to leasehold, license and non-exempt freehold villages which lack the financial capacity to fund mandatory buybacks.

3.8.3.3 The need for an accessible legislative framework

The ARQRV spoke about the need for new legislative arrangements to be accessible to older people who are running a retirement village:

One of the things the Retirement Villages Act is tightening up on is reporting and making operators more accountable to their residents. There are a lot more expectations now written into the legislation. I am not certain if these villages that are owner operated are going to be able to keep up with the legislation.

If their accreditation becomes mandatory, how do owners run their own accreditation scheme or pay for it? How do owners make sure that the village comparison documents are kept up to date, particularly as they age? If you exempt them from the 18-month buyback, as we travel forward in years, are there going to be other exemptions that they are needing to deal with and that the government will be asked to do? ... That is my concern.²²²

Ms Judy Mayfield, President, ARQRV, also reflected on previous legal advice offered to affected retirement villages when seeking exceptions from the Anti-Discrimination Act:

My belief is that those residents in those villages actually did not understand what was being suggested to them. In talking to those residents since they have had that information and assistance, I have found that none of them understand. The two villages that we have members in are particularly vulnerable because they are a much older population in those villages.²²³

3.8.3.4 Concern around the creation of loopholes and exemptions from other

Ms Judy Mayfield raised concerns that non-resident-operated scheme operators will seek to become exempt from buyback requirement:

Big operators have very large legal companies behind them. Are they going to also somehow apply for an exemption so that they do not have to do the 18-month buyback? We are really concerned that that may well happen, because this has been long and hard fought for to give residents some certainty. ... Our concern is that if they find legal loopholes this may well happen in the future.²²⁴

In response, the department noted that the exemption framework in the Bill creates a regulation-making power to implement an assessment-based approach that ensures the responsible Minister considers the financial, legal, and operational circumstances of each resident-operated village that seeks an exemption. The department advised that this will ensure the granting of any exemptions is

²²⁰ Public hearing transcript, Brisbane, 20 July 21, p 58.

²²¹ Department, correspondence, 23 July 2021, p 14.

²²² Public hearing transcript, Brisbane, 20 July 21, p 60.

²²³ Public hearing transcript, Brisbane, 20 July 21, p 60.

²²⁴ Public hearing transcript, Brisbane, 20 July 21, p 58.

justified, based on a broad consideration of all circumstances. This should prevent retirement villages, which are not substantially resident-operated, from being exempted.²²⁵

ARQRV also queried whether requirements in the *Retirement Villages Act 1999* could be the subject of exemption going forward, thereby removing certain other protections in the Act.²²⁶

In response, the department confirmed that the exemption framework provided for in the Bill is limited to exempting resident-operated retirement villages from mandatory buyback requirements in recognition of the stress and uncertainty these provisions are causing resident-operated retirement villages. The department also confirmed that there is no proposal to make any other exemption from requirements in the *Retirement Villages Act 1999*, noting the importance of ensuring consumer protections for residents of Queensland retirement villages.²²⁷

3.8.3.5 Application of exemptions from the Anti-Discrimination Act 1991

The Queensland Human Rights Commission noted that the exemption framework under the *Anti-Discrimination Act 1991* is not appropriate for long-term arrangements such as age restrictions in residential housing complexes.

The Queensland Human Rights Commission stated: ‘For a number of years now, the Commission has not supported age restrictions in accommodation. The Commission’s concerns about exemptions that allow age restrictions in accommodation included:

- Tribunal exemptions are temporary and not suited to permanent arrangements such as accommodation
- Housing affordability is a national concern for all, irrespective of age
- Segmenting housing by age is not consistent with an inclusive age-friendly community
- All age groups benefit from intergenerational engagement, whereas working and socialising in age-segregated worlds does not promote a healthy society ...

The Queensland Human Rights Commission recommended that the government review age restrictions in housing and form a policy position about extending the exemption in the *Retirement Villages Act 1999* to other forms of residential housing. And if age discrimination in residential community housing is supported by the government, then appropriate amendments should be made to relevant legislation to provide clarity for the community and relieve the burdens associated with using the tribunal exemption process.²²⁸

In response, the department noted, the existence of resident-operated retirement villages and other accommodation targeted to seniors (such as residential [manufactured home] parks), indicates the preference of some seniors to live in seniors-only congregate accommodation, but not necessarily a retirement village. This also provides some indication of the ‘value’ attributed to the exemption in the RV Act from the *Anti-Discrimination Act 1991* prohibition on discrimination based on age.

The department also advised that careful consideration of the costs and benefits of allowing age restrictions (to restrict entry to older people) in other forms of housing would be required. Considerations include the impact of any change on the existing cohort of retirement village residents and the investment they have made in buying into a retirement village.²²⁹

²²⁵ Department, correspondence, 23 July 2021, p 14.

²²⁶ Public hearing transcript, Brisbane, 20 July 21, p 58.

²²⁷ Department, correspondence, 23 July 2021, p 15.

²²⁸ Queensland Human Rights Commission, submission 716, pp 20 and 21.

²²⁹ Department, correspondence, 23 July 2021, p 15.

3.8.3.6 Community education about retirement villages

COTA suggested that there needs to be more community education about retirement villages as people are not understanding the contracts they are signing when they enter a retirement village:

... people still do not understand what they are getting themselves into. There has been some work done by the Queensland government to try to simplify that and get the message out. [ARQRV], COTA and others were involved in this a few years ago now. What we do see is that people enter into agreements with retirement villages without actually understanding what they are getting themselves into.²³⁰

Property Council of Australia agreed, observing a potential misunderstanding by the public about retirement living, and spoke of the importance of education and advice to those considering retirement living:

We always encourage, ... prospective residents to shop around and seek independent legal and financial advice so that they can hope to understand the nature of the contract, how it affects things such as the pension, whether they can get rent assistance and those sorts of things. One of the things we are looking to do is educate people further about that. We had a campaign a few years ago where we wrote *The Book of Wise Moves* to tell people about all the different options, what it is like to live in retirement village, our code of conduct and accreditation scheme and helpful links at the back.

We feel it is very important to get the word out about what retirement villages are. That said, the decision to move into a retirement village is multifaceted. It is not only a place to live; it is also a community. In addition to the price and the type of tenure they get, people will always look at the facilities, whether they can stay in their community, whether there is a village in their community or they need to move away and whether they would be willing to move away from their family and friends, doctors and those sorts of supports. It can be a decision that has many factors.²³¹

In response, the department advised that the Queensland Housing and Homelessness Action Plan 2021-2025 commits to the delivery of a number of measures relevant to this issue. This includes:

- Finalise implementation of retirement villages reforms to create more standardised residence contracts. Greater standardisation will:
 - make it is easier for prospective residents to understand the contracts they are signing
 - ensure that important information is upfront and clearly labelled
 - make it easier for prospective residents to get legal and financial advice and negotiate on terms in their contract
 - help to reduce disputes between residents and operators.
- Explore options to improve Queenslanders' access to pre-contractual advice about residential (manufactured home) parks and retirement villages.
- Enhance the consumer experience and industry engagement across ...retirement villages, including through targeted communication, compliance and best practice guidance approaches, including introduction of a retirement village comparison website.²³²

3.8.3.7 Possible impacts of exemptions and buybacks

Some inquiry participants were asked whether people may be deterred from buying into a retirement village where buybacks are not available.

Ms Judy Mayfield offered her opinion that such villages may struggle going forward:

I do not think people would want to buy into an owner operated village where the buyback has been taken away. If they have a choice between being in a village where there is a buyback or a village operated

²³⁰ Public hearing transcript, Brisbane, 20 July 21, p 61.

²³¹ Public hearing transcript, Brisbane, 20 July 21, p 61.

²³² Department, correspondence, 23 July 2021, p 15.

by residents where they will not get buyback, I think they would more likely choose the 18-month buyback village. My personal view is that I think these villages are going to struggle going forward.²³³

Property Council of Australia was also asked about retirement villages that faced with buyback conditions had since gone into receivership or been liquidated. Ms Pritis advised that the Property Council had spoken with three operators which were not resident-owned freehold villages and provided a summary of their various experiences in answers to questions on notices.²³⁴

3.8.3.8 *Committee comment*

The committee supports the proposed amendments to the Retirement Villages Act and notes the broad support from inquiry participants for them.

The committee notes that should the Bill be passed, the department will contact individual villages which may be eligible for the exemption. The committee recommends that the department ensure that the necessary accessible advice is provided to eligible villages to ensure that they can navigate the exemption process efficiently and effectively.

Recommendation 5

The committee recommends that the Department of Communities, Housing and Digital Economy ensure that accessible advice is provided to eligible retirement villages to ensure that they can navigate the exemption process efficiently and effectively.

3.9 Reforms not included in the Bill

Submissions recommended that consideration be given to additional reforms not proposed in the Bill.

This included:

- recommended Stage 1 minor modification reforms as outlined in the Consultation Regulatory Impact Statement be included in the Bill, particularly as they relate to modifications needed by people with a disability and renters experiencing domestic and family violence
- requiring owners to pass on service charges (such as water bills) or rebates (such as solar feed in tariffs) to renters within a reasonable time
- regulating the interactions and relationships between property managers and renters through a code of conduct, including the use of tenancy databases.
- stronger controls on setting and adjusting rents
- improving processes for bonds, notices and abandoned goods
- education and awareness activities to achieve better outcomes in the rental market for renters, including to encourage long-term leases and tenancy sustainment.²³⁵

The department advised that the reforms progressed through Stage 1 have been identified as priority renting issues through extensive consultation with the residential rental and related sectors and the community.²³⁶

Stage 2 reforms will establish modern tenancy laws by focusing on:

- entry and privacy practices including inspections

²³³ Public hearing transcript, Brisbane, 20 July 21, p 60.

²³⁴ Property Council of Australia, correspondence, 26 July 2021, p 1.

²³⁵ Department, correspondence, 23 July 2021, p 12.

²³⁶ Department, correspondence, 23 July 2021, p 12.

- basics of leasing including rental bonds and rent
- security of tenure including longer term leases, and
- property management practices.²³⁷

3.9.1 Minor modifications

Currently, tenants are unable to make minor modifications to their home without the lessor's permission. Acknowledging that minor modifications are not included in this part of rental reforms, a number of inquiry participants expressed disappointment that the legislation did not include provisions for residents and tenants to undertake minor modifications.²³⁸

For example, Q Shelter submitted that it is crucial that households are able to undertake minor modifications that not only make their rental dwelling feel like home and provide a sense of belonging, but also enhance the ongoing affordability of their property, achieve accessibility outcomes, and can make their dwelling safe.²³⁹

DNQ expressed a similar view:

It is important to note the issue of minor modifications in the bill. Lots of members and Queenslanders experience issues ... in trying to get minor modifications made to their rental property. Minor modifications are often health, safety and wellbeing issues. Often those minor modifications help people achieve more independence in their home, whether it is safe access to the house through the front door—it is the same right that is afforded to other people without disability—or security and safety in the bathroom. These are really important day-to-day issues for Queenslanders with disability. I would ask the committee to consider the issue of minor modifications, which is currently not addressed in this bill, as an important issue.²⁴⁰

QCOSS submitted benefits of minor modifications as outlined in the C-RIS included protection of life, reduced impacts on health system through avoided potential cost of falls and injuries, reduced discrimination against people with a disability as they will be able to install accessibility features in their home, improved wellbeing outcomes, improved connectedness by enabling tenants to install telecommunications, improved energy and water efficiency.²⁴¹

In response, the department advised that given the complex and evolving national reform environment for minor modifications this reform priority will continue to be developed in future reform stages in consultation with stakeholders.

The department also noted that there is a risk of increased discrimination being experienced by people with disability or renters experiencing domestic and family violence in the private rental market if concerns about how minor modification is defined and the approval requirements for these changes to be made are not resolved in close partnership with all stakeholders in the residential rental and related sectors, including in community title schemes.²⁴²

This will allow for the outcomes of national work to be clearer and inform decisions about what is required to be achieved through rental law reform and for further work to be undertaken with

²³⁷ Department, correspondence, 23 July 2021, p 12.

²³⁸ Human Rights Commissioner, submission 716, p 15.

²³⁹ Q Shelter, submission 741, p 5.

²⁴⁰ Public hearing transcript, Brisbane, 20 July 2021, p 10.

²⁴¹ QCOSS, submission 706, p 3.

²⁴² Department, correspondence, 23 July 2021, p 12.

stakeholders to design workable solutions that strike a better balance between lessor and renter interests across these issues.²⁴³

3.9.1.1 Committee comment

The committee acknowledges the numerous calls for legislation that would enable renters to make minor modifications to their homes and the impact that such modifications can have on the wellbeing and safety of tenants. The committee also acknowledges that the national regulatory environment is complex and evolving and that this matter will be addressed in future reform stages. The committee encourages the department to ensure that the views of this inquiry's stakeholders are taken into consideration in the development of minor modification proposals.

²⁴³ Department, correspondence, 23 July 2021, p 12.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

4.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

4.1.1.1 *Clauses 22 and 26 – information sharing and disclosure - right to privacy*

Clause 22 inserts a new subdivision into the RTRA Act relating to domestic violence. The new section provides that victims of domestic violence may end their interest in a residential tenancy agreement by giving notice to the lessor. Under proposed new section 308B, a notice given by a tenant in these circumstances must be supported by evidence (to be prescribed by regulation). This evidence may be provided with the notice or be inspected by the lessor or the lessor’s agent.

Clause 26 provides equivalent rights to residents of rooming accommodation agreements. Victims of domestic violence may end their interest in a residential tenancy agreement by giving notice to the provider, and under proposed new section 381B, such notice must be supported by evidence (which can be provided with the notice or inspected by the provider or their agent).

The right to privacy and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual. The requirement to provide supporting evidence with a notice may impact on a person’s right to privacy.

The explanatory notes offer the following justification:

This is considered a reasonable and necessary requirement to safeguard rental lessors from abuse or misuse of these protections. Tenants will be provided a range of options to fulfil the evidence requirements, including to provide the evidence to the managing party for inspection only but not to retain or store. A new offence provision s308I is also proposed to minimise any misuse of the sensitive information.²⁴⁴

Clause 22 (new section 308I) and clause 26 (new section 381I) prevent a person with access to the evidence provided in a notice from disclosing this evidence, unless under certain specified circumstances. A maximum penalty of 100 penalty units applies (\$13,785).²⁴⁵

4.1.1.2 *Committee comment*

The committee considers that provisions contain safeguards to protect a person’s private information and ensure that the information is used only for the required purpose of satisfying the lessor that the tenant or resident has a genuine claim.

²⁴⁴ Explanatory notes, p 15.

²⁴⁵ Penalties and Sentences Regulation 2015, s 3. Note that from 1 July 2021, the penalty unit increased from \$133.45 to \$137.85 (Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2021, s 4).

The committee considers that, on balance, the provisions have sufficient regard to the rights and liberties of individuals.

4.1.1.3 Clauses 16, 19, 22, 26, 32, 35, 51 and 75 – penalties should be reasonable and proportionate

The Bill proposes to introduce the following new offences into the RTRA Act:

- clause 16 replaces section 211 of the RTRA Act to provide that where a tenant changes a lock to protect themselves from domestic violence and the tenant provides a new key to the lessor, the lessor cannot give the key to another person without the tenant's agreement or a reasonable excuse - maximum penalty of 50 penalty units (\$6,892.50)
- clause 19 provides that where a resident has requested a provider to change or repair a lock to protect themselves from domestic violence, it is an offence for the provider to give a key to any other person without the resident's agreement or a reasonable excuse - maximum penalty of 50 penalty units (\$6,892.50)
- clause 22 inserts new section 308I into the RTRA Act to provide that it is an offence for a person to disclose evidence provided to them in relation to a notice to end a tenancy due to domestic violence - maximum penalty is 100 penalty units (\$13,785)
- clause 26 inserts new section 381I into the RTRA Act, with the same effect as section 308I, except it applies to a rooming accommodation agreement rather than a tenancy - maximum penalty of 100 penalty units also applies (\$13,785)
- clause 32 inserts new section 57A into the RTRA Act to prohibit a lessor (or agent) from advertising or offering a residential tenancy unless the information prescribed by regulation is stated in, or disclosed with, the advertisement or offer. Further, a lessor (or agent) must not accept a rental bond from a tenant if the premises was advertised not in accordance with the above mentioned requirements. Both attract a maximum penalty of 20 penalty units (\$2,757)
- clause 35 inserts new section 76A into the RTRA Act which mirrors the requirements contained in section 57A, but for a provider of rooming accommodation or their agent - maximum penalty of 20 penalty units (\$2,757). Further, clause 35 inserts new section 76B which states that a provider must give a prospective resident the information prescribed by regulation before entering into a rooming agreement with the resident - maximum penalty of 20 penalty units (\$2,757)
- clause 51 inserts new section 221C into the RTRA Act to require a person to comply with a repair order made by QCAT, unless they have a reasonable excuse - maximum penalty of 50 penalty units (\$6,892.50).

This provision also includes a penalty for each week the offence continues after a conviction (a 'continuing offence'), with a penalty of 5 penalty units (\$689.25) per week applying, and

- Clause 75 introduces several new offences relating to the new grounds to end tenancy agreements:
 - new section 365A provides that a lessor (or agent) must not give a tenant a notice to leave containing information that is false or misleading in a material particular, and
 - new section 365B provides that if the lessor ends a tenancy and gives the tenant a notice to leave for sale contract, the lessor must not offer a residential tenancy for the premises for 6 months after the handover day. Similarly, if a lessor ends a tenancy due to change of use or owner occupation, the lessor must not offer a residential tenancy for the premises for 6 months after the handover day (proposed sections 365C and 365D).

A maximum penalty of 50 penalty units applies to all of these offences (\$6,892.50).

