



# **Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021**

**Report No. 8, 57th Parliament  
Community Support and Services Committee  
August 2021**

## **Community Support and Services Committee**

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### **Acknowledgements**

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

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## Abbreviations

APSAA	Asia Pacific Student Accommodation Association
ARAMA	Australian Resident Accommodation Managers' Association
Bill	Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021
CHIA Queensland	Community Housing Industry Association Queensland
committee	Community Support and Services Committee
CPI	Consumer price index
ECHR	European Convention on Human Rights
Government Bill	Housing Legislation Amendment Bill 2021
HRA	<i>Human Rights Act 2019</i>
LSA	<i>Legislative Standards Act 1992</i>
NAHP	National Affordable Housing Providers Ltd
NRAS	National Rental Affordability Scheme
PBSA	Purpose built student accommodation
POAQ	Property Owners' Association of Queensland Inc
QCAT	Queensland Civil and Administrative Tribunal
REEA	Real Estate Excellence Academy
REIQ	Real Estate Institute Queensland
RTA	Residential Tenancies Authority
RTRA Act	<i>Residential Tenancies and Rooming Accommodation Act 2008</i>
SAA	Student Accommodation Association
UDIA	Urban Development Institute of Australia Queensland
Victorian Charter	<i>Victorian Charter of Human Rights and Responsibilities Act 2006</i>



## Chair's foreword

This report presents a summary of the Community Support and Services Committee's examination of the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other 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*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and appeared at the committee's public hearing. I also thank the Member for South Brisbane, the Department of Communities, Housing and Digital Economy and our Parliamentary Service staff.

I commend this report to the House.



**Corrine McMillan MP**

Chair

## Recommendations

### Recommendation 1

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The committee recommends that the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021 not be passed.

## 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.<sup>1</sup>

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.<sup>2</sup>

The Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021 (Bill) was introduced into the Legislative Assembly and referred to the committee on 26 May 2021. The committee was required to report to the Legislative Assembly by 26 November 2021.

### 1.2 Policy objectives of the Bill

The explanatory notes state that the objective of the Bill is to improve rights for renters in Queensland, address rental affordability concerns and improve access to safe and secure housing.<sup>3</sup> The Bill aims to achieve its policy objectives by amending the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act) to:

- improve lease security by removing the ability for 'no grounds' evictions or evictions for sale contract by the lessor, and replacing these provisions with two new grounds for a notice to leave, being:
  - occupation by the property owner or the owner's close relative, and
  - major renovations to be made to the property
- vary minimum notice periods for a notice to leave, including:
  - 6 months' notice for owner/relative occupation and major renovations
  - 2 months' notice for ending of employment entitlement, and
  - 6 months' notice for ending of accommodation or housing assistance
- create an offence for lessors who issue a notice to leave on false grounds

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<sup>1</sup> *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

<sup>2</sup> *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019*, ss 39, 40, 41 and 57.

<sup>3</sup> Explanatory notes, p 1.

- ensure certain inclusions in regulations made regarding minimum standards for rental homes
- require lessors or lessors' agents to provide more comprehensive information about the property to prospective tenants
- remove the lessor or lessors' agents ability to ask inappropriate rental application questions of prospective tenants
- remove the lessor or lessors' agents ability to accept rent bids from prospective tenants
- limit rent increases to once every 24 months and by no more than consumer price index (CPI) per year, including if there is a period for which the property is not rented or if current tenants move out and new tenants enter on a new lease
- give tenants the right to keep a pet unless the lessor applies successfully to the Queensland Civil and Administrative Tribunal (QCAT) for an order refusing the pet on reasonable grounds
- allow tenants to make minor modifications to a rental property without first obtaining the landlord's consent
- improve tenant privacy by increasing notice periods for entry to the premises
- provide for the prompt forwarding of water bills by lessors where a tenant is required to pay for water consumption charges, and
- remove the ability for a lessor to remove a resident under a rooming accommodation agreement without a QCAT order, to bring the rights of tenants in rooming accommodation in line with tenant's rights in other residential rental accommodation.