The creation of new offences and penalties affects the rights and liberties of individuals.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.²⁴⁶

The explanatory notes do not address each penalty provision separately, but rather provide the following general justification for the offences introduced by the Bill:

The new penalty provisions are considered proportionate and appropriate responses to encourage parties to comply with the RTRA Act or avoid misusing protections and safeguards. The new penalty provisions are consistent with existing offences of similar severity provided for under the Act.²⁴⁷

4.1.1.4 Committee comment

The committee notes that the offences contained in the current RTRA Act attract maximum penalties ranging from 10 penalty units (eg failure to provide receipt for payment of rent in cash²⁴⁸) to 80 penalty units (eg pretending to be an authorised person²⁴⁹).

The majority of the penalties proposed in the Bill, therefore, fall within the range of penalties that currently exist under the RTRA Act. The committee considers that the penalties also appear to be scaled, with more serious offences attracting higher penalties than less serious offences.

The committee notes that clauses 22 and 26 relate to circumstances where a person discloses evidence provided to them in relation to a notice to end a tenancy due to domestic violence and attract a maximum penalty of 100 penalty units. These would represent the highest penalties in the RTRA Act. However, similar penalties exist for disclosure of confidential information under other legislation.²⁵⁰ It is also noted that the purpose of such penalty is to act as a safeguard to protect against any misuse of sensitive information.²⁵¹

In regard to clause 51, which introduces a continuing offence where a person does not comply with a repair order, the explanatory notes state:

... the proposed continuing offence under new section 221C only applies where QCAT has decided to impose the order that must be complied with. The level of offending in terms of seriousness depends on how long the person continues to fail to comply with the order, and the person has the defence of a reasonable excuse.²⁵²

Generally speaking, continuing penalties are objectionable if the penalty increases whilst the offence continues, even though the offender has not been found guilty by a court. The preferred course is to fix a higher maximum penalty for a particular offence to clearly indicate its severity. However, the same issue does not arise if the offender has been found guilty and the offence continues, or if the

²⁴⁶ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

²⁴⁷ Explanatory notes, p 15.

²⁴⁸ RTRA Act, s 88(1).

²⁴⁹ RTRA Act, s 453.

²⁵⁰ See, for example, *Disability Services Act 2006*, s 228; *Health Ombudsman Act 2013*, s 272.

²⁵¹ Explanatory notes, p 15.

²⁵² Explanatory notes, p 16.

object of the penalty is to provide a small penalty for each day, up to a reasonable maximum limit in total.²⁵³

The committee notes that, under clause 51, an offender must be subject to a repair order made by the tribunal for the continuing offence penalty to apply.²⁵⁴ There are also safeguards in the Bill including that the person is not required to comply with the repair order if they have a reasonable excuse, and the lessor may apply to the tribunal for an extension of time to comply with the repair order in specified circumstances.²⁵⁵ There is also a similar continuing offence in the current RTRA Act for failure to comply with a tribunal order (section 463), with the same maximum penalty applying per week.

The committee is satisfied that the offences and penalties contained in the Bill are reasonable, appropriate and proportionate in the circumstances.

4.1.1.5 Clause 103 – penalties should be reasonable and proportionate

Clause 103 creates an offence in the RV Act for retirement village scheme operators who fail to give the chief executive notice, within 28 days of becoming aware, that there has been a change to matters relevant to an exemption granted to that scheme (section 70F). The Bill also creates an offence for scheme operators who fail to respond, within the stated time, to a notice given by the chief executive asking for information relevant to an exempt scheme (section 70G). The maximum penalty for both offences is 50 penalty units (\$6,892.50).

The creation of new offences and penalties affects the rights and liberties of individuals as set out above.

The explanatory notes provide the following justification for these penalty provisions:

The ability to request and obtain information will enable proper consideration of matters relevant to deciding whether removal of an exemption from a retirement village is necessary. Removal of an exemption may be required where, for example, control of a scheme operator company passes from the residents to another operator, but the scheme operator entity itself remains the same. Penalty provisions are necessary to ensure compliance with these requirements and the levels of the proposed new penalties are consistent with comparable, existing offences in the RV Act.²⁵⁶

The RV Act already contains provisions whereby scheme operators are required to give notice to the chief executive of certain information, or respond to requests for information.²⁵⁷ As noted in the explanatory notes:

These provisions will work in conjunction with existing requirements under Part 2 Division 5 of the RV Act which require a scheme operator to notify the chief executive when it proposes to transfer control of a retirement village scheme's operation to another person. These provisions ensure the chief executive is sufficiently empowered to monitor the circumstances of exempt retirement villages and provide advice to the Minister about whether an exemption from the mandatory buyback requirements remains appropriate.²⁵⁸

4.1.1.6 Committee comment

The committee is satisfied that the penalty provisions contained in clause 103 are appropriate and proportionate in the circumstances.

²⁵³ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 122.

²⁵⁴ See new s 221A.

²⁵⁵ See new ss 221B, 221C.

²⁵⁶ Explanatory notes, p 17.

²⁵⁷ See, for example, RV Act, ss 41C and 113.

²⁵⁸ Explanatory notes, p 12.

4.1.1.7 Clauses 32, 44, 56, 58 and 59 - general rights and liberties – common law rights

The Bill includes specific obligations of parties to a tenancy or rooming accommodation agreement with the obligations fixed by legislation, rather than the terms of the agreement.

Further, some of the provisions included in the Bill have the potential to limit a lessor's right to deal with their property, or amount to more onerous obligations on the lessor in dealing with their property. For example:

- clause 59 removes the ability of lessors' to terminate a tenancy without grounds. Clause 58 inserts proposed sections 290B to 290G into the RTRA Act as additional legislated grounds to end a tenancy, being: state government program, planned demolition or redevelopment, significant repair or renovation, change of use, ending of entitlement to student accommodation and owner occupation. Clause 56 amends section 286 of the RTRA Act to provide that tenancies can also be terminated for contract of sale with vacant possession
- clause 44 provides that a lessor cannot refuse a tenant's request to keep pets unless one of the grounds which are set out in proposed section 184E is applicable, and
- clause 32 provides that lessors or their agents must give certain information (to be prescribed by regulation) to prospective tenants at the time of offering the rental accommodation.

The above mentioned clauses apply to residential tenancy agreements, however, the Bill contains similar clauses in relation to rooming accommodation agreements.²⁵⁹ To the extent that providers of rooming accommodation are individuals, then their rights may be impacted in a similar way to residential property owners.

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. Legislation should not abrogate common law rights without sufficient justification.²⁶⁰ This includes the right of individuals to contract freely with each other, and to establish and enforce their contractual entitlements via traditional means.²⁶¹

It also includes the common law right to property. Two of the most important principles protective of property rights are set out in the *Legislative Standards Act 1992* (LSA), being that a power to enter premises should be supported by a warrant and that compulsory acquisition of property should be only with fair compensation.²⁶² However, the general common law right to own and deal with property remains an important consideration when assessing whether legislation has sufficient regard to the rights and liberties of individuals.

The explanatory notes acknowledge that fixing the terms of a tenancy or rooming accommodation agreement by legislation may be a departure from the principle that individuals should have freedom to contract and agree between themselves as to the terms of those contracts.²⁶³ The explanatory notes provide the following justification:

The Bill seeks to reflect community expectations in achieving a fair balance between the rights of the parties.

The RTRA Act is fundamentally consumer protection legislation and recognises that there is often unequal bargaining power between tenants and lessors, with tenants generally having less power than lessors

²⁵⁹ See, for example, cl 76 (ending of rooming accommodation agreements), cl 54 (pets), and cl 35 (advertising property).

²⁶⁰ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 95.

²⁶¹ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 99.

²⁶² LSA, s 4(3)(e) and (i).

²⁶³ Explanatory notes, p 15.

particularly in competitive markets. The provisions of the Bill seek to strike the right balance between the competing rights of tenants and lessors in the tenancy relationship and ensure that tenants are supported to enforce their rights without fear of retaliatory action.²⁶⁴

The explanatory notes do not address how the Bill could also impact on the common law property rights of owners in dealing with their property, which goes to the reasonableness and fair treatment of them as individuals. However, the property rights of owners are addressed in detail in the statement of compatibility.²⁶⁵ The statement of compatibility acknowledges that various provisions of the Bill may impact on property rights, but concludes:

... the purpose of supporting individuals and families to access safe and secure rental accommodation is more important than the minimal restrictions on an individual's freedom to choose where to live or an individual's property rights.²⁶⁶

4.1.1.8 Committee comment

The committee is satisfied that the various clauses of the Bill that may impact parties' ability to contract freely, or limit the property rights of owners, are justified by the objectives of the Bill and the need to strike a fair balance between the parties.

4.1.1.9 Clause 8 – natural justice

Clause 8 inserts new section 135A into the RTRA Act, which provides that the usual notice provisions in relation to bond payments do not apply to circumstances where a tenant makes an application for a bond payment after ending a tenancy under the domestic violence provisions. This means that the authority must not give written notice of the application to a co-tenant (in usual circumstances, notice would be given).²⁶⁷

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.²⁶⁸ These principles have been developed by the common law and include the following:

- nothing should be done to a person that will deprive them of a right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker
- the decision maker must be unbiased, and
- procedural fairness should be afforded to the person, including fair procedures that are appropriate and adapted to the circumstances of the particular case.²⁶⁹

The provision that prevents a co-tenant from being notified that an application for rental bond payment has been made potentially limits the procedural fairness that is offered to them under the proposed arrangements. This is further exacerbated by the fact that such co-tenant(s) may be liable to top-up the rental bond if part of the bond has been refunded (under clause 22).

The explanatory notes provide the following justification for these provisions:

This restriction on providing notice to the co-tenant is sufficiently justified, proportionate and relevant to achieve the policy intent of enabling victims of domestic and family violence to leave a tenancy quickly and not have the bond refund process used by someone as a means of intimidation, harassment or control. This is balanced against the obligations still imposed on the vacating tenant that they remain

²⁶⁴ Explanatory notes, p 15.

²⁶⁵ See specifically, statement of compatibility, pp 5-8.

²⁶⁶ Statement of compatibility, p 8.

²⁶⁷ See RTRA Act, s 136.

²⁶⁸ LSA, s 4(3)(b).

²⁶⁹ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 25.

liable for any damage caused to the property not related to incidents of domestic and family violence and the lessor or provider can make a dispute resolution request to the Authority in these circumstances.²⁷⁰

4.1.1.10 *Committee comment*

The committee is satisfied that any potential breach of fundamental legislative principle is justified in the circumstances, noting the need to enable victims of domestic and family violence to leave a tenancy quickly.

4.1.2 **Clause 103 – retrospectivity**

Clause 103 of the Bill provides that the 18-month exit entitlement requirements under the RV Act do not apply to the operator of an exempt retirement village.²⁷¹ New section 70I specifies that the exit entitlements will no longer apply to an accommodation unit of a former resident from the exemption start day. This will retrospectively alter the right of residents who would otherwise have their accommodation unit purchased by the scheme operator 18 months after they terminated their right to reside.

New section 70J is a transitional provision for mandatory buyback contracts underway but not finalised at the time an exemption is granted to the village.²⁷² Any incomplete contracts of sale for the purchase of a unit under the buyback provisions will be terminated on the day that the exemption is granted, and the scheme operator may request repayment of any amount already paid under the contract. No compensation is available to the seller for any loss incurred because the contract ends under section 70J.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect the rights and liberties, or impose obligations retrospectively.

Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.²⁷³

The explanatory notes state:

Retrospective application of these provisions is justified to address the significant stress, uncertainty and anxiety felt by residents of resident-operated retirement villages arising from the prospect of having to potentially raise significant amounts of money to fund the scheme operator to buyback unsold units in the retirement village, or risk their retirement village becoming insolvent. This retrospectivity does not apply to any outstanding breach of a villages' buyback obligations prior to the granting of an exemption.²⁷⁴

Whilst the provision may adversely affect some individual rights, it can be seen that the intent of the provision is to provide resident-operated retirement villages with an exemption to the buyback requirements as recommended by the *Interim Report: Independent review of timeframes for exit entitlements in Queensland retirement villages*.²⁷⁵ Further, as noted in the explanatory notes, the amendments will not affect any right to compensation for accommodation unit owners whose contracts of sale were due to be completed before the day that exemption is granted.²⁷⁶

²⁷⁰ Explanatory notes, p 16.

²⁷¹ Clause 103 inserts new part 3, division 5B (Exemptions from particular obligations relating to former residents).

²⁷² See cl 70D.

²⁷³ LSA, s 4(3)(g).

²⁷⁴ Explanatory notes, p 17.

²⁷⁵ Explanatory notes, p 6.

²⁷⁶ Explanatory notes, 17. See also proposed s 70K.

4.1.2.1 *Committee comment*

The committee is satisfied that any retrospective impact on individual rights is justified in the circumstances, having regard to the overall objective of the amendments to the RV Act.

4.1.3 **Institution of Parliament**

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

4.1.3.1 *Clause 103 - Appropriateness of a delegation of legislative power*

Clause 103 (proposed section 70D) creates a power for a regulation to declare that an exemption applies to a stated retirement village scheme. This section provides that the Minister may recommend to the Governor in Council the making of a regulation using this power where the residence contracts under the scheme are based on a freehold interest and the Minister is satisfied that the exemption would be appropriate because of the extent to which:

- residents are in a position to control or influence the affairs of the scheme operator in relation to the operation of the scheme; and
- the scheme operator's assets, and ability to generate income, are likely to be insufficient to purchase a freehold interest in a former resident's accommodation unit.²⁷⁷

New subsection 70D(3) further provides that when deciding whether an exemption would be appropriate, the Minister may have regard to any relevant matters, including the following:

- whether, for a scheme in which the retirement village land is land included in a community titles scheme, how the common area of the retirement village is held (ie as common property under the community titles scheme or a lot owned by the body corporate under the community titles scheme)
- the extent to which the scheme operator involves itself in the sale of a former resident's accommodation unit other than as required by the RV Act
- the extent to which the former resident is required to refurbish, reinstate, or renovate the former resident's accommodation, other than as required by the RV Act, before it may be sold
- the extent to which the scheme operator makes a profit from fees or charges payable by residents
- whether amounts are payable to the scheme operator on the sale of an accommodation unit.

This section also provides that where the Minister stops being satisfied about the proposed section 70D(2)(a) or (b) matters in relation to an exempt scheme, the Minister must recommend to the Governor in Council the making of a regulation ending the exemption of the scheme.

Whether a Bill has sufficient regard to the institution of Parliament depends on whether the Bill:

- allows the delegation of legislative power only in appropriate cases and to appropriate persons, and
- sufficiently subjects the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly.²⁷⁸

²⁷⁷ Proposed s 70D(1), (2).

²⁷⁸ LSA, s 4(4)(a) and (b).

The use of regulations to grant exemptions, rather than Acts of Parliament, raises the fundamental legislative principle of the appropriateness of a delegation of legislative power.²⁷⁹

Whether a Bill has sufficient regard to the institution of parliament depends on whether the Bill, for example, allows the delegation of legislative power only in appropriate cases and to appropriate persons.²⁸⁰ This question is concerned with the level at which delegated legislative power is used.

For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.²⁸¹

Generally, the greater the level of political interference with individual rights and liberties, or the institution of parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below parliament. A Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.²⁸²

The explanatory notes provide the following justification for using regulations, rather than an Act of Parliament, to grant exemptions to mandatory buyback requirements:

This regulation-making power is justified because the differences in how the villages operate makes it impractical to implement an inflexible legislative definition for resident-operated retirement villages. The delegation of such a power provides the necessary flexibility to consider the diverse financial, legal, and operational circumstances of each resident-operated village within the constraints established by the exemption criteria established in the Bill.²⁸³

Such regulations will be publicly notified, tabled and subject to potential disallowance by the Legislative Assembly under section 50 of the *Statutory Instruments Act 1992*, providing for parliamentary oversight and scrutiny.²⁸⁴

Further, proposed section 70D(3) contains a list of matters that the Minister may have regard to in making an exemption decision, and whilst not mandatory, the existence of such criteria in primary legislation provides for some level of parliamentary oversight.

4.1.3.2 Committee comment

The committee considers that the primary reason to use regulations to exempt certain resident-operated retirement villages from the buyback requirements is the need for flexibility.

In the circumstances, and taking into account that such regulations will be subject to the usual tabling and disallowance provisions, the committee is satisfied that the use of regulations is appropriate in the circumstances, such that the Bill has sufficient regard to the institution of parliament.

4.2 Explanatory notes

Part 4 of the *LSA* requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

²⁷⁹ Note that the explanatory notes (pp 65-66) characterise these matters as raising issues regarding s 4(4)(c) of the *LSA* – whether legislation authorises the amendment of an Act only by another Act (Henry VII clauses). The better view is that these matters involve a consideration of s 4(4)(a) of the *LSA* – appropriateness of a delegation of legislative power.

²⁸⁰ *LSA*, s 4(4)(a).

²⁸¹ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 154.

²⁸² *LSA*, s 4(4)(b).

²⁸³ Explanatory notes, p 16.

²⁸⁴ Explanatory notes, p 16.

Explanatory notes were tabled with the introduction of the Bill. The committee considers that the notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

5 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.²⁸⁵

A Bill is compatible with human rights if the Bill:

- does not limit a human right, or
- limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019* (HRA).²⁸⁶

The HRA protects fundamental human rights drawn from international human rights law.²⁸⁷ Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee considers that the Bill is compatible with the HRA and that any limits on human rights have been sufficiently justified. The committee brings the following to the attention of the Legislative Assembly.

5.1 Human rights compatibility

In summary, the committee considers that:

- while some of the Bill's amendments to the RTRA Act amount to a deprivation of property rights (section 24 of the HRA, the committee does not consider such deprivation to be arbitrary
- while some of the Bill's amendments to the RTRA Act contain provisions which limit freedom of speech (section 21 of the HRA) or privacy (section 25 of the HRA), the committee considers that such limitations are justified. The committee considers that many of these provisions, particularly those directed at the objective of consumer protection, are justified by a wide margin. Nevertheless, the committee has highlighted some issues, particularly those relating to the domestic violence provisions set out in clauses 22 and 25 of the Bill, which it brings to the attention of the Legislative Assembly, and
- although the Bill's amendments to the RV Act amount to a deprivation of property, the committee does not consider this deprivation to be arbitrary.