The Bill also makes consequential amendments to the *Police Powers and Responsibilities Act 2000*.<sup>4</sup>

### **1.3 Housing Legislation Amendment Bill 2021**

On 18 June 2021 the Hon Leeanne Enoch MP, Minister for Communities, Housing and Digital Economy, introduced the Housing Legislation Amendment Bill 2021 (Government Bill) into the Legislative Assembly. The committee was required to report on the Government Bill by 16 August 2021.<sup>5</sup>

The Government Bill's objective is to deliver key elements of the government's *Queensland Housing Strategy 2017 – 2027* by amending the RTRA Act, and other relevant legislation, 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

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<sup>4</sup> Explanatory notes, pp 3-4.

<sup>5</sup> On 27 July 2021, the Committee of the Legislative Assembly advised that it had, following a request from the committee, resolved to extend the reporting date for the Government Bill from 6 August 2021 to 16 August 2021, in accordance with Standing Order 136(3).

- 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 *Retirement Villages Act 1999*.<sup>6</sup>

#### **1.4 Private Member Consultation on the Bill**

The explanatory notes state that the Member for South Brisbane developed the proposed amendments in the Bill based on stakeholder and community feedback, including consultation with Tenants Queensland, Anglicare Australia and the Queensland Council of Social Service. The development of the Bill was also informed by the publicly available results of the Government's *Open Doors to Renting Reform* consultation process.<sup>7</sup>

#### **1.5 Inquiry process**

On 8 June 2021, the committee invited stakeholders and subscribers to make written submissions on the Bill.

The committee received a public briefing about the Bill from the Member for South Brisbane on 14 June 2021. A transcript is published on the committee's web page; see Appendix B for a list of attendees at the public briefing. The committee also received written advice from the Member for South Brisbane in response to matters raised in submissions.

Following the introduction of the Government Bill on 18 June 2021, the committee resolved to align the key dates in relation to its examination of the Bill and Government Bill, including the deadline for submissions, the public hearing held on 20 July 2021 (see Appendix C for a list of witnesses) and the reporting date for the Bills.

The submissions, correspondence from the Member for South Brisbane and transcripts of the briefing and hearing are available on the committee's webpage.

#### **1.6 Should the Bill be passed?**

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including the policy objectives it intends to achieve, and consideration of the information provided by the Member for South Brisbane and submitters, the committee recommends that the Bill not be passed.

The committee acknowledges the important issues that the Bill seeks to address, including rental affordability and improving access to safe and secure housing in Queensland. The committee considers, however, that the Government Bill strikes a more appropriate balance between the often conflicting rights and needs of tenants, lessors, property owners and property managers.

The committee understands that the government has indicated that some of the issues raised in the Bill, and the submitters' comments on those issues, will be considered as part of stage 2 of its renting reforms.

##### **Recommendation 1**

The committee recommends that the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021 not be passed.

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<sup>6</sup> Government Bill, explanatory notes, pp 2 and 5.

<sup>7</sup> Explanatory notes, p 5.

## 2 Examination of the Bill

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

Many of the issues identified in the Bill were also considered in detail during the committee's consideration of the Government Bill. The committee reported separately on the Government Bill. The committee's report on the Government Bill provides additional detail on the issues considered.

### 2.1 Background to the Bill

At the public briefing, the Member for South Brisbane stated that she introduced the Bill to improve rights for renters, improve housing affordability and improve access to secure housing for tenants in Queensland.<sup>8</sup>

The explanatory notes state that the Bill '... is introduced in the context of a growing rental crisis in Queensland'.<sup>9</sup>

According to the Australian Bureau of Statistics housing occupancy figures, approximately 36 per cent of Queensland households rent their home.<sup>10</sup> Over the last quarter, Queensland's relative attractiveness as a place to live and work has led to the highest net interstate migration of any Australian state. Queensland's interstate migration rate is now at a 20-year high and this has contributed to an increase in house prices and rents.<sup>11</sup>

The Member for South Brisbane stated that:

Right now, the situation for renters is becoming more and more dire. A year ago, when COVID-19 hit, the government responded quickly by committing to measures to ensure renters were not left out in the cold by the looming economic crisis. Ultimately, many of these measures were heavily modified in light of a campaign by the Real Estate Institute of Queensland, REIQ, and other real estate advocates. As Queensland has started to recover from COVID-19, we have seen how our state's housing market has become increasingly squeezed as investors take advantage of low interest rates and grant schemes like the federal government's HomeBuilder and as our state becomes more attractive to interstate buyers in a world changed by the pandemic. As a result, the housing market has become incredibly competitive and the rental system is stretched to its absolute capacity. In Brisbane, vacancy rates are as low as 1.5 per cent.<sup>12</sup>

At the public briefing, the Member for South Brisbane advised that:

For people on JobSeeker or DSP [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, with some waiting for years; rising levels of housing stress among people paying a mortgage; critical levels of housing debt; and rising numbers of people who are homeless, most notably the growing rates among women over 50. Of course, many of these issues are outside of the scope of this bill, but transforming our rental system is a crucial part of tackling the housing crisis here in Queensland.<sup>13</sup>

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<sup>8</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, p 2.

<sup>9</sup> Explanatory notes, p 1.

<sup>10</sup> Australian Bureau of Statistics, 2019, Housing Occupancy and Costs, 2017-18, cat. No. 4130.0.

<sup>11</sup> Deloitte Access Economics, Updated economic analysis of Queensland residential renting reforms, June 2021, pp. 8, 11.

<sup>12</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, pp 1 and 2.

<sup>13</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, p 2.

The Member for South Brisbane stated that 'The bill makes a number of critical changes to our rental system to correct the massive power imbalance that currently faces tenants'.<sup>14</sup>

## 2.2 Summary of submitters' views

The committee received a significant number of submissions from industry and professional associations, advocacy groups and individual tenants, lessors and property managers. The committee also received nine form submissions. In total, the committee received over 2,300 submissions to its inquiries on the Bill and Government Bill, demonstrating the significant interest in the issue of rental reform in Queensland.

In general, the views of submitters were polarised between tenants and tenants' advocacy groups, who supported the Bill, and rental industry and professional associations, individual lessors and property managers who opposed the Bill.

Tenants Queensland, and a significant number of submissions from individual tenants, supported all, or some, of the provisions in the Bill. In summary, submitters who supported the Bill considered that it would:

- provide tenants with long-term security in their homes without the risk of an unfair eviction at the end of their lease
- allow tenants to make minor modifications
- ban agents and property owners from accepting an amount above the advertised rent for a property
- expand minimum housing standards to include ventilation, cleanliness and insulation
- prevent unreasonable rent increases by linking rent increases to general inflation
- ensure prospective tenants have fair and honest information about the property
- ban inappropriate or discriminatory questions be asked by lessors, and
- make it easier for tenants to have pets.<sup>15</sup>

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<sup>14</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, p 2.

<sup>15</sup> See, for example, submissions 19 to 27, 29 to 117, 119, 120, 122 to 125, 127 to 153, 155, 156, 158 to 169, 172 to 229, 231, 232, 234 to 251, 253 to 365, 367 to 377, 379 to 413, 415 to 420, 422 to 424, 426 to 433, 436, 438 to 443, 445, 446, 448 to 455, 457 to 473, 475, 478 to 485, 487 to 490, 492 to 499, 501, 503 to 521, 523 to 526, 528 to 534, 535, 537 to 548, 551 to 553, 555 to 557, 559, 560, 565, 568, 570, 572, 573, 576 to 581, 583, 585, 587, 588, 590, 597, 600 to 606, 615, 618 to 621, 623, 628, 629, 632, 634, 637, 640 to 644, 648, 650, 651, 653, 654, 658, 660, 662, 665 to 667, 669, 670, 672 to 676, 678, 680, 681, 683 to 685, 687 to 690, 692, 696, 698 to 702, 723, 736, 737, 744, 746, 748, 749, 751 to 758, 760 to 764, 770, 772, 774, 776, 777, 780, 782, 784, 786 to 789, 792 to 795, 797, 799 to 802, 804 to 809, 811 to 813, 815 to 825, 832 to 835, 837, 839, 840, 842 to 844, 848, 850, 869, 871 to 873, 877 to 880, 882, 883, 885, 886, 888 to 890, 896, 900 and Form Submissions B and C.

The Real Estate Institute Queensland (REIQ), and a significant number of submissions from individual lessors and property managers opposed the Bill.<sup>16</sup> The REIQ considered that 'The reforms proposed in this Bill are extreme and, if passed, would have adverse consequences for the Queensland property sector as a whole, and specific consequences for the rental sector'.<sup>17</sup> The REIQ stated that the Bill:

- has limited appreciation of the nature of real estate and its relationship to Queensland's social and economic wellbeing
- ignores or neglects commercial and practical reality, as it purports to impose regulatory controls on factors that have, and should always, be left to the market
- focusses solely on tenants' rights and lacks any balance or recognition of the rights of property owners, and
- ignores established legal principles and requirements.<sup>18</sup>