Nature of the human rights

Human Rights Act 2019, section 24 – right to property

The Bill engages the right to property. In particular, the Bill engages section 24(2) of the HRA, the right not to be arbitrarily deprived of one's property.

The term 'deprivation' is not defined in the HRA. However, it is well established in comparative jurisdictions that deprivation is not limited only to the taking of a person's title over property. Property is a 'bundle of rights': some of these rights may be impaired, even if some remain unimpeded. Whether there has been a 'deprivation' requires an assessment of whether the alleged rights violation

²⁸⁵ HRA, s 39.

²⁸⁶ HRA, s 8.

²⁸⁷ The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

prevents a person from exercising their right in a way that is ‘practical and effective’,²⁸⁸ or, for example, ‘the ability to use or develop [their] land’.²⁸⁹ The Supreme Court of Victoria has found that the term should be interpreted ‘liberally and beneficially to encompass economic interests and deprivation in a broad sense’.²⁹⁰

The committee considers that the Bill amounts to a deprivation of property, as it would deprive landowners of the use of their property in several respects.

This is most clearly illustrated in provisions which restrict or clarify the grounds under which lessors may evict a tenant. Clause 59 (amending section 291 of the RTRA Act) would prevent lessors and providers (lessors)²⁹¹ from exercising control over their property in the form of ‘without grounds’ eviction, and instead limit evictions to the end of fixed-term tenancies and a limited set of grounds in the case of periodic tenancies.²⁹²

New provisions designed to protect victims of domestic violence may also limit lessors’ use of their properties, for example by removing lessors’ rights to compensation or repair,²⁹³ or to receive income from a tenant who has entered into a property contract but experiences domestic abuse.²⁹⁴ Other provisions limit a lessor’s existing rights to exclude tenants with pets,²⁹⁵ and lessors’ rights to let their properties for a six-month period following certain types of eviction.²⁹⁶

The committee notes that in the statement of compatibility, the Minister considers the rights of property owners to be engaged by new sections 307A-307D of the RTRA Act. These provisions would allow tenants to give notice to end a tenancy where the premises fail to meet prescribed minimum standards; on the death of a co-tenant; where entitlement to student accommodation ends; or because the lessor fails to comply with a repair order. While sections 307B-C create new rights for tenants that are not included in the existing RTRA Act, new sections 307A and 307D are provisions which confer rights on tenants to enforce obligations on lessors that are substantively contained in the existing legislation.²⁹⁷ The committee, therefore, considers that sections 307A and 307D do not engage the right protected by HRA section 24(2).

Section 24(2) of the HRA contains an internal limitation: the HRA protects against only ‘arbitrary’ deprivation of property. The explanatory notes to the Queensland Human Rights Bill 2018 explains that:

The right essentially protects a person from having their property unlawfully removed.

Subclause (1) provides that all persons have the right to own property alone or with others.

²⁸⁸ *PJB v Melbourne Health (Patrick’s Case)* [2011] VSC 327 [89], citing *Zwierzynski v Poland* (2004) 38 EHRR 6 [69].

²⁸⁹ *Swancom Pty Ltd v Yarra CC (Red Dot)* [2009] VCAT 923 at [22].

²⁹⁰ *PJB v Melbourne Health (Patrick’s Case)* [2011] VSC 327 [87].

²⁹¹ For ease of reference, we refer to lessors and providers collectively as ‘lessors’.

²⁹² Those grounds would be inserted into the RTRA Act by new ss 290B-290G, as well as clarifying amendments to s 286.

²⁹³ Clause 14, amending RTRA Act s 188; cl 20, amending RTRA Act s 253.

²⁹⁴ Clause 22, amending RTRA Act s 308A; cl 26, amending RTRA Act s 381A.

²⁹⁵ Clauses 44 and 54.

²⁹⁶ Clause 75, inserting new ss 365B-D.

²⁹⁷ See RTRA Act ss 17A and 221. While the Bill would make some adjustments to these provisions (see cls 31 and 50), the general schemes of repair orders and minimum housing standards are left substantially the same.

Subclause (2) provides that a person must not be arbitrarily deprived of their property. This clause does not provide a right to compensation. The protection against being deprived of property is internally limited to arbitrary deprivation of property.²⁹⁸

Section 24 is modelled on Article 17 of the Universal Declaration of Human Rights. Section 24(2) closely resembles section 20 of the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Victorian Charter). Article 1 of Protocol 1 of the *European Convention on Human Rights* (ECHR) also contains property rights protections. Like Article 24(2), the Victorian Charter and ECHR also contain internal limitations.

The term ‘arbitrary’ is not defined in the HRA. For the purposes of the committee’s analysis, it has treated ‘arbitrary’ as encompassing the framework applied by the European Court of Human Rights in property rights cases: a three-part framework of lawfulness, public interest, and fair balance.²⁹⁹ There is no question that the Parliament of Queensland has the lawful authority to enact the legislation in question. The committee has, therefore, restricted its analysis to public interest and fair balance, both of which are captured by the factors set out in section 13 of the HRA. We proceed to assess the Bill against these factors.

However, the committee also considers that the concept of ‘arbitrariness’ conveys the idea that the right is only engaged in the face of restrictions that are clearly or manifestly, rather than arguably, disproportionate. Therefore, while the committee considers the issue in terms of the factors set out in section 13, it has done so with an additional margin of deference to the Parliament, and also on the assumptions that these factors apply – by analogy under section 24(2) – and if they do, the committee may not need actually to reach the question of compatibility under section 13 itself, as opposed to the ‘internal’ limitation clause found in section 24(2).³⁰⁰

Nature, purpose and importance of the rights limitation and relationship between purpose and policy measures

The rights limitations set out in the Bill form part of the Queensland Housing Strategy 2017-2027, ‘a 10-year framework which aims to provide all Queenslanders with a better pathway to safe, secure and affordable housing’.³⁰¹ The explanatory notes lists five purposes of the Bill’s amendments to the RTRA Act, specifically to:

- support tenants and residents to enforce their existing rights by removing the ability for lessors and providers to end tenancies without grounds
- provide an expanded suite of additional approved reasons for lessors/providers and tenants/residents to end a tenancy
- ensure all Queensland rental properties are safe, secure, and functional by prescribing mechanisms to strengthen the ability to enforce these standards
- strengthen rental law protections for people experiencing domestic and family violence, and
- support parties to residential leases to reach agreements about renting with pets.

The committee notes that the rights limitations set out in the Bill are intended to address serious housing challenges in Queensland. The explanatory notes set out the Bill’s background and context,

²⁹⁸ Human Rights Bill 2018, explanatory notes, p 22.

²⁹⁹ See e.g. *Beyeler v. Italy* (2001) 33 EHRR 52.

³⁰⁰ This approach is common in comparative jurisdictions when evaluating limitations on rights. For discussion on the relationship between internal and external limitations on rights, see e.g. Robert Alexy, *A Theory of Constitutional Rights* (Oxford University Press, 2001), pp 178-79.

³⁰¹ Explanatory notes, p 1.

including information about the current state of rental housing in Queensland. The explanatory notes state that an increasing number of people (now over one-third of all Queenslanders) are renters,³⁰² and that a stable home environment is an important contributor to positive life outcomes.³⁰³

The Bill follows a consultation process which revealed tenants' concerns over lessor retaliatory actions (including the threat of 'without grounds' evictions) and the ability to keep pets.³⁰⁴ That consultation process received over 135,000 responses.³⁰⁵ The explanatory notes also identify that other state governments as well as the national government have adopted policy objectives in the Domestic and Family Violence Prevention Strategy 2016-2026 and National Plan to Reduce Violence Against Women and Children 2010-2022.³⁰⁶

The committee considers that the purpose of the limitations on property rights are undoubtedly important. Improving the living standards and housing security of a large and growing proportion of Queenslanders is an objective consistent with human rights concerns. The Bill would promote the property interests of renters. A leasehold contract is a property interest. Provisions of the Bill, such as protection against 'without cause' eviction, provide added security to renters' property interests.

Relatedly, the Bill promotes the human rights of renters to privacy and family life. These rights are protected by section 25 of the HRA. The Bill would allow renters a greater degree of control over their private sphere, for example by clarifying their rights to have a pet and in terminating a tenancy that fails to meet minimum standards. We note that the European Court of Human Rights has recognised the privacy interest of 'any person at risk of losing his home'.³⁰⁷

In particular, the committee notes that the Bill supports the rights interests of domestic violence victims, and their children, to privacy (section 25 of the HRA), protection of families and children (section 26 of the HRA) and security (section 29(1) of the HRA). By allowing for victims to end their tenancies without liability for rent or repair, the Bill would make it easier for victims to leave dangerous situations and not face the threat of financial penalties when seeking to protect themselves and their children. The committee notes that state and national governments have identified domestic violence as a priority policy issue, and the protection of domestic violence victims is undoubtedly a pressing concern.³⁰⁸

The Bill also promotes renters' rights to housing, undoubtedly an important interest.³⁰⁹ For example, new section 365B would prevent lessors from letting a premises for six months after a tenant is evicted for reasons that would ordinarily preclude another tenant from renting the premises, such as the lessor's own occupation, a sale contract, or change of use. These provisions act as a disincentive for lessors to pre-textually evict tenants for reasons other than those permitted, and thus enhance tenants' housing security. While the HRA does not contain a right to housing, section 12 clarifies that a 'right or freedom not included, or only partly included in this Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not

³⁰² Explanatory notes, p 2.

³⁰³ Explanatory notes, p 3.

³⁰⁴ Explanatory notes, p 4.

³⁰⁵ Explanatory notes, pp 17-19.

³⁰⁶ Explanatory notes, p 4.

³⁰⁷ *McCann v UK* [2008] ECHR 19009/04.

³⁰⁸ *Domestic and Family Violence Prevention Strategy 2016-2026 and National Plan to Reduce Violence Against Women and Children 2010-2022*

³⁰⁹ As the European Court of Human Rights observed in *Czapska v Poland* (2007) 45 EHRR 4 at [166], 'spheres such as housing, which modern societies consider to be a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State'.

included in this Act or is only partly included'. The examples of 'another law' listed in that section include the Universal Declaration of Human Rights, as well as 'rights under other international conventions'. Article 25 of the Universal Declaration and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights both include a right to adequate housing. The UN Committee on Economic, Social and Cultural Rights, the international body charged with interpreting this right, has identified security of tenure and habitability as components of what makes housing 'adequate'.³¹⁰

To be clear, the Bill's promotion of human rights interests does not automatically excuse any violation of the rights of lessors, and the rights of lessors and tenants must be balanced against one another. Nevertheless, the fact that the Bill promotes interests that are consistent with the HRA and international human rights commitments underscore the importance of those interests.

Nature and importance of the human right

As noted above, the right to property has long played an important role in the common law. It helps to secure other rights interests, such as owners' privacy and dignity. As well as being protected by the HRA, the right to property has a long provenance in common law. As the Supreme Court of Victoria noted in *PJB v Melbourne Health (Patrick's Case)*:

Separately to the Charter, the right to ownership and peaceful enjoyment of property is an ancient feature of the common law, established by the time of the Magna Carta 1297 ... According to Blackstone, the right of property is inherent in every person and 'consists of the free use, enjoyment and disposal of all his acquisitions, without any control of diminution, save only by the laws of the land'. In *Grey v Harrison*, Callaway JA (Tadgell and Charles JJA agreeing) said 'it is one of the freedoms which shape our society, and an important human right, that a person should be free to dispose of his or her property as he or she thinks fit'. Protecting the right to property is a purpose of the civil and criminal law, as is protecting the personal integrity of the individual.³¹¹

Property rights also make the functioning of a rental market possible, and therefore may ultimately serve the interests of tenants: if ownership of rental properties is no longer viable, there is a risk of undersupply. Indeed, the European Court of Human Rights has accepted that where it is no longer viable for landlords to recover the costs of property maintenance because of a government rent control scheme, a violation of property rights has likely occurred.³¹²

Whether there is a fair balance between the right and the limitations (HRA section 13(2)(d), (g))

Section 13(2)(d) of the HRA provides that it 'may be relevant' to consider 'whether there are any less restrictive and reasonably available ways to achieve the purpose'. Read together with the broad deference implied with the internal limitation of 'arbitrariness' contained in section 24 of the HRA, the committee considers that the legislature is entitled to a wide margin of appreciation in determining whether alternative means would achieve the same purpose with the same effectiveness as the measures selected in the Bill, especially in this context of complex social and economic policy. The legislative branch has a wide margin of appreciation 'in choosing the form and deciding the extent of control over the use of property'.³¹³

The committee does not believe there are any obviously available alternative means that would achieve the same policy objectives in a manifestly more effective way. The committee does, however, note that many of the Bill's objectives are achieved through criminal penalties.³¹⁴ In some cases, these

³¹⁰ UN Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing* E/1992/23 (December 1991).

³¹¹ *PJB v Melbourne Health (Patrick's Case)* [2011] VSC 327 [93], citing *Grey v Harrison* [1997] 2 VR 359, 366.

³¹² *Czapska v Poland* (2007) 45 EHRR 4.

³¹³ *Aquilina v Malta* App no 28040, IHRL 1657 (ECHR 2011), at [61]. See also *Mellacher v Austria* (1989) 12 EHRR 391 at [45].

³¹⁴ See e.g. cls 16, 19, 22, 26, 32, 35, 51, 75, 103 of the Bill.

are significant financial penalties: the Bill creates offences punishable by up to 100 penalty units, which amounts to \$13,785 for an individual, or \$68,925 for a company.³¹⁵ Offences under the Bill would be criminal, and prosecutable in the Magistrates Court.³¹⁶ Although not all offences are likely to result in prosecution, and that offence provisions may be considered necessary in order to achieve compliance, these penalties are severe and Parliament may wish to consider whether policy objectives could be achieved through the application of lesser penalties, or civil penalties.

On balance, the committee concludes that the deprivation of property rights in the Bill is not arbitrary. The committee, therefore, considers that the Bill is consistent with section 24 of the HRA.

In reaching this conclusion, the committee has considered the compelling interests served by the Bill's purpose, many of which relate to rights protected elsewhere in the HRA. In particular, the Bill's recognition of the interests of victims of domestic violence are especially compelling.

While the Bill does contain some restrictions on property interests, the committee considers that these interests do not reach the core aspects of property rights. The restrictions are unlikely to prevent lessors from recovering maintenance costs³¹⁷ or substantially realising expectation interests, and they do not render evictions impossible in all circumstances.³¹⁸

The committee notes that at least one provision offers *greater* protection for lessors, by clarifying that a lessor may give a tenant notice to leave if she/he is *preparing* to sell the premises, even if she/he has not yet entered into a contract for sale.³¹⁹ It thus seems unlikely that the Bill would substantially reduce the supply of housing in the Queensland market. Importantly, the Bill clarifies a list of narrowly circumscribed grounds under which lessors and tenants may end a periodic tenancy.

Furthermore, the Bill's provisions relating to pets are calibrated to facilitate a reasonable balance of interests, rather than an automatic presumption in favour of one party. The committee also notes the pressing and growing social need for renters' security of tenancy, as well as Parliament's entitlement to substantial deference – implied by the standard of 'arbitrariness' – in determining the most appropriate means to achieve these pressing aims.

The committee agrees with the conclusion in the statement of compatibility which accompanied the Bill's introduction, that 'the changes do not arbitrarily deprive a person of their property. The changes adjust the respective rights and obligations of lessors/providers and tenants/residents in respect of rental property.'

Human Rights Act 2019, section 21 – freedom of expression and right to privacy

Clauses 32 and 35 (mandatory disclosures of certain information), 75 (false or misleading information in notice to leave) and 22 and 25 (giving notice to end tenancy of victim of domestic violence) engage the right to freedom of expression by requiring lessors to disclose certain information, penalising certain speech acts, and mandating the disclosure of information relating to domestic violence. The Bill also engages the right to privacy in mandating the disclosure of information relating to domestic violence.

³¹⁵ Residential Tenancies Authority: Queensland Government, 'Penalties and Prosecutions', <https://www.rta.qld.gov.au/investigations/investigations/penalties-and-prosecutions>.

³¹⁶ Residential Tenancies Authority: Queensland Government, 'Penalties and Prosecutions', <https://www.rta.qld.gov.au/investigations/investigations/penalties-and-prosecutions>.

³¹⁷ *Czapska v Poland* (2007) 45 EHRR 4.

³¹⁸ *Aquilina v Malta* App no 28040, IHRL 1657 (ECHR 2011), at [61]; *Immobiliare Saffi v Italy*, App. No. 22774/93, [1999] ECHR 65.

³¹⁹ Clause 56, amending RTRA Act s 286.

Section 21(2) of the HRA protects freedom of expression. Importantly, section 21(2) protects ‘information and ideas *of all kinds*’. This broad language thus engages a wide variety of speech acts and should be interpreted liberally. This may also include the freedom to refrain from speech.³²⁰

Section 25 is modelled on article 17 of the International Covenant on Civil and Political Rights.³²¹ The explanatory notes clarify that the intended scope of the right is ‘very broad’, and extends to:

... an individual’s private life more generally. For example, the right to privacy protects against interference with their physical and mental integrity; freedom of conscience; legal personality; legal identity, including appearance, clothing and gender; sexuality; family and home.³²²

Importantly, the right contains internal limitations similar to those that apply to property rights. Section 25(a) protects only against invasions of privacy that are ‘unlawful’ or ‘arbitrary’. In line with our interpretation of section 24, we consider that the word ‘arbitrary’ suggests that the legislature is entitled to a particularly wide margin of deference in its selection of the appropriate balance between privacy and other interests.

Clauses 32 and 35 of the Bill insert new sections into the RTRA Act (sections 57 and 76A) which would mandate certain speech acts by lessors. Specifically, these sections would require that lessors must not advertise tenancies or accommodation arrangements unless such advertisements are accompanied by certain information, to be prescribed in regulations. These provisions engage freedom of expression by mandating certain speech acts, and by conditioning other speech acts – the advertising of residential property – on the disclosure of certain information. These provisions would impose criminal penalties for failure to include such information, or accepting a rental bond following an advertisement which failed to include the requisite information.

Clause 75 of the Bill would insert new section 365A into the RTRA Act. The section creates an offence of misleading information given by a lessor to a tenant, where a lessor provides a notice to leave on the basis of a permitted ground (such as significant repair or change of use), but does so in a false or misleading manner. The clause contains criminal penalties for these expressive acts, and thus engages HRA section 21.

Clauses 22 and 25 of the Bill would amend the RTRA Act by introducing a set of provisions concerning victims of domestic violence. New sections 308A and 381A of the RTRA Act would create a right of tenants to end their tenancy when the tenant cannot safely occupy the premises because of domestic violence. Sections 308B and 381B require tenants who are victims of domestic violence to give such notice in an approved form, and to support the notice with evidence to be further prescribed by regulation. Sections 308E and 381E would require the lessor to give notice of certain information to the tenants remaining in the property. Sections 308I and 381I prevent lessors from disclosing information about the underlying evidence which supports the tenant’s notice to leave. These provisions engage HRA section 21 by preventing lessors from disclosing the evidence that they receive. It also puts at risk tenants’ right to privacy, by allowing lessors’ access to the underlying evidence which supports the notice to leave, and allowing lessors to share that information in the circumstances specified at sections 308I(2) and 381I(2).

³²⁰ We consider that the interests of domestic violence victims, when considering the Bill’s domestic violence confidentiality provisions (new RTRA Act ss 308I and 381I), are more usefully discussed under the framework of privacy rights, rather than freedom of expression.

³²¹ Human Rights Bill 2018, explanatory notes, p 22.

³²² Human Rights Bill 2018, explanatory notes, p 22.

Can the prima facie inconsistencies between section 21 of the HRA and clauses 32, 35 and 75 of the Bill be justified?

Although the Bill is prima facie inconsistent with section 21 of the HRA, the committee considers that such inconsistency is justified by a wide margin. The restricted speech acts are not at the heart of expressive interest, whereas the Bill protects important public interests, including human rights.

The expression at issue in this instance is ‘commercial speech’: that is, speech that takes place in the context of commercial transactions. While such speech may be covered by the broad scope of section 21, an individual’s interest in such statements is unlikely to be at the heart of free speech rights. Freedom of expression is typically justified on the basis of the need for robust societal debate on important issues, or the need for self-expression of an individual’s beliefs and desires. Information exchanged in the context of a commercial transaction will rarely touch on these values.

Australian law has long recognised that speech values may be restricted when outweighed by public interest values. The common law of tort and contract restricts speech through doctrines such as defamation, while statutes have often limited free speech in order to promote public interests such as consumer protection. In *Global Sportsman Pty Ltd v Mirror Newspapers Ltd*, the Federal Court of Australia found that commercial speech may be restricted by operation of a consumer protection statute.³²³ In that case, the Court concluded that:

... freedom does not mean licence but freedom under law in a civilized society. Speech is free if it is free from unwarranted restrictions. Freedom of speech is but one of a number of competing rights and interests which must be accommodated. ... Like sedition, defamation, obscenity, copyright etc, consumer protection can justify some restriction upon what may be published. The ambit of any restriction is a matter for Parliament ...³²⁴

In *Noone (DCAV) v Operation Smile (Aust) Inc*, the Victorian Court of Appeal considered the relationship between commercial speech and the Victorian Charter’s guarantees of freedom of expression.³²⁵ While the majority in that case did not need to reach a conclusion on the issue, one judge concluded that the Victorian Charter’s free speech provisions were not intended to permit ‘misleading and deceptive conduct in trade and commerce’.³²⁶

The committee considers that the interests which underpin the rights restrictions in this case are at least as pressing as the consumer protection interest at issue in *Global Sportsman* and *Noone*. The mandatory disclosures required of lessors are consumer protection requirements, ensuring that tenants are aware of any circumstances which could make the premises less desirable, and are not pre-textually evicted from their homes for reasons other than those permitted in the RTRA Act.

The provisions protect the privacy interest of tenants, as well as their significant interests in housing that is safe, meets their expectations, and is secure from arbitrary eviction. The committee also notes that clauses 32 and 35 include an exclusion from the disclosure requirement for simple physical advertising, such as ‘to let’ signs, and that clause 75 contains an exception where a lessor or agent corrects misleading information.³²⁷ The committee considers that these are compelling interests which – based on the comparatively modest free speech interests and precedents in Australian case law – substantially outweigh the limitations on freedom of expression.

While the committee considers that these provisions appear justified by a wide margin, the committee notes a number of matters. First, the committee notes that the Bill would impose criminal penalties for violations of these provisions. Notwithstanding the seriousness of some of the offences (such as

³²³ *Global Sportsman Pty Ltd v Mirror Newspapers Pty Ltd* [1984] FCA 180, (1984) 2 FCR 82.

³²⁴ At 86, cited in *Noone* at [145].

³²⁵ [2012] VSCA 91.

³²⁶ At [147].

³²⁷ New s 365A(2) of the RTRA Act.

the pretextual eviction of tenants), the committee seeks further advice on whether the underlying objectives could be achieved with civil penalties.

Secondly, the disclosure requirements in clauses 32 and 35 delegate the content of such disclosures to future regulation. Such regulations must have regard to human rights interests. In particular, such regulations must be clear and precise in order to ensure that any criminal penalties imposed on commercial speech acts are known in advance by lessors, and meet the consumer protection objectives of the Bill and the RTRA Act. The committee considers that it may be appropriate for the responsible Minister to consider whether a certificate under section 41 of the HRA is required to accompany these regulations.

Can the prima facie inconsistencies between clauses 22 and 25 of the Bill, and sections 21 and 25 of the HRA, be justified?

Clauses 22 and 25 require that in order for tenants to leave a tenancy because they have experienced domestic violence, they must provide notice to the lessor, accompanied by 'evidence'. The evidence is to be prescribed in further regulation.

The explanatory notes explain that '[t]his may include a protection order, a police protection notice, a Court injunction, or an evidence document signed by an authorised professional such as a DFV support worker, social worker, or doctor'.³²⁸

These provisions are motivated by a compelling purpose, namely the protection of victims of domestic violence, and addressing the current system which does not 'support people experiencing DFV to leave quickly and safely as they rely on applications to QCAT or intervention by third parties such as property managers and lessors'.³²⁹ They also attach to a right or privilege, in ways that could be seen as reducing or even obviating the extent to which they engage protected rights, such as the right to privacy.

The committee considers that these provisions also arguably engage tenants' privacy interests in three respects: the privacy interests of alleged domestic violence perpetrators; the privacy interests of domestic violence victims in relation to the particular person to whom they may disclose evidence of domestic violence; and the privacy interests of domestic violence victims in relation to other persons. We examine each of these separately.

The legislation would provide for tenants to be able to give notice to lessors that they will leave the tenancy because they are victims of domestic violence. New sections 308B and 381B set out a process whereby the victim tenant would give notice to the lessor, to be accompanied by 'evidence prescribed in the regulation'. Although the content of that 'evidence' is to be defined further by way of regulation, it is likely that it would contain information about the alleged perpetrator of domestic violence. The committee notes that such evidence would clearly have implications for the alleged perpetrator's reputation; that in many cases, the information would be shared with the lessor of the alleged perpetrator, a person who wields significant power over the alleged perpetrator; and that the information contained in the 'evidence' is not conclusive of domestic violence or criminal offending. Such information could harm the alleged perpetrator's standing in relation to their landlord, and clearly implicates the alleged perpetrator's privacy interest: section 25 of the HRA specifically refers to a person's right 'not to have the person's reputation unlawfully attacked'.

Nevertheless, the committee considers that any infringement of the alleged perpetrator's right to privacy is justified. First, section 25(2) protects only against 'unlawful' attacks on reputation: compliance with a legislative and regulatory scheme is by definition lawful. Secondly, to the extent that the alleged perpetrator's interests are engaged, they must be weighed against the pressing interests of the alleged victims, who may otherwise be compelled (for example, because of a financial

³²⁸ Explanatory notes, p 10.

³²⁹ Explanatory notes, p 9.

inability to otherwise exit the lease) to remain in an extremely dangerous situation. This interest is augmented by the victim's rights to privacy, family, and security, all of which are contained in the HRA. Furthermore, the alleged perpetrator's interests are protected by the confidentiality scheme set out at sections 308I and 381I, which restrict the sharing of the evidence. Although these provisions do permit the disclosure of evidence in a judicial proceeding or where 'required by a law', the committee is not aware of any mandatory bystander reporting of domestic violence in Queensland law.³³⁰ The committee further discuss the adequacy of these provisions below.

The second set of privacy interests engaged are those of domestic violence victims as against lessors. The committee notes that this relationship can take on a variety of forms: in some cases, lessor/tenant relationships are formal and impersonal, and involve a tenant interacting with a professional property management company. In other instances, such arrangements may be relatively informal, and could involve a lessor who is a friend or relative of the tenant, interacting with them regularly outside of their contractual relationship. The committee make this point to illustrate the fact that in some cases, domestic violence victims may have strong privacy reasons for not disclosing evidence of domestic violence to lessors – for example, where the lessor is a friend or relative of the alleged perpetrator. In such circumstances, disclosure of evidence of domestic violence may in fact put the victim at risk of further harm or retaliation.

The privacy interest of victims of domestic violence in such circumstances is extremely compelling. As the explanatory notes observes, victims of domestic violence may face retaliation and violence if perpetrators discover that they are taking steps to exit the tenancy.³³¹ These privacy interests therefore weigh heavily in restricting the number of persons to whom the 'evidence' referred to in sections 308B and 381B is disclosed.

The committee considers that the privacy interests of domestic violence victims must be weighed against the administrability of a scheme which allows them to quickly and efficiently exit a tenancy, as well as the potential for misuse of a power to exit a tenancy and shift liability to co-tenants. In other words, some limitations on privacy interests may facilitate a more expeditious exit process, which in turn enhances the security interests of domestic violence victims. The very purpose of these provisions is to avoid lengthy and public exit proceedings that engage courts and tribunals.³³² In many cases, the most effective and private means of exiting the tenancy will be for the victim to share evidence only with their lessor.

However, the committee considers that there are some cases in which it would be safer for the victim to share the sensitive documents which form the underlying 'evidence' with a third party (such as the Residential Tenancies Authority), rather than with the lessor. In certain circumstances, this may provide a greater safeguard for the victim's privacy interests. The committee also notes that the regulations prescribing the necessary 'evidence' must take into account HRA section 25, and should be subject to a human rights certificate under HRA section 41.³³³

Finally, the third privacy interest raised by these provisions is the interest of the domestic violence victim in relation to persons with whom the lessor may share the evidence of domestic violence. This category of persons is limited by new sections 308I and 381I of the RTRA Act. These provisions would allow the lessor to disclose the evidence to their agent, their employees, or their agent's employees (or vice versa); to a lawyer while obtaining legal advice; in a court or tribunal; or as otherwise required

³³⁰ We do not hold ourselves out as experts on Queensland criminal law. If we are wrong on this point, we conclude that it may still be open to the committee to conclude that ss 308I and 381I strike an appropriate balance between different interests. However, the committee should be aware of the possibility that this information may be shared more widely than intended.

³³¹ Explanatory notes, pp 9-10.

³³² Explanatory notes, p 9.

³³³ In making this observation, we are in agreement with the statement of compatibility at p 9.

by law. These provisions appear to be designed to facilitate the administrability, prevent abuse of the system, and to ensure that the Residential Tenancies Authority is able to adjudicate claims where the lessor has applied to have the notice set aside on the grounds set out in new sections 308C and 381C. Sections 308C and 381C also set out matters that the lessor must inform the co-tenants of once they have received a notice ending the tenancy interest.

Human Rights Act 2019, section 24 – right to property

Clauses 103 to 106 of the Bill would amend the RV Act to exempt certain retirement villages from the existing requirement that persons who exit a retirement village have their capital returned within an 18-month time period. Such exemptions could be made by the responsible minister through regulations, having regard to the factors set out at new section 70D of the RVA. The purpose of this legislation is to protect some resident-operated villages, many of which are unable to fund these mandatory buybacks.³³⁴ These concerns were raised by an independent panel which concluded that resident-operated schemes are fundamentally different to other retirement village schemes, and that the mandatory buyback framework ‘financially burdens residents individual and collectively’ as ‘an unintended consequence of the amended legislation’.³³⁵

The committee considers that this is an area of complex social and economic policy, which seeks to balance the competing property rights of many different individuals involved in a collective scheme. In light of the internal limitation contained in section 24(2) of the HRA,³³⁶ as well as the findings of the expert panel, the committee considers that substantial deference is appropriate in adjusting the competing rights of the respective parties. While the exemption scheme may have the effect of depriving the former resident’s property interest in receiving a prompt buyback, they do so as an order to protect the property interests of the remaining residents, whose ability to continue as an ongoing concern may be threatened by the buyback requirement. The interference with property rights does not meet the threshold of ‘arbitrariness’ set out in HRA section 24(2).

The committee notes for completeness that this issue may also engage the right to freedom of association set out in section 22(2) of the HRA.³³⁷ The Bill may indirectly affect this right by making it more difficult for residents in resident-operated retirement villages to leave the community, because doing so would be prohibitively expensive in the absence of a prompt buyback entitlement. Nevertheless, the committee notes that the Bill is calibrated to permit exemptions only in circumstances to be prescribed by regulations; and further, that the current scheme appears to threaten existing residents’ interests in freedom of association, because it may not be possible to maintain a resident-operated community with the existing buyback regime.

The committee, therefore, does not consider that the Bill is inconsistent with this right, or alternatively, that any such consistency can be justified.

STATEMENT OF COMPATIBILITY

Section 38 of the HRA requires a statement of compatibility to be tabled for a Bill.

The statement of compatibility was tabled with the introduction of the Bill and a sufficient level of information was provided to facilitate understanding of the Bill in relation to its compatibility with human rights.

³³⁴ Explanatory notes, p 6.

³³⁵ Explanatory notes, p 6.

³³⁶ The threshold of ‘arbitrariness’.

³³⁷ Every person has the right to freedom of association with others, including the right to form and join trade unions.

Appendix A – Submitters

Sub #	Submitter	Sub #	Submitter
001	Not relevant to Bill	033	Confidential
002	Not relevant to Bill	034	Campaign submission
003	Not relevant to Bill	035	Campaign submission
004	Not relevant to Bill	036	Campaign submission
005	Not relevant to Bill	037	Campaign submission
006	Not relevant to Bill	038	Campaign submission
007	Not relevant to Bill	039	Campaign submission
008	Not relevant to Bill	040	Campaign submission
009	Not relevant to Bill	041	Campaign submission
010	Not relevant to Bill	042	Campaign submission
011	Not relevant to Bill	043	Campaign submission
012	Not relevant to Bill	044	Campaign submission
013	Not relevant to Bill	045	Campaign submission
014	Not relevant to Bill	046	Campaign submission
015	Not relevant to Bill	047	Campaign submission
016	Not relevant to Bill	048	Campaign submission
017	Not relevant to Bill	049	Campaign submission
018	Not relevant to Bill	050	Campaign submission
019	Campaign submission	051	Campaign submission
020	Campaign submission	052	Campaign submission
021	Campaign submission	053	Campaign submission
022	Campaign submission	054	Campaign submission
023	Campaign submission	055	Campaign submission
024	Campaign submission	056	Campaign submission
025	Campaign submission	057	Campaign submission
026	Confidential	058	Campaign submission
027	Campaign submission	059	Campaign submission
028	Amanda Chan	060	Campaign submission
029	Campaign submission	061	Campaign submission
030	Campaign submission	062	Campaign submission
031	Campaign submission	063	Campaign submission
032	Campaign submission	064	Campaign submission

065	Campaign submission	099	Campaign submission
066	Campaign submission	100	Campaign submission
067	Campaign submission	101	Campaign submission
068	Campaign submission	102	Campaign submission
069	Campaign submission	103	Campaign submission
070	Campaign submission	104	Campaign submission
071	Campaign submission	105	Campaign submission
072	Campaign submission	106	Campaign submission
073	Campaign submission	107	Campaign submission
074	Campaign submission	108	Campaign submission
075	Campaign submission	109	Campaign submission
076	Campaign submission	110	Campaign submission
077	Campaign submission	111	Campaign submission
078	Campaign submission	112	Campaign submission
079	Campaign submission	113	Campaign submission
080	Campaign submission	114	Campaign submission
081	Campaign submission	115	Campaign submission
082	Campaign submission	116	Campaign submission
083	Campaign submission	117	Campaign submission
084	Campaign submission	118	Alexandra Dapontes
085	Campaign submission	119	Campaign submission
086	Campaign submission	120	Campaign submission
087	Campaign submission	121	Real Estate Excellence
088	Campaign submission	122	Campaign submission
089	Campaign submission	123	Campaign submission
090	Campaign submission	124	Campaign submission
091	Campaign submission	125	Campaign submission
092	Campaign submission	126	Campaign submission
093	Campaign submission	127	Campaign submission
094	Campaign submission	128	Campaign submission
095	Campaign submission	129	Campaign submission
096	Campaign submission	130	Campaign submission
097	Campaign submission	131	Campaign submission
098	Campaign submission	132	Campaign submission

133	Campaign submission	167	Campaign submission
134	Campaign submission	168	Campaign submission
135	Campaign submission	169	Campaign submission
136	Campaign submission	170	Cynthia
137	Campaign submission	171	Coty Mao
138	Confidential	172	Campaign submission
139	Campaign submission	173	Campaign submission
140	Campaign submission	174	Campaign submission
141	Campaign submission	175	Campaign submission
142	Campaign submission	176	Campaign submission
143	Campaign submission	177	Campaign submission
144	Campaign submission	178	Campaign submission
145	Campaign submission	179	Campaign submission
146	Campaign submission	180	Campaign submission
147	Campaign submission	181	Campaign submission
148	Campaign submission	182	Campaign submission
149	Campaign submission	183	Campaign submission
150	Campaign submission	184	Campaign submission
151	Campaign submission	185	Campaign submission
152	Campaign submission	186	Campaign submission
153	Campaign submission	187	Campaign submission
154	Ching-Biau Mao	188	Campaign submission
155	Campaign submission	189	Campaign submission
156	Campaign submission	190	Campaign submission
157	Not relevant to Bill	191	Campaign submission
158	Campaign submission	192	Campaign submission
159	Campaign submission	193	Campaign submission
160	Campaign submission	194	Campaign submission
161	Campaign submission	195	Campaign submission
162	Campaign submission	196	Campaign submission
163	Campaign submission	197	Campaign submission
164	Campaign submission	198	Not relevant to Bill
165	Campaign submission	199	Campaign submission
166	Campaign submission	200	Campaign submission

201	Campaign submission	235	Campaign submission
202	Campaign submission	236	Campaign submission
203	Campaign submission	237	Campaign submission
204	Campaign submission	238	Campaign submission
205	Campaign submission	239	Campaign submission
206	Campaign submission	240	Campaign submission
207	Campaign submission	241	Campaign submission
208	Campaign submission	242	Campaign submission
209	Confidential	243	Campaign submission
210	Campaign submission	244	Campaign submission
211	Campaign submission	245	Campaign submission
212	Campaign submission	246	Campaign submission
213	Campaign submission	247	Campaign submission
214	Campaign submission	248	Campaign submission
215	Campaign submission	249	Campaign submission
216	Campaign submission	250	Campaign submission
217	Campaign submission	251	Campaign submission
218	Campaign submission	252	Not relevant to Bill
219	Campaign submission	253	Campaign submission
220	Campaign submission	254	Campaign submission
221	Campaign submission	255	Campaign submission
222	Campaign submission	256	Campaign submission
223	Campaign submission	257	Campaign submission
224	Campaign submission	258	Campaign submission
225	Campaign submission	259	Campaign submission
226	Campaign submission	260	Campaign submission
227	Campaign submission	261	Campaign submission
228	Campaign submission	262	Campaign submission
229	Campaign submission	263	Campaign submission
230	Tim Murphy	264	Campaign submission
231	Campaign submission	265	Campaign submission
232	Campaign submission	266	Campaign submission
233	Name withheld	267	Campaign submission
234	Campaign submission	268	Campaign submission

269	Campaign submission	303	Campaign submission
270	Campaign submission	304	Campaign submission
271	Campaign submission	305	Campaign submission
272	Campaign submission	306	Campaign submission
273	Campaign submission	307	Campaign submission
274	Campaign submission	308	Campaign submission
275	Campaign submission	309	Campaign submission
276	Campaign submission	310	Campaign submission
277	Campaign submission	311	Campaign submission
278	Campaign submission	312	Campaign submission
279	Campaign submission	313	Campaign submission
280	Campaign submission	314	Campaign submission
281	Campaign submission	315	Campaign submission
282	Campaign submission	316	Campaign submission
283	Campaign submission	317	Campaign submission
284	Campaign submission	318	Campaign submission
285	Campaign submission	319	Campaign submission
286	Campaign submission	320	Campaign submission
287	Campaign submission	321	Campaign submission
288	Campaign submission	322	Campaign submission
289	Campaign submission	323	Campaign submission
290	Campaign submission	324	Campaign submission
291	Campaign submission	325	Campaign submission
292	Campaign submission	326	Campaign submission
293	Campaign submission	327	Campaign submission
294	Campaign submission	328	Campaign submission
295	Campaign submission	329	Campaign submission
296	Campaign submission	330	Campaign submission
297	Campaign submission	331	Campaign submission
298	Campaign submission	332	Campaign submission
299	Campaign submission	333	Campaign submission
300	Campaign submission	334	Campaign submission
301	Campaign submission	335	Campaign submission
302	Confidential	336	Campaign submission

337	Campaign submission	371	Not relevant to Bill
338	Campaign submission	372	Campaign submission
339	Campaign submission	373	Campaign submission
340	Campaign submission	374	Campaign submission
341	Campaign submission	375	Campaign submission
342	Campaign submission	376	Campaign submission
343	Campaign submission	377	Campaign submission
344	Campaign submission	378	Gerard Chue Hong
345	Campaign submission	379	Campaign submission
346	Campaign submission	380	Campaign submission
347	Campaign submission	381	Campaign submission
348	Campaign submission	382	Campaign submission
349	Campaign submission	383	Campaign submission
350	Campaign submission	384	Confidential
351	Campaign submission	385	Campaign submission
352	Campaign submission	386	Campaign submission
353	Campaign submission	387	Campaign submission
354	Campaign submission	388	Campaign submission
355	Campaign submission	389	Campaign submission
356	Campaign submission	390	Campaign submission
357	Campaign submission	391	Campaign submission
358	Campaign submission	392	Campaign submission
359	Campaign submission	393	Campaign submission
360	Robyn Evans	394	Campaign submission
361	Campaign submission	395	Campaign submission
362	Campaign submission	396	Campaign submission
363	Campaign submission	397	Campaign submission
364	Campaign submission	398	Campaign submission
365	Campaign submission	399	Campaign submission
366	Andrew and Miranda van Veen	400	Campaign submission
367	Campaign submission	401	Campaign submission
368	Campaign submission	402	Campaign submission
369	Campaign submission	403	Campaign submission
370	Campaign submission	404	Campaign submission

405	Campaign submission	439	Campaign submission
406	Campaign submission	440	Campaign submission
407	Campaign submission	441	Campaign submission
408	Campaign submission	442	Campaign submission
409	Campaign submission	443	Campaign submission
410	Campaign submission	444	Peter Smith
411	Campaign submission	445	Campaign submission
412	Campaign submission	446	Campaign submission
413	Campaign submission	447	Peter Madden
414	Janet Dunn	448	Campaign submission
415	Campaign submission	449	Campaign submission
416	Campaign submission	450	Campaign submission
417	Campaign submission	451	Campaign submission
418	Campaign submission	452	Campaign submission
419	Campaign submission	453	Campaign submission
420	Campaign submission	454	Campaign submission
421	Not relevant to Bill	455	Campaign submission
422	Campaign submission	456	Michael Mangelakis
423	Campaign submission	457	Campaign submission
424	Campaign submission	458	Campaign submission
425	Alan Cox	459	Campaign submission
426	Campaign submission	460	Campaign submission
427	Campaign submission	461	Campaign submission
428	Campaign submission	462	Campaign submission
429	Campaign submission	463	Campaign submission
430	Campaign submission	464	Campaign submission
431	Campaign submission	465	Campaign submission
432	Campaign submission	466	Campaign submission
433	Campaign submission	467	Campaign submission
434	Campaign submission	468	Campaign submission
435	Marcus Hodges	469	Campaign submission
436	Campaign submission	470	Campaign submission
437	Keith Pien	471	Campaign submission
438	Campaign submission	472	Campaign submission

473	Campaign submission	507	Campaign submission
474	Chewkang Lee	508	Campaign submission
475	Campaign submission	509	Campaign submission
476	Campaign submission	510	Campaign submission
477	Not relevant to Bill	511	Campaign submission
478	Campaign submission	512	Campaign submission
479	Campaign submission	513	Campaign submission
480	Campaign submission	514	Campaign submission
481	Campaign submission	515	Campaign submission
482	Campaign submission	516	Campaign submission
483	Campaign submission	517	Campaign submission
484	Campaign submission	518	Campaign submission
485	Campaign submission	519	Campaign submission
486	Sharon Silva	520	Campaign submission
487	Campaign submission	521	Campaign submission
488	Campaign submission	522	Campaign submission
489	Campaign submission	523	Campaign submission
490	Campaign submission	524	Campaign submission
491	Not relevant to Bill	525	Campaign submission
492	Campaign submission	526	Campaign submission
493	Campaign submission	527	Not relevant to Bill
494	Campaign submission	528	Campaign submission
495	Campaign submission	529	Campaign submission
496	Campaign submission	530	Confidential
497	Campaign submission	531	Campaign submission
498	Campaign submission	532	Campaign submission
499	Campaign submission	533	Campaign submission
500	Not relevant to Bill	534	Campaign submission
501	Campaign submission	535	Campaign submission
502	Campaign submission	536	Not relevant to Bill
503	Campaign submission	537	Campaign submission
504	Campaign submission	538	Campaign submission
505	Campaign submission	539	Campaign submission
506	Campaign submission	540	Campaign submission

541	Campaign submission	575	Australian Proprietors Alliance Incorporated
542	Campaign submission	576	Campaign submission
543	Campaign submission	577	Campaign submission
544	Campaign submission	578	Campaign submission
545	Campaign submission	579	Campaign submission
546	Campaign submission	580	Campaign submission
547	Campaign submission	581	Campaign submission
548	Campaign submission	582	Property Owners' Association of Queensland Inc
549	Noel Wheeler	583	Campaign submission
550	Not relevant to Bill	584	Arno Hsu
551	Campaign submission	585	Campaign submission
552	Campaign submission	586	Mosa and Forinka Vidinovski
553	Campaign submission	587	Campaign submission
554	Mars Petcare	588	Raquel Dubois
555	Campaign submission	589	Deborah Read
556	Campaign submission	590	Campaign submission
557	Campaign submission	591	Rachel Murphy
558	John Wittingham	592	Kooi Poh Foong and Yin Kwan Foong
559	Campaign submission	593	Simone Walsh
560	Campaign submission	594	Geoff Baldwin
561	Mathew Mansfield	595	Barry Hall
562	Kathleen Mansfield	596	Jamie Foong
563	Chris Reid	597	Campaign submission
564	Not relevant to Bill	598	Not relevant to Bill
565	Campaign submission	599	PL and ME Ellis
566	Roeloff and Yani Seevnik	600	Campaign submission
567	Alvaro Conti	601	Campaign submission
568	Campaign submission	602	Campaign submission
569	Not relevant to HLA Bill	603	Campaign submission
570	Campaign submission	604	Campaign submission
571	Steve Kieu	605	Campaign submission
572	Campaign submission	606	Campaign submission
573	Campaign submission	607	Keith Martin
574	Confidential	608	Pauline Aconley

609	Frederick Leonard Stratford	643	Campaign submission
610	Sam Bartlett	644	Confidential
611	Robert Hewlett	645	Aleks Krinkovski
612	Mark Fletcher	646	Sandra Kilner
613	John Drury	647	Timothy Macdonald
614	Anne Mitchell	648	Campaign submission
615	Confidential	649	Allan Loy
616	Julia Barratt	650	Campaign submission
617	Darren and Sharron Chandler	651	Campaign submission
618	Campaign submission	652	Not relevant to Bill
619	Campaign submission	653	Campaign submission
620	Campaign submission	654	Campaign submission
621	Campaign submission	655	Frank Amico
622	Christopher Carlile	656	Jane Salthouse
623	Campaign submission	657	Julie Arndell
624	Nyuk Sang Chye and Kooi Im Chye	658	Campaign submission
625	Confidential	659	G D Merchant
626	Rob McKilliam	660	Campaign submission
627	Daniel Pirota	661	Real Estate Institute of Queensland
628	Campaign submission	662	Campaign submission
629	Campaign submission	663	Gary and Muriel Manners
630	Michelle Maddocks	664	Carole Willday
631	Lynette and Ron McDonald	665	Campaign submission
632	Campaign submission	666	Campaign submission
633	PropertySafe Australia Pty Ltd	667	Campaign submission
634	Campaign submission	668	Richard Matlof and Teresa Rojas
635	Andrew Henderson	669	Campaign submission
636	Name withheld	670	Campaign submission
637	Campaign submission	671	Gabrielle McCullough
638	Queenslanders with Disability Network Ltd	672	Campaign submission
639	Not relevant to Bill	673	Campaign submission
640	Campaign submission	674	Campaign submission
641	Campaign submission	675	Campaign submission
642	Campaign submission	676	Campaign submission

677	Bob Brown	711	Animal Welfare League of Queensland
678	Campaign submission	712	Suncoast Community Legal Service
679	Iain Taylor	713	LawRight
680	Campaign submission	714	Australian Resident Accommodation Managers' Association
681	Campaign submission	715	inCommunity
682	Alec Cortez	716	Queensland Human Rights Commission
683	Campaign submission	717	Community Housing Industry Association Queensland
684	Campaign submission	718	Asia Pacific Student Accommodation Association
685	Campaign submission	719	Caravan Parks Association of Queensland Ltd
686	Campaign submission	720	Make Renting Fair in Queensland
687	Campaign submission	721	Student Accommodation Association
688	Campaign submission	722	Urban Development Institute of Australia Queensland
689	Campaign submission	723	Tenants Queensland
690	Campaign submission	724	Alistair Passmore
691	Edmund Lai	725	George Michaelson
692	Campaign submission	726	Bruce Hill-Webber
693	Jeff Martinsen	727	James Anderson
694	Harry French	728	Vicki Powell
695	Glen Martin	729	Glenda Hardiman
696	Campaign submission	730	Strata Community Association Queensland
697	Tyson Kidcaff	731	Desley Cowley
698	Campaign submission	732	Robin Zakharov
699	Campaign submission	733	Property Owners' Association of Queensland
700	Campaign submission	734	Monte Carlo Residents Association Inc
701	Campaign submission	735	Joe and Barb Gray
702	Campaign submission	736	Campaign submission
703	Bernard Huang	737	Campaign submission
704	Gabriel and Iole Iommarini	738	Chris Dorian
705	Craig Chinn	739	Glen Martin
706	Queensland Council of Social Service	740	Peter Millar
707	Property Council of Australia	741	Q Shelter
708	Queensland Law Society	742	Cairns Sexual Assault Service
709	National Affordable Housing Providers	743	Peter Traynor
710	Queensland Youth Housing Coalition Inc	744	Campaign submission

745	Sally Traynor	779	Campaign submission
746	Cassie Holland	780	Campaign submission
747	Campaign submission	781	Warwick Higham
748	Campaign submission	782	Campaign submission
749	Campaign submission	783	Campaign submission
750	Sue Taylor	784	Campaign submission
751	Campaign submission	785	Michael and Joy Feiertag
752	Campaign submission	786	Campaign submission
753	Campaign submission	787	Campaign submission
754	Campaign submission	788	Campaign submission
755	Campaign submission	789	Confidential
756	Campaign submission	790	Owen Zeng
757	Campaign submission	791	Ping Pui Mak
758	Campaign submission	792	Campaign submission
759	Julie Rudd	793	Campaign submission
760	Campaign submission	794	Campaign submission
761	Campaign submission	795	Campaign submission
762	Campaign submission	796	Lynne Neal
763	Campaign submission	797	Campaign submission
764	Campaign submission	798	Barry and Leanne Binnie
765	Confidential	799	Campaign submission
766	Campaign submission	800	Campaign submission
767	Campaign submission	801	Campaign submission
768	Ming Ang	802	Campaign submission
769	Nicholas McQueen	803	George Stewart
770	Campaign submission	804	Campaign submission
771	Maria Caranese	805	Campaign submission
772	Campaign submission	806	Campaign submission
773	Campaign submission	807	Campaign submission
774	Campaign submission	808	Campaign submission
775	Campaign submission	809	Campaign submission
776	Campaign submission	810	Robin Rieger
777	Campaign submission	811	Campaign submission
778	Linda Snart	812	Campaign submission

813	Campaign submission	847	Terry Booth
814	Benjamin Mislov	848	Campaign submission
815	Campaign submission	849	Kate Baldwin
816	Campaign submission	850	Campaign submission
817	Campaign submission	851	Ian Joyner
818	Campaign submission	852	Debbie Parker
819	Campaign submission	853	John and Lois Holley
820	Campaign submission	854	Edward Dever
821	Campaign submission	855	Campaign submission
822	Campaign submission	856	Ian Baldwin
823	Campaign submission	857	Colin Hardiman
824	Campaign submission	858	Penny Gibson
825	Campaign submission	859	Women's Legal Service Queensland
826	Trinity Suzanne	860	Bruce Kelly
827	Daniel Wong	861	Jaye Eyre
828	Judi Bedford	862	Peter Davies
829	David Hugill	863	Rob and Coralie Griffiths
830	Salvatore Nicosia	864	Wendi Stewart
831	Neil Hallett-Carpenter	865	Name withheld
832	Campaign submission	866	Naron Ear
833	Campaign submission	867	Hans and Linda Iserief
834	Campaign submission	868	Courtney Czechowski
835	Campaign submission	869	Campaign submission
836	Carol Jilek	870	Sherree Baldwin
837	Campaign submission	871	Campaign submission
838	Rachel Gregory	872	Campaign submission
839	Campaign submission	873	Campaign submission
840	Campaign submission	874	Name withheld
841	Vern Traill	875	Ian Joyner
842	Campaign submission	876	Campaign submission
843	Campaign submission	877	Campaign submission
844	Campaign submission	878	Campaign submission
845	Campaign submission	879	Campaign submission
846	Campaign submission	880	Campaign submission

- 881 Desley Willgoss
- 882 Campaign submission
- 883 Campaign submission
- 884 Elias Habelrih
- 885 Campaign submission
- 886 Campaign submission
- 887 Heron Lee
- 888 Campaign submission
- 889 Campaign submission
- 890 Campaign submission
- 891 Lisa Eileen Gorman
- 892 Campaign submission
- 893 John K White
- 894 Damien Negus
- 895 Peter S Penfold
- 896 Campaign submission
- 897 Johnson Hong
- 898 Jack Gamble
- 899 Chris
- 900 Campaign submission
- Form A 15 submitters
- Form B 86 submitters
- Form C 124 submitters
- Form D 100 submitters
- Form E 25 submitters
- Form F 245 submitters
- Form G 815 submitters
- Form H 21 submitters
- Form I 5 submitters

Appendix B – Officials at public departmental briefing

Department of Communities, Housing and Digital Economy

- Trish Woolley, Deputy Director-General, Housing and Homelessness Services
- Kirstine Harvie, Executive Director, Strategic Policy and Legislation, Housing and Homelessness Services
- Ange Wright, Director, Legislation and Reform, Strategic Policy and Legislation, Housing and Homelessness Services
- Damian Sammon, Director, Legislation and Reform, Housing and Homelessness Services
- Teresa Moore, General Counsel, Legal Services

Appendix C – Witnesses at public hearing

Tenants Queensland

- Penny Carr, Chief Executive Officer
- Julie Bartlett, Principal Solicitor
- Eilisha Matthews, Renter

Individual submitter

- Robyn Evans

Q Shelter

- Emma Greenhalgh, Manager Strategic Projects

Queenslanders with Disability Network Ltd

- Michelle Moss, Director, Policy and Strategic Engagement

Queensland Youth Housing Coalition Inc.

- Lorraine Dupree, Executive Director

National Affordable Housing Providers

- Rob Beaumont, Member

Community Housing Industry Association of Queensland

- Jane West, CHIA Queensland Board Member

Asia Pacific Student Accommodation Association

- Sue Fergusson, Industry Advancement Committee QLD Rep, and QLD State Operations Manager at Scape
- Patrick McCarthy, Manager

Queensland Law Society

- Elizabeth Shearer, President
- Matt Dunn, General Manager – Advocacy, Guidance and Governance
- Wendy Devine, Principal Policy Solicitor

LawRight

- Steve Grace, Managing Lawyer
- Nikki Hancock, Senior Lawyer
- Kurt Maroske, Project Officer

Property Owners Association of Queensland Inc

- Roslyn Wallace, Secretary

Strata Community Association Queensland

- Chris Irons, Director
- Kristian Marlow, Policy Officer

Real Estate Institute of Queensland

- Antonia Mercorella, Chief Executive Officer
- Katrina Beavon, Legal Counsel

Urban Development Institute of Australia Qld

- Martin Zaltron, Manager - Policy

Caravan Parks Association of Queensland Ltd

- Michelle Weston, Chief Executive Officer

PropertySafe

- Rob Curtis, General Manager
- Garry Mulvey, Chief Executive Officer, Home Trades Hub

Queensland Human Rights Commission

- Neroli Holmes, Deputy Queensland Human Rights Commissioner
- Heather Corkhill, Senior Policy Officer

Women's Legal Service Queensland

- Lulu Milne, Principal Social Worker
- Sabrina Singh, Social Worker

Queensland Council of Social Service

- Aimee McVeigh, Chief Executive Officer

Association of Residents of Queensland Retirement Villages

- Judy Mayfield, President

Property Council of Australia

- Leida Pirts, National Policy Manager – Retirement Living

Council on the Ageing (COTA) Queensland

Mark Tucker-Evans, Chief Executive

Statement of Reservation



Housing Legislation Amendment Bill 2021 Statement of Reservation

The Opposition members of the Community Support and Services Committee (the committee) make the following statement of reservation to Report No. 7, 57th Parliament – Housing Legislation Amendment Bill 2021 (the Report).

While not opposing the Housing Legislation Amendment Bill (the Bill) outright, the Opposition members of the committee have deep reservations about a number of its provisions.

In particular, we consider that the Bill inappropriately tips the balance towards the rights and needs of tenants, and note that there is not one proposal in the Bill that would benefit lessors. During its inquiry, the committee received hundreds of submissions from individual lessors and property managers and industry and professional association groups, such as the Real Estate Institute Queensland (REIQ), Property Owners' Association of Queensland and the Urban Development Institute of Australia, who all raised concerns about the Bill's adverse impact on the rights of lessors and property managers.

Elimination of periodic agreements

We share submitters' concerns that the removal of a lessor's right to issue a 'without grounds' notice to tenants during a periodic agreement would encourage a greater use of fixed-term agreements, create 'in perpetuity' leases and lead to tenants having a registerable interest over the property, complicating the lessor's future use or sale of the property.

We consider that the Bill will eliminate periodic agreements, something that will be a disadvantage to tenants and lessors alike, as it will remove flexibility for both parties and reduce rental options.

No lessor in their right mind would agree to a periodic lease under the Bill's proposals. Perversely, this will undermine the very tenet of the proposed changes, continuity and security in Queensland's rental market.

We agree with the Queensland Law Society (QLS), who in their submission stated:

It would seem likely that lessors will prefer not to enter into periodic tenancies with a tenant when the fixed term agreement expires, given that under the Bill, there will be limited capacity to bring the periodic tenancy to an end. Instead, if a lessor is not in a position to grant a further fixed term, a lessor will likely require a tenant to leave at the end of the fixed term agreement rather than agreeing to extend for a short period of time. This would reduce the flexibility available to a tenant (and the lessor) where a short period of extension might otherwise suit both parties.¹

At the public hearing, the QLS stated:

¹ Queensland Law Society, submission 708, p 3.

We are concerned that the legislation will have adverse unintended consequences; for example, discouraging periodic tenancy, increasing the loss of housing stock for short-term rental, and requiring parties in conflict to remain in a landlord/tenant relationship. The law generally aims to facilitate the resolution of conflict, but this bill has the potential to entrench a conflictual relationship.²

REIQ also made the point that:

The abolition of the ability to terminate a periodic tenancy undermines the whole point of parties entering into periodic tenancy. Let us bear in mind that it is not always the landlord who wants to put a tenant on a periodic tenancy. We have to think about the tenants who choose to remain on a periodic tenancy. For example, they want to purchase their own home but need an arrangement for a one month or two month lease in order to progress their future plans. The abolition of the ability to terminate a periodic tenancy is not just a landlord's problem. Notwithstanding the fact that they have the ability to terminate, we will start to see landlords be more careful about entering into a periodic tenancy. We could potentially see notices provided in advance just to ensure that periodic tenancies are not allowed. It removes a landlord's ability to terminate at the end of the term, which is the whole point of a periodic tenancy.

And

It is rather absurd, if I may say, to suggest that a tenant who is in a periodic tenancy effectively ends up with greater security than a tenant in a fixed-term tenancy agreement. I think that is concerning. In terms of practical consequences, what I think will play out if this passes as it is that unfortunately we will see the mass issuing of notices to leave to end those periodic tenancies. That will be a shame because the point of a periodic tenancy is to give both parties flexibility.³

Keeping pets at a premises

The Opposition members of the committee have serious concerns about the proposals in the Bill regarding the keeping of pets. We believe that a lessor should be allowed to reject applications for tenants to have pets, without stating a reason. This is a basic property owner's right.

This view is shared by a significant number of submitters who noted that damage to property and pest infestation caused by pets has a material impact on a home's value and rentability, and considered that the decision as to whether pets could be kept at a premise should remain with the property owner.⁴

The REIQ also noted that landlord insurance does not automatically or commonly cover accidental or other damage caused by pets. Even where pet damage is included, technical wording within insurance policies may leave owners without protection. Given this, owners should be able to decline a pet request for reasons outside of those listed in 184E'.⁵

² Queensland Law Society, public hearing transcript, Brisbane, 20 July 2021, p 23.

³ REIQ, public hearing transcript, Brisbane, 20 July 2021, pp 40 and 41.

⁴ See, for example, submissions 2, 3, 5, 6, 7, 18, 28, 121, 154, 170, 171, 252, 414, 421, 435, 444, 447, 449, 536, 549, 563, 582, 571, 575, 584, 586, 589, 591, 592, 593, 596, 609, 612, 613, 624, 647, 661, 682, 717, 722a, 731, 735, 743, 745, 750, 759, 768, 778, 836, 847, 853, 854 and Form Submissions A, D, F, G and H.

⁵ REIQ, submission 714B, p 12.

Amendments to the *Retirement Villages Act 1999*

We note that the Bill makes a number of amendments to the *Retirement Villages Act 1999* to exempt freehold resident-operated retirement villages from existing statutory buyback requirements.

The Opposition members of the committee welcome these changes but note that the Government was warned about the adverse impact of the mandatory buyback provisions both in 2017 and 2019. It should not have taken this long for the Government to sort out an issue which impacts on some of the more vulnerable members of our community.

Private Members' Bill

As noted in the Report, the committee examined the Member for South Brisbane's Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill, in conjunction with the Bill.

We wish to place on record that the extreme elements of the Member for South Brisbane's Bill, which drastically tip the balance towards tenants and erode the rights of lessors, would not have seen the light of day without the recommendations made by the Labor Government in its response to its Open Doors consultation.



Mr Stephen Bennett MP
Member for Burnett



Mr Jon Krause
Member for Scenic Rim

Dissenting Report

13 August 2021

Dissenting report - Member for Maiwar
Residential Tenancies and Rooming Accommodation (Tenants' Rights)
and Other Legislation Amendment Bill 2021
and Housing Legislation Amendment Bill 2021

In May 2021, my Queensland Greens colleague Dr Amy MacMahon, the Member for South Brisbane, introduced the *Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021* (the Tenants' Rights Bill) into Queensland parliament.

This, the Member for South Brisbane's first private member's bill, was an urgent priority given Queensland's dire housing situation, and a reflection of Dr MacMahon's dedication to representing all Queenslanders who are vulnerable to housing insecurity.

In June 2021, the government followed suit, with the introduction of the *Housing Legislation Amendment Bill 2021* (the Government Bill). Despite its assurances to voters and the tenancy advocacy sector in Queensland, this bill represented a backdown from many of the government's stated commitments to improving rights for renters.

As the Community Services and Support Committee conducted the inquiries into these bills on a parallel timeline, this report will summarise my position in relation to both inquiries. While I submit this dissenting report as the only Greens member of parliament on this or any other committee, this report represents the position of the Queensland Greens.

Recommendations

- 1. The Queensland Greens recommend that the *Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021* be passed, with minor amendments to incorporate issues raised by submitters in relation to third party**

payment platforms, and in relation to safety measures for survivors of domestic and family violence.

2. The Queensland Greens recommend that the *Housing Legislation Amendment Bill 2021* be amended to:
 - a. genuinely end unfair evictions;
 - b. improve minimum housing standards to the extent proposed in the *Tenants' Rights Bill*;
 - c. prohibit inappropriate and unreasonable questions from landlords or their agents to prospective tenants, and ensure tenants have fair and honest information about the property in question;
 - d. end rental bidding and limit rent increases;
 - e. allow tenants to keep a pet as a basic right, not a privilege to be granted with set conditions;
 - f. allow tenants to make minor modifications to their homes, in line with the government's original commitment to do so;
 - g. increase notice periods for entry by the lessor, for reasons other than to inspect the premises, from 24 to 48 hours;
 - h. require lessors to forward water consumption bills to tenants in a timely way;
 - i. remove the ability of a lessor to evict a rooming accommodation resident without a QCAT order;
 - j. improve the level of protections available to survivors of domestic and family violence by allowing for expedited lease transfers, the right to instal safety equipment without lessor consent and cultural awareness upskilling for real estate agents; and
 - k. incorporate issues raised by submitters in relation to third party payment platforms by requiring lessors to provide a fee-free payment option to tenants.
3. The Queensland Greens recommend that the Legislative Assembly debate these two bills in cognate, commensurate with the Committee's decision to consider their respective inquiries in parallel.

Background

Right now, the situation for renters in Queensland is dire. Over a year ago, when the COVID-19 crisis hit, the government responded quickly by committing to measures to ensure renters weren't left in the cold by the looming economic crisis. Ultimately, those measures were heavily modified following a campaign by the Real Estate Institute of Queensland and other real estate advocates. As Queensland has started to recover from COVID-19, we've seen our state's housing market increasingly squeezed, as investors take advantage of low interest rates and grants schemes like the federal government's HomeBuilder, and as our state becomes more attractive to interstate buyers in a world changed by the pandemic.

The housing market is incredibly competitive, and the rental system is stretched to its absolute capacity. In Brisbane, vacancy rates are as low as 1.5 per cent. There is no indication that this will improve. For people on JobSeeker or the Disability Support Pension, there are next to zero affordable rental properties and rents are increasing three times faster than wages. In every major population centre in Queensland, rents have grown faster than the median wage over the last decade.

This is of course set against a broader housing crisis – 47,000 people waiting for social housing, some waiting for years. Rising levels of housing stress among people paying a mortgage, and critical levels of household debt. Rising numbers of people who are homeless, most notably, the growing rates among women over 50. Of course many of these issues are outside the scope of the Tenants' Rights Bill, but transforming our rental system is a crucial part of tackling the housing crisis in Queensland.

Renting in Queensland isn't uncommon or just temporary. For myself, Dr MacMahon and many of the 1.8 million Queenslanders who rent, it is our only option. In the South Brisbane electorate, nearly 60 per cent of households rent. Across the state 36% of households are renting, making renters the largest group in terms of housing tenure. Despite this, our tax system makes it easier to buy your fourth property than your first, and our rental system puts tenants through undue and at times extreme stress.

It is with these issues in mind that the Queensland Greens prioritised introduction of the private member's bill in May 2021. The government introduced its *Housing Legislation Amendment Bill 2021* just a month later, purporting to also improve rights for renters. Against that backdrop, I will now turn to the issues raised in the relevant inquiries.

Committee Response

The Committee Report notes the importance of the issues that the Tenants' Rights Bill seeks to address, including affordability and access to safe and secure housing. The Committee report¹ notes the importance of improving renters rights to housing, rental quality and affordability, and that the purposes of the Bill are consistent with the human rights of renters. The Committee also notes that the Tenants' Rights Bill "promotes interests that are consistent with the HRA and broader human rights commitments".² The Committee report also notes the committee received thousands of submissions regarding rental reform in Queensland. Submitters such as Tenants Queensland, and a "significant number of submissions from individual tenants" supported all or some of the provisions in the Tenants' Rights Bill.³

However, the Committee ultimately concludes that the Government Bill "strikes a more appropriate balance" between the rights of tenants and landlords. However, **the Government Bill does next to nothing to change the inherently unequal power relationship between lessors and tenants** (an inequality which Report No. 7 acknowledges⁴). There are no changes to lessors' power to increase rents. No-grounds evictions continue, with the inclusion of the end of a fixed-term lease as new ground for eviction. There are no powers for tenants to make minor modifications. The power around pets still sits firmly with lessors. The Committee notes, drawing on economic analysis, that the Government Bill will have negligible "impacts to rents, supply and affordability".⁵

In acknowledging the severity of issues facing Queensland tenants but choosing to do nothing about affordability or security of tenure, the Committee, like the Government, concedes to the power of the real estate lobby - representatives of an industry that cares little for the 1.8 Million Queensland renters.

¹ Report No. 8, 57th Parliament, CSS Committee, August 2021, p. 30.

² Report No. 8, 57th Parliament, CSS Committee, August 2021, p. 31.

³ Report No. 8, 57th Parliament, CSS Committee, August 2021, p. 5.

⁴ "...with tenants generally having less power than lessors particularly in competitive markets" Report No. 7, 57th Parliament, CSS Committee, August 2021, p. 51.

⁵ Report No. 7, 57th Parliament, CSS Committee, August 2021, p. 35.

Submissions by renters on the need to improve housing rights

There were thousands of submissions on these bills, and many of these were from renters sharing their experiences. People talked about their treatment from landlords and property managers, the constant uncertainty caused by the threat of a no-grounds eviction, the inability to keep a pet or make minor modifications to their homes, the poor standard of rental homes and various other issues. Over 800 submissions outlined their support for the following actions, all of which are reflected in this report's recommendations:

1. A genuine end to 'no-grounds' evictions, providing tenants with long-term security in their homes without the risk of an unfair eviction at the end of their lease.
2. Allowing tenants to make minor modifications, like hanging picture frames or installing furniture safety anchors.
3. A real ban on rent bidding - banning agents and property owners from accepting amounts above the advertised rent for a property.
4. Expanding minimum standards to include ventilation, cleanliness and insulation.
5. Stopping unreasonable rent increases by tying rent increases to general inflation.
6. Ensuring prospective tenants have fair access to honest information about the property.
7. Banning inappropriate or discriminatory questions by lessors.
8. Making it easier for tenants to have pets - by flipping the onus on property owners/agents to demonstrate why it's unreasonable for a tenant to have a pet.

Our laws roll out the red carpet for investors to grow their wealth, while failing to provide basic housing and security for those who need it most. Given the huge advantages conferred by the federal taxation system on investors, including negative gearing and capital gains concessions, our tenancy laws are extremely weak in ensuring housing for renters.

The mental health impacts on tenants

One of the most striking, and yet unsurprising themes to emerge from the submissions, was the number of submissions from renters stressing the impacts Queensland's rental system has had on their mental health. This was reflected also on the committee page, which included links to Lifeline Crisis Support,

Beyond Blue Support Service, DVConnect, 1800RESPECT and the Sexual Assault Helpline. For many tenants, challenges that they have faced with evictions, unsafe properties, and bullying treatment by real estate agents, have caused severe mental health pressures. The Government Bill, with the exception of the DV provisions, will do little to alleviate the mental health impacts of insecure housing on Queensland renters.

Impact on Families

Many submissions detailed the impact that evictions, instability, rent increases and poor quality have on families, and the Committee notes in Report 7 that families with children are the largest cohort of renters. For many, the ability to maintain a home to let kids go to their local school uninterrupted was a key consideration, as well as the ability to make minor modifications for the safety of children. The Government Bill, with the exception of the DV provisions, will do little to alleviate the stress faced by Queensland renting families.

Impact on rental housing supply and affordability

The real estate lobby argued strongly against the Tenants' Rights Bill. The Real Estate Institute of Queensland (REIQ) raised concerns in their submission (#661) that the *Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021* would discourage property investment in Queensland, and that this would reduce the supply of rental properties.

Ms Antonia Mercorella, Chief Executive Officer of the REIQ told the public hearing into this Bill:

"The impact of these changes could result in investors withdrawing from the permanent rental market. Additionally, we are concerned that some of these reforms could deter future investment in Queensland. In our view, the combination of these factors would detrimentally impact the residential real estate sector, resulting in reduced housing supply and higher rents potentially"

Similar concerns were raised by the Property Owners Association of Queensland, the Urban Development Institute of Australia (UDIA) and the Property Council of Australia. The UDIA describes in their submission (#722):

"Risks such as substantial changes to the certainty of the length of leases, rent rises, and the balance between the roles of renters and lessors can reduce confidence in rental housing, impinge

on the supply of capital for housing and in the Institute's view, lessen the number of new dwellings developed, increasing pressure for higher rents."

Ms Roslyn Wallace of the Property Owners Association of Queensland mentioned throughout her statements to the public hearing that members of her association were thinking of selling if some of the measures outlined in the *Tenants' Rights Bill* were passed, including minor modifications and pets. Ms Wallace was asked by a committee member if she would sell her properties if this law changed. Ms Wallace said she would not.

Tenants Queensland disagreed with the claims that strengthening tenants' rights would discourage property investment in Queensland, and described how there was no evidence to support them. Ms Penny Carr, CEO of Tenants Queensland, explained to the hearing:

"There is no evidence to support claims that tenancy law changes will see investors exit the market. In terms of investment decisions, research shows that landlords make decisions based on fiscal and financial policy, with tenancy law having little if any impact. Research also shows that, while individual investors move in and out of the market with some frequency and for varying reasons, overall for many years investment in residential housing continues to increase."

Tenants Queensland proceeded to table a collection of research on investors' motivations conducted over the last two decades. **To be clear: the real estate lobby has argued against any advance in renters' rights since at least the 1980s, on the basis it would shrink the housing market. This has simply never eventuated.**

During the public hearing, I asked the REIQ if they could provide evidence to support their assertions that the proposed changes would reduce housing supply and drive up rents. Ms Mercorella said beyond a survey of their members in 2019, they had no additional research on this matter.

I note that the research tabled by Tenants Queensland describes that property investors are more motivated by long-term capital gains than short-term rental yield. It also states that *"the relationship between investment and tenancy law reform continues to prove weak."*⁶

⁶ Seelig, T., Thompson, A., Burke, T., Pinnegar, S., McNelis, S., Morris, A. (2009) *Understanding what motivates households to become and remain investors in the private rental market*, AHURI Final Report No. 130, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/130>.

Additionally, if strengthening tenants' rights does end up leading to some property investors selling their properties, these properties will almost invariably be bought by another investor, or someone who is currently renting but looking to purchase their first home.

Balancing the needs of tenants and property owners

The Property Owners Association of Queensland and Australian Proprietors Alliance Incorporated (APA) both raised concerns in their submissions that the measures outlined in the *Tenants' Rights Bill* would have an unfair impact on property owners.

The REIQ has similar concerns, and describes in their submission (#661) that:

"...the Bill seeks to severely restrict key lessor rights and commercial benefits associated with property investment. The lack of balance and total oversight of lessor rights is very concerning."

Form Submission A, Form Submission D and Form Submission H also echo these concerns that the Tenants' Rights Bill would have an unjustifiable, negative impact on property owners. Form Submission I states that property owners take all the risk and financial burden of owning a property.

Tenancy laws are one of many government mechanisms that influence Queenslanders' experiences in the housing market. As outlined in the research presented by Tenants Queensland, the enormous taxation concessions available to real estate investors have a much greater bearing on the housing market than tenancy law. Currently homeowners and investors receive the vast majority of the benefits from federal government housing policies, like negative gearing and capital gains tax concessions, while renters receive next to no benefits. The Grattan Institute stated in 2013 that federal government expenditure - both direct expenditure and tax concessions - on home owners adds up to about \$36 billion a year.⁷ The Australia Institute modelled in 2015 how these concessions inflate housing prices, encourage speculative behaviour and are used by high-income households as a tax shelter.⁸

⁷ https://grattan.edu.au/wp-content/uploads/2014/03/800_Renovating_Housing.pdf

⁸ <https://australiainstitute.org.au/wp-content/uploads/2020/12/Top-Gears-How-Negative-Gearing-and-CGT-benefits-top-10-per-cent.pdf>

Another key piece of information I note is that over 80% of property investors are high income earners and the majority already own their family home.⁹ On average, the net wealth of investor households is triple that of the average Australian household.

When determining what legislative changes would strike a fair balance between property owners and tenants, the often significant wealth disparity between property investors and renters must be taken into consideration. Housing justice means different things for different groups, and those who are already marginalised because of low income, disability, cultural and linguistic diversity, Indigenous or other status will be disproportionately impacted by unstable housing. Tenants are at risk of losing the roof over their family's head, and in many cases, risking homelessness. The unequal power relation is acknowledged in the explanatory notes for the Government Bill - "there is often unequal bargaining power between tenants and lessors" - however the Government Bill does little to nothing to address this inequality.¹⁰

The measures outlined in the Tenants' Rights Bill are critical to correcting the inherent power imbalance that exists between property owners and tenants, and ensuring every Queenslanders has a secure home. The Committee report¹¹ notes the importance of improving renters rights to housing, rental quality and affordability, and that the purposes of the Bill are consistent with the human rights of renters.

Relying on the market to provide affordable and secure rental properties

Real Estate Excellence Academy Pty Ltd (#121) emphasises in their submission the key role of market forces in regulating rental pricing. They state that increasing the supply of housing is the solution by providing more incentives to invest. A range of submissions with copied text from submission #121 also presented this as the solution.

The Australian Proprietors Alliance Incorporated (APA) states in their submission (#575) that:

"The property market is driven by supply and demand, private sector investments to provide more rental properties is crucial to add to the supply and stabilise rental market."

⁹ Household, Income and Labour Dynamics in Australia Survey, the Melbourne Institute

¹⁰ Report No. 7, 57th Parliament, CSS Committee, August 2021, p. 51.

¹¹ Report No. 8, 57th Parliament, CSS Committee, August 2021, p. 30.

Similar sentiments are raised by a number of individual submitters as well, most of whom have identified themselves as real estate agents or property investors. These submitters posit that the best way to provide renters with affordable rental properties is through maximising investment in the private market with minimal restrictions.

Increasing private supply may have some minimal impacts on housing affordability, however entirely leaving housing prices to the whims of the market has not proven to be a successful public policy.

There are estimated to have been 164,000 excess dwellings in Australian from 2001-2017¹². Over this same time period, the median rent in Queensland rose from \$200 per week to \$330 per week¹³.

I note that what these submitters are describing is the long-term status quo in Queensland: a heavy reliance on the private market to provide housing. There have long been significant tax incentives in Australia to invest in property. Apart from a brief period in 1985-1987, negative gearing has been a consistent part of the Australian tax system for almost 100 years. Capital gains tax loopholes have been available since 1999. Property developers have also long had favourable conditions in Queensland, with a flexible performance-based planning system and caps on the infrastructure charges they can be asked to pay. A number of submissions reflected on this commodification of housing.

I note that the status quo has also left 47,000 people on the social housing waiting list in Queensland and critical levels of household debt. In every major population centre in Queensland, rents have grown faster than the median wage over the last decade.

The most compelling reason why rental affordability cannot be left up to the whims of the private market is that we are already leaving rental affordability to the market, and this pathway is catastrophically failing to provide affordable and secure housing to a growing portion of Queenslanders.

The REIQ stated in relation to the Tenants' Rights Bill that it has a 'limited appreciation of the nature of real estate and its relationship to Queensland's social and economic wellbeing.' I would say the Tenants' Rights Bill appreciates this all too well. Stories from the thousands of Queenslanders about how housing

¹² Regional housing supply and demand in Australia, Phillips, B & Joseph, 2017

¹³ Australian Bureau of Statistics

instability impacts their lives, Dr MacMahon and I know how vital housing security is for Queensland's social and economic wellbeing.

Ending tenancy agreements

Many renters shared their stories about how the constant threat of being evicted made it hard to feel secure in their home, or to enforce their basic rights. Tenants Queensland gave a powerful summary at the inquiry hearing of this issue, sharing the story of someone they had spoken to the day prior.

There was an issue with his garage door, which he asked several times to be fixed. After issuing a notice to remedy breach - the correct process - he received a notice to leave without grounds the same day. The provisions in the Tenants' Rights Bill which operate to remove no-grounds evictions would ensure that people can enjoy security in their own homes, and would ensure that no one is evicted in such a situation. The Committee report notes that Stage 2 will include "security of tenure including longer term leases"¹⁴ - I urge the government to fast-track this by genuinely ending no-grounds evictions in the Government Bill.

As the submission from Tenants Queensland states, although the government has pledged to remove no-grounds evictions in its bill, it simply has not. Without addressing this power differential, the other advances in rights for renters are undermined by the continuing fear of eviction without fair reason. Making Renting Fair in Queensland (#720) similarly argue that in failing to end no grounds evictions, the Government Bill fails to meet its stated objectives.

LawRight, an independent community legal centre and the leading facilitator of pro-bono legal services in Queensland, reiterated there should be no provision for no-grounds evictions. They spoke of how their casework showed that vulnerable tenants will frequently tolerate poor treatment or conditions due to the fear of retaliatory action. They state that allowing landlords to evict a tenant without grounds at the end of their lease agreement will discourage tenants from asserting their rights, and undermine other protections with regard to minimum housing standards and repair orders. As they state, unfair evictions are often explained by another pretext, come at great expense, and cause significant disruption to tenants' lives.

¹⁴ Report No. 7, 57th Parliament, CSS Committee, August 2021, p. 43.

The Law Society of Queensland opposed the abolition of no-grounds evictions, commending the government for effectively maintaining them. It cited the need for contractual certainty as the reason that landlords should be permitted to evict a tenant for any reason. Instead of ending no-grounds evictions, the Law Society suggested that community legal centres should be funded to assist tenants to enforce their rights in the case of a retaliatory termination, or that landlords should be encouraged to consider offering longer fixed-term leases.

These are wholly unsatisfactory alternatives to law reform. The community legal sector is already drastically under-resourced, and contractual certainty is maintained in many other instances where the parties' agreement is subject to legislative constraints. Further, it is hard to reconcile the fact that options for renewal are a key feature of any commercial lease, but the real estate lobby, the government and the Law Society do not wish to legislate to provide a family or individual the kind of certainty and stability that businesses would ordinarily enjoy.

Recommendation 2a: The Government Bill should be amended by removing the end of fixed-term agreement as grounds for eviction.

Minimum housing standards

For hundreds of the submissions to this inquiry, the poor quality of rental properties, lack of maintenance, and unresponsiveness from lessors was a major issue. This feedback underlines the importance of legislating key minimum standards, beyond the half-measures in the Government Bill and to the extent covered in the Tenants' Rights Bill, including:

- sanitation, drainage, cleanliness, repair;
- ventilation, insulation;
- protection from damp;
- construction, condition, structures, safety, situation;
- room dimensions;
- privacy and security;
- water supply, storage and sanitary facilities;

- laundry, cooking facilities;
- lighting;
- freedom from vermin infestation; and
- energy efficiency.

The Committee report states that ventilation, smoke alarms, lighting and electrical safety are covered under the *Electrical Safety Act 2002* and the *Fire and Emergency Services Act 1990*. However, neither of these acts make any mention of ventilation. These acts cover the safety associated with lights and electrical systems, but do not touch on issues such as provision of appropriate lighting for safe enjoyment of a home.

The following submissions, among the many hundreds, provide a snapshot of the experience of tenants living in unmaintained, poor quality homes.

A number of submissions highlighted the importance of minimum standards, beyond what is included in the Government Bill and to the extent covered in the Tenants' Rights Bill. The following submissions, for example, highlight the importance of **temperature control** and **insulation**. Submission #107 writes about the challenges of lack of temperature control for older people:

"My current rental has NO insulation, nor any other kind of temperature control. NO decent curtains, NO ceiling fans (in spite of recent, strong requests), NO roof spinners and certainly NO AC! Last February, on an average day, the floor temperature was around 33 degrees Celsius. While three weekends ago my place was simply too costly to heat all of the evenings, and I contracted a dose of the 'flu.. Potentially, a serious concern when I live on my own, and will be 82 years of age, next November".

Queenslanders with Disability Network (QDN) also stressed in their submission (#638) the importance of **lighting, ventilation and protection from mould**, for people with disabilities in particular, writing:

"Adequate lighting, ventilation and environments free from mould are important standards for people with disability, and issues with these things can significantly impact upon their disability, access, and health and well-being. It is important to recognise that these are basic to a reasonable standard of living".

QDN reiterated the importance of **ventilation and lighting** in the hearing, stating:

"I would like to draw the committee's attention to the minimum standards regarding

ventilation and lighting. This is an important health and safety issue that often impacts on people with disability in different ways because of their visual or sensory impairments. It is really important that ventilation and lighting be considered as a key issue of health and safety within those minimum standards”.

The Queensland Council of Social Service (QCOSS) similarly stressed the importance of **lighting and ventilation** in the public hearing, stating:

“I did note that REIQ provided some information earlier today to say that lighting and ventilation are not linked to health and safety. Our own common sense tells us that light and ventilation are connected to health and safety. This is true for all of us but it is particularly true for people living with chronic illnesses or disability and older people. It is also completely out of step with community attitudes. We know that three-quarters of landlords and property managers actually support proper lighting and ventilation as a minimum standard”.

Ms Eilisha Matthews, who presented at the public hearing, also detailed the importance of **heating and cooling provisions** for people with disabilities, and the challenges she faced from unresponsive landlords not maintaining air-conditioning. She stated:

“Some of the issues I have faced have been things like when I requested for air conditioning that existed in the property to be repaired and time passed and I followed it up, I was told that it was not considered an urgent request as aircon was not a necessity. I had opted specifically to rent a property at a higher price to others because it had air conditioning. My disability prevents me from maintaining my body temperature so air conditioning is a necessity for me, but I had to wait almost six months before they sent a repair through”.

I note that for some submitters, such as REIQ, minimum standards beyond what the government have detailed in the Government Bill were deemed unnecessary. In the public hearing, REIQ argued that lighting, for example, was not a safety necessity. The above submissions and testimonies clearly contradict this, and I’d urge the government to consider the needs of Queensland tenants, in particular vulnerable tenants, in determining what minimum standards should be implemented, as opposed to the demands of the real estate lobby.

Recommendation 2b: The Government Bill should be amended to extend the proposed minimum standards for rental housing to match those set out in the Tenants’ Rights Bill.

Prohibition on inappropriate rental application questions, and requirement for lessor’s disclosure

A key distinction between the Tenants’ Rights Bill and the Government Bill is the former’s prohibition on lessors, or lessor’s agents, requesting certain information from a prospective tenant, such as that relating to unredacted bank statements, bond history, previous legal action, passport details if other evidence of identity is in place and residency status or nationality details, unless these are needed for a social housing service or NRAS assessment.

Further, the Tenants’ Rights Bill requires frank disclosure by a lessor of key details relating to the property, including the existence of an embedded electricity network, building defects or impediments to the lessor’s right to deal with the property.

This was supported by Tenants Queensland and individual tenants in their submissions. The former told of application processes asking intrusive and unreasonable questions, and cited the Victorian legislation, regulating such requests. From the evidence provided by tenants and tenants’ advocates that there is both the need to regulate requests for information, and clear precedent for such regulation working effectively.

Recommendation 2c: The Government Bill should be amended to ensure tenants receive appropriate information about the property, and are not subject to unreasonable or discriminatory requests for information.

Ending rental bidding and limiting rent increases

The Tenants’ Rights Bill prohibits lessors or their agents accepting rental amounts greater than those advertised. The current law bans soliciting such rental bids, but is silent on whether lessors can accept offers of rental bids. The Tenant’s Rights Bill would also limit rent increases to once every two years, and by no more than the consumer price index (CPI) each year, unless agreed by the tenant or unless the landlord successfully obtains a QCAT order to the contrary. In contrast the Government Bill includes no measures to tackle affordability, and rather “ impacts to rents, supply and affordability would be negligible”.¹⁵

¹⁵ Report No. 7, 57th Parliament, CSS Committee, August 2021, p. 35.

Numerous submissions from tenants supported these provisions on the basis of the increased housing security this would provide.

Hundreds of submissions called for a **cap on rent increases**, with dozens of stories of people being priced out of their homes due to rent increases, and the upward pressure practices such as rent bidding are having across the state. In addition, the 'Open Doors' consultation also found affordability to be a major concern for renters.

Recommendation 2d: The Government Bill should be amended to ensure rental bidding and unreasonable rent increases do not continue to price Queenslanders out of their own homes.

The right to rent with pets

The right to rent with pets was an important consideration for hundreds of submitters to the inquiries on these Bills, who stressed the importance of having the right to have pets as the base assumption, with the onus on lessors - not tenants - to challenge this. Pets have significant health benefits for owners¹⁶ and Queenslanders with Disability Network (#638) note that *"Many people with disability have animals which may be considered by them as an essential part of their assistance and therapy"*.

Currently, a tenant must obtain the landlord's written consent before keeping a pet, either stated in the lease or later agreed in writing. The Government Bill sets out the grounds on which a landlord can refuse the keeping of a pet, and the conditions they can set out, including conditions such as a pet outside or in particular parts of a property. Despite the new provision included in Clause 44, the provision that tenants, rather than lessors, have to appeal their rights via QCAT, demonstrates that this is not the case.

Many key stakeholders and submitters argued for the assumed right for tenants to keep pets, and that the Government Bill does not go far enough. Under this proposed legislation, lessors still have overriding power regarding a tenant's right to have a pet. The onus remains on tenants to pursue their rights via

¹⁶ <https://www.ahuri.edu.au/research/ahuri-briefs/understanding-pet-policies-for-australian-households>

QCAT. For people with companion animals - a key issue outlined by QDN in their submission (#638) - requirements to keep pets outside or in particular parts of properties in an unacceptable requirement.

Tenants Queensland, AWLQ and others argued for a model closer to that which is in place in Victoria, and which is outlined in the Tenants' Rights Bill. Queenslanders with Disability Network (#638), for example, write that, *"It is important that having a pet starts from the basis that you can have a pet and work to establish what the fair conditions and restrictions are"*. The AWLQ note that the Tenants' Rights Bill provides certainty that tenants are allowed to have pets, reducing discrimination. In contrast, they note that the Government Bill *"is NOT going to alleviate the current situation"* given that the onus remains on less powerful tenants to argue their case against powerful lessors and real estate agents. Similarly, the submission from Making Renting Fair Queensland (#720) states that a fair Bill should *"start with an assumption that renters can keep pets if they choose; require the lessor to seek orders to restrict pets if there is a dispute"*.

AWLQ write in support of the Tenants' Rights Bills proposal for dealing with pets, writing,

"We therefore strongly support the proposal in the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021 (Sections 221B and 221C) be accepted, which reflects the Victorian and ACT legislation i.e. that a tenant is allowed to keep a pet and when they apply to the lessor, if the lessor wants to exclude the pet, the lessor can apply to the Queensland Civil and Administration Tribunal (QCAT) for an order to exclude the pet based on reasonable grounds and conditions".

Submission #424 refers to the new Victorian legislation regarding pets, writing,

"Other states have made it easier to rent with pets, why can't Queensland? Labor in Victoria led the way on that reform".

I note that some submissions from landlords noted potential damage by pets. However, I contrast this with evidence from Australia and abroad suggesting that pets are no more likely to cause damage to a property than tenants without pets.¹⁷

I note the challenges associated with pet ownership with regards to strata title properties, noted by the Strata Communities Association Qld (#730). The Tenants' Rights Bill acknowledges this challenge.

¹⁷ <https://www.ahuri.edu.au/research/ahuri-briefs/understanding-pet-policies-for-australian-households>

Recommendation 2e: The Government Bill should be amended to allow people to keep pets as a basic right, not as a privilege to be granted by a landlord with set conditions.

Minor modifications

Hundreds of submissions reflected the argument that tenants should be able to make their rental house feel like a home, as well as improve safety, and make minor modifications like hang pictures, paint walls, and install furniture anchors. Many people are now renting long term, and should be able to make a house feel like a home while they are living there. This includes both rental properties and rooming accommodation. This will improve people's wellbeing and quality of life, particularly for:

- parents of young children, being able to install furniture anchors and baby gates;
- ageing and elderly people, being able to install safety and mobility aids;
- people with disability, being able to install safety and mobility aids; and
- victim/survivors of domestic violence, being able to install safety equipment.

For people living with disabilities, being able to install things like grab rails can mean the difference between living independently and with dignity, or not.

In the 'Open Doors to Renting reform' consultation, conducted by the government in 2018, 65 per cent of respondents thought that a property owner shouldn't be able to stop tenants from making minor modifications. Both Victoria and the ACT have provisions to allow renters to make minor modifications, and Queensland should follow suit. I also note that while allowances for minor modifications were flagged in the government's 2019 C-RIS, these are not present in the government's proposed legislation, a move supported by organisations such as REIQ. As Tenants Queensland (#723) wrote:

"TQ calls for the ability for minor modifications to be undertaken by the tenant to be included in the Bill, as it was in the 2019 RIS. This is a matter of priority as its exclusion is a major omission in the Bill as it leaves some renters to living in unsafe and inappropriate circumstances".

Tenants Queensland provided this list of minor modifications that should be allowed:

- installation of picture hooks or screws for wall mounts, shelves or brackets on surfaces other than brick walls;

- installation of wall anchoring devices on surfaces other than brick walls to secure items of furniture;
- installation of LED light globes which do not require new light fittings;
- replacement of halogen or compact fluorescent lamps;
- installation of blind or cord anchors;
- installation of security devices;
- replacement of curtains if the original curtains are retained;
- installation of adhesive child safety locks on drawers and doors.
- modifications assessed and recommended by an Australian Health Practitioner's Regulation Agency practitioner;
- installation of low flow shower heads where the original is retained;
- installation of non-permanent window film for insulation and reduced heat transfer;
- installation of flyscreens on doors and windows; and
- installation of a vegetable or herb garden.

PropertySafe (#633) made the case for minor modifications in their evidence to the committee, for both tenants and lessors, from a safety standpoint. Ms Eilisha Matthews, a tenant who accompanied Tenants Queensland to the public hearing, provided detailed evidence of the impact of not being able to make minor modifications to her home, as a person with disability. She detailed shocking treatment by her landlord who refused things like grab rails, which put her safety at risk. QDN similarly made a compelling case for allowing minor modifications, to ensure the safety, independence and dignity of people with disabilities, stating in their submission (#638):

"Many people with disability require minor accessibility modifications to their rental properties, as finding ready accessible rental housing that meets their needs is very difficult. Minor modifications sought include handrails, ramps, and safe seating (showers)".

In the public hearing, QDN similarly **made the case for minor modifications being a health and safety issue**, offering people independence, and allowing people to reduce their reliance on carers, or family members, for support. QDN also made the case that accessible properties, with safety features like grab rails, make these homes more appealing to a wider group of prospective tenants. Both QShelter and QDN confirmed that allowances for minor modifications would allow for cost savings in other sectors, including the mental health and broader health sectors.

I note the evidence given by the Women’s Legal Service regarding the right for tenants to install safety equipment, such as cameras, locks and lighting, stating:

“We would also like to see provisions to make it easier for tenants to make minor modifications such as installing security devices like sensor lights and cameras, as was proposed in the consultation regulatory impact statement released in 2019”.

This was supported by QCOSS, who stated their support for safety modifications in the hearing,

“In particular, we think tenants should be allowed to make minor modifications for security purposes. We would like to see that people who do stay in properties [are] able to install security cameras, deadlocks or security doors— whatever they need to stay safe and secure in their property—immediately and without the permission of the property owner”.

Just as the Government Bill proposed minimum standards from a health and safety standpoint, so too are the right to make minor modifications a health and safety issue. The Committee report notes the “increased risk of discrimination” faced by tenants with disabilities and people experiencing DV, when requiring minor modifications.¹⁸ Rather than waiting for a national response, I urge the government not to delay in allowing Queensland tenants the right to make minor modifications to their homes. I note that the Committee report does not include minor modifications under the listed state 2 reforms.¹⁹

Recommendation 2f: The government should reinstate the minor modifications provisions it originally intended to legislate, and amend the government to allow tenants to make minor modifications to their homes.

Notice periods for entry

Many submissions noted the impacts of short notice periods for entry to the premises, or landlords and real estate agents showing up to properties unannounced, causing significant mental distress, and invasion of privacy. This underlines the need for **extended notice periods for inspections and end of leases**, as included in the Tenants’ Rights Bill.

¹⁸ Report No. 7, 57th Parliament, CSS Committee, August 2021, p. 44.

¹⁹ Report No. 7, 57th Parliament, CSS Committee, August 2021, p. 43.

Recommendation 2g: The Government Bill should be amended to increase notice periods for entry by the lessor, other than an entry to inspect the premises (currently 7 days), from 24 hours to 48 hours.

Water bills

The Tenants' Rights Bill requires a lessor to forward bills for water charges to a tenant within a month of its issue, where a tenant is required to pay water consumption charges. This was supported by Tenants Queensland, tenants and some lessors in their submissions. This would ensure tenants are able to budget for the water bills in a sustainable ongoing way, rather than receiving large unforeseen liabilities dependent on a lessor's administration.

Recommendation 2h: The Government Bill should be amended to ensure lessors must forward water bills in a timely way.

Removal of rooming accommodation residents

The Tenants' Rights Bill would remove a lessor's ability to remove a resident under a rooming accommodation agreement without a QCAT order. This would ensure consistency with other tenants' rights. This was supported by Tenants Queensland.

Recommendation 2i: The Government Bill should be amended to ensure consistency in tenants' rights across accommodation types, and require a QCAT order before any eviction.

Protection for victims/survivors of domestic violence

Protections for victims/survivors of domestic violence are vitally important. As Women's Legal Service (#859) notes, domestic violence is a leading cause of homelessness for women, and financial liabilities and rental debts can be a huge burden for people leaving DV situations. Key protections include:

- not being held liable for damage caused by domestic violence;
- having the ability for people to change locks; and

- having the right to leave a tenancy.

I note that many of these measures have been in place under the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*, with positive feedback from the sector about the function of these provisions.

I also note further suggested amendments made by Women's Legal Service which include:

- the ability to transfer leases into the names of co-tenants and remove perpetrators' names;
- the right to install safety equipment (lighting, cameras, locks) without requiring lessor approval beforehand; and
- community awareness activities and appropriate training for real estate agents.

The Queensland Greens intend to move amendments to the Tenants' Rights Bill when it comes to parliament for second reading, to include all of these provisions.

Recommendation 2j: The Government Bill should be amended to improve the level of protections available to survivors of domestic and family violence by allowing for expedited lease transfers, the right to instal safety equipment without lessor consent and cultural awareness upskilling for real estate agents.

Third-party platforms

Another issue that emerged in the submissions, which the Queensland Greens intend to incorporate into the Tenants' Rights Bill via amendments in parliament, is the third-party platforms that property managers often require tenants to use. As articulated by Tenants Queensland at the inquiry hearing, these simply shift the costs of collecting rent from property managers to tenants.

Just this week my electorate office heard from a local resident whose real estate agent told them there was now a surcharge for paying weekly rent, and that a late fee of \$20 per day would apply to rental payments.

These platforms have evolved from the early rental payment platforms, into platforms which support a range of other uses like application processes, document storage and communications. Submitters like Tenants Queensland have put the view that these platforms should be regulated to mitigate against their unfair and unreasonable aspects.

Critically, there should be a fee-free method of rent payments available, as is mandated in other Australian jurisdictions, and amendments to the Tenants' Rights Bill will be moved to require that tenants be offered a free, direct debit to a bank account as an available rental payment method.

Recommendation 2k: The Government Bill be amended to require that tenants be offered a free, direct debit to a bank account as an available rental payment method.

Human rights

A fascinating debate emerged during the inquiry on these bills in relation to the human rights implications of both the Tenants' Rights Bill and the Government Bill. Of course, all bills introduced to Queensland parliament are required to be accompanied by a Statement of Compatibility that provides an assessment of their human rights implications. After the Government Bill was introduced in June, a month after the introduction of the Tenants' Rights Bill, it was roundly criticised by the housing justice sector as not adequately improving tenants' rights.

Media reports emerged of how Labor members of parliament had started to respond with a form email, in response to constituent concerns, suggesting that for the government to extend the scope of its bill to further improve tenants' rights would be in breach of human rights.

Indeed, correspondence from the Housing Minister's office (sent as recently as 3 August 2021) advised constituents that 'Elements of the Greens' Private Member's Bill... including the proposal that an owner would not be able to end a tenancy at the conclusion of the lease, are in breach of Queensland's Human Rights Act and will lead to a reduced supply in the rental market.' I've attached a copy of letter as Attachment 1 to this report, to highlight the government's bad faith arguments against improving tenants'

housing rights. These arguments directly contradict those outlined by the Queensland Human Rights Commission, and findings of the Committee.²⁰

Thankfully, the Queensland Human Rights Commissioner intervened to put this spurious argument to bed, issuing a statement on 8 July 2021.²¹ Commissioner Scott McDougall urged parliamentarians to carefully consider a range of human rights - not just the property rights of landlords which Labor MPs had referred to in their arguments. The Commissioner said “there are also rights held by tenants which need to be properly considered - including their rights to protection of families and children, and freedom from interference with their home, which is protected under the right to privacy and reputation”.

Commissioner McDougall clarified that for the right to property to be unreasonably limited, a person would need to be arbitrarily deprived of it. Abolishing no-grounds evictions ‘may amount to diminishing the property rights of a lessor, but would probably not amount to an “arbitrary deprivation” of the right to property.’ In their submission (#716), QHRC note that,

“Since there is a clear justification for a limitation of rights given significant housing instability and homelessness in Queensland, it is unlikely that requiring a lessor to provide reasons to end a tenancy at the end of the fixed term would amount to an arbitrary action”.

In balancing Queenslanders’ right to housing with the property rights of landlords, the Commissioner cited the significant housing instability and homelessness in Queensland as a clear justification for limiting the rights of lessors. As Aimee McVeigh, the Chief Executive Officer of the Queensland Council of Social Service, said in the final testimony of the hearing, the government’s argument about genuinely ending no-grounds evictions is a “*furphy*”. She went on:

“I would also ask: how can a government say that this law will breach or limit human rights in a way that is unacceptable when they are willing to pass a law that puts GPS trackers on children and call that compatible with human rights?”

The Committee Report regarding the Tenants’ Rights Bill²² also notes that the provisions included in the Bill, including caps on rent increases, and security of tenure, are compatible with the *Human Rights Act 2019*.

²⁰ Report No. 8, 57th Parliament, CSS Committee, August 2021, p. 27-28.

²¹

https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0006/33747/2021.07.08-Media-statement-re-proposed-Qld-tenancy-reforms.pdf

²² Report No. 8, 57th Parliament, CSS Committee, August 2021, p. 27-28.

Cognate Debate

These Bills, both concerned with the rights of renters in Queensland, have been considered in parallel through the committee inquiry and there is good reason for them to be debated in cognate. Most of the evidence given at hearings and in submissions has addressed both Bills, reflecting the different policy approaches, priorities and outcomes that would result from each Bill, and it will be impractical to consider the evidence on one without addressing the other.

Further, the passage of the Government Bill will likely render much of the Tenants' Rights Bill out of order under the Standing Orders (as per SO87. Same question not to be again proposed). If it is to proceed with the Government Bill, which we know will be largely ineffective in addressing the issues facing Queensland renters, the Government should at least provide opportunity for the Parliament to debate the alternative approach proposed in the Tenants' Rights Bill - an approach that more fully reflects the desperate need for genuine reform of Queensland's residential tenancy laws.

Recommendation 3. The Queensland Greens recommend that the Legislative Assembly debate these two bills in cognate, commensurate with the Committee's decision to consider their respective inquiries in parallel.

Conclusion

This moment represents a unique opportunity to improve housing fairness for the many Queenslanders who rent. As we start to recover from the shocks caused by the COVID-19 pandemic, the housing market is getting tighter and more expensive, risking a deepening of the housing crisis that Queensland already faces. Do we want a Queensland where it's easier for a few to hoard properties than it is for many to get a rental property? The Queensland Greens reject this dystopian vision, and will keep working to ensure housing justice for all Queenslanders.

A handwritten signature in black ink, appearing to read 'MB', with a long horizontal flourish extending to the right.

Michael Berkman MP

Member for Maiwar

Appendix 1



Office of the
Minister for Communities and Housing
Minister for Digital Economy
Minister for the Arts

Our reference: MN05164-2021

3 August 2021

1 William Street
Brisbane Queensland
GPO Box 806 Brisbane
Queensland 4001 Australia
T: +617 3719 7170
E: communitiesandhousing@ministerial.qld.gov.au

Thank you for your campaign submission regarding Queensland rental law reform.

The Palaszczuk Government is committed to rental law reform that provides better protections for renters and rental property owners and improves stability in the rental market.

The Palaszczuk Government has introduced the Housing Legislation Amendment Bill 2021, which will progress Stage 1 rental law reform informed by consultation with the public and key stakeholders.

The first stage of the legislative reform process aims to strengthen laws to ensure safety, security and certainty for all Queenslanders in the rental market by:

- ending without-grounds eviction and providing appropriate approved reasons to end a tenancy
- making it easier for renters to have a pet by requiring owners to have a prescribed reason to refuse and allowing approval to be subject to conditions
- ensuring renters have confidence their rental property is safe, secure and functional by prescribing Minimum Housing Standards
- ensuring people experiencing domestic and family violence have options to end a tenancy with limited liability for end of lease costs.

A comprehensive analysis of options considered for rental law reform in Queensland, including reforms implemented in the Government Bill, is provided in the Decision Regulatory Impact Statement available at chde.qld.gov.au/about/initiatives/rental-law-reform.

The Palaszczuk Government recognises that maintaining supply is important to ensure Queenslanders continue to have access to safe and secure housing in the private rental market.

Elements of the Greens' Private Member's Bill (the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021), including the proposal that an owner would not be able to end a tenancy at the conclusion of the lease, are in breach of Queensland's Human Rights Act and will lead to a reduced supply in the rental market.

The Palaszczuk Government will ensure that laws provide a strong, balanced approach that protects the rights of renters and lessors, while improving stability in the rental market.

The Palaszczuk Government's Housing Legislation Amendment Bill 2021 has been referred to the Community Support and Services Committee and will undertake a rigorous process of review before it reports back to Parliament on 16 August 2021. All Queenslanders are encouraged to follow the discussion on this topic. More information on the Housing Legislation Amendment Bill 2021 is available online at: www.parliament.qld.gov.au/work-of-committees/committees/CSSC.

I encourage you to contact your local Housing Service Centre if you need help with your current housing situation or information about the range of housing assistance offered through the Department of Communities, Housing and Digital Economy.

To contact a Housing Service Centre visit online at www.qld.gov.au/housing/public-community-housing/housing-service-centre or call 13QGOV (13 7468).

Yours sincerely



Angus Sutherland
Senior Policy Advisor
Office of the Minister for Communities and Housing
Minister for Digital Economy and Minister for the Arts