Submitters, including the REIQ and Property Owners' Association of Queensland Inc (POAQ), stated that the proposed amendments would destabilise the Queensland rental market, with lessors and property owners considering selling their rental properties. REIQ referred to the results of a survey it had conducted in 2019 to support its views.<sup>19</sup> Such submitters considered that this would significantly reduce the number and quality of available rental properties and result in rent increases.<sup>20</sup> This assertion was disputed, however, by Tenants Queensland who advised that 'There is no evidence to support claims that tenancy law changes will see investors exit the market'.<sup>21</sup> At the public hearing, Tenants Queensland tabled a research paper to support its view.<sup>22</sup>

Several industry and professional associations, such as POAQ, Urban Development Institute of Australia (UDIA), Australian Resident Accommodation Managers' Association (ARAMA), Student Accommodation Association (SAA) and Caravanning Queensland also opposed the Bill.<sup>23</sup>

The committee thanks the individual tenants and lessors who shared their stories and personal experiences of the rental sector in Queensland in their submissions. In their submissions, individuals highlighted a number of issues, including:

- treatment by landlords and property managers
- repair and maintenance issues and poor standard of rental accommodation
- the availability of affordable rentals
- uncertainty caused by the threat of a no-ground eviction and fear of retaliation
- the inability to keep a pet or make minor modifications to homes

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<sup>16</sup> See, for example, submissions 1, 4, 5, 8, 9, 10, 13, 28, 121, 170, 171, 233, 252, 366, 378, 456, 474, 491, 527, 549, 550, 558, 561 to 563, 564, 567, 569, 571, 574, 575, 584, 586, 589, 591 to 593, 595, 596, 598, 607, 609, 610 to 614, 616, 617, 622, 624 to 626, 631, 635, 645, 647, 649, 657, 661, 663, 671, 679, 682, 695, 703, 704, 731, 735, 739, 743, 745, 750, 759, 769, 771, 773, 778, 785, 790, 791, 796, 814, 827, 829, 831, 838, 847, 849, 851 to 854, 856, 862, 864, 866, 870, 881, 884, 897 and Form Submissions A, D, E, F, G, H and I.

<sup>17</sup> REIQ, submission 661, p 11.

<sup>18</sup> REIQ, submission 661, p 1.

<sup>19</sup> REIQ, public hearing transcript, Brisbane, 20 July 2021, p 39.

<sup>20</sup> See, for example, submissions 582 and 661.

<sup>21</sup> Tenants Queensland, public hearing transcript, Brisbane, 20 July 2021, p 3.

<sup>22</sup> Tabled document, public hearing, 20 July 2021, titled 'Tenants Queensland Inc, Residential Tenancy Law & Residential Rental Investment – Evidence on Tenancy Law Reform and the Risk of Disinvestment in Residential Rental Property, An updated review, October 2018.

<sup>23</sup> Submissions 582, 652, 719, 721 and 722a.

- bond claim issues
- the impact Queensland's rental system has had on mental health, and
- the impact evictions, instability, rent increases and poor quality housing has on families.<sup>24</sup>

### 2.3 Ending tenancy agreements

The Bill would remove the ability for lessors to issue a tenant with a notice to leave a premises 'without grounds' or due to the lessor entering into a contract to sell the premises with vacant possession. Instead, the Bill provides for the following two grounds for a lessor to issue a notice to leave. If the lessor requires the premises for the purpose of:

- the lessor, or a close relative of the lessor, occupying the premises for a period of not less than one year (occupation by lessor), or
- carrying out renovations or repairs that will make the premises completely, or partly, unfit to live in for a period of not less than six weeks (major renovation). In these circumstances, the lessor must offer another agreement to the tenant for the property after the renovations or repairs have been completed.<sup>25</sup>

The Bill would also create an offence, attracting a maximum penalty of 50 penalty units, prohibiting a lessor from giving a tenant a notice to leave the premises, unless the lessor believes on reasonable grounds that they may give the notice.<sup>26</sup>

The Bill also proposes to amend the current minimum notice periods for the issuing of a notice to leave. For example, the Bill amends the RTRA Act to provide that the lessor must give the tenant six months' notice to leave because of occupation by the lessor or major renovations.<sup>27</sup>

#### 2.3.1 *Submitters' views and Member for South Brisbane's response*

Industry and professional associations including REIQ, POAQ and UDIA, and individual lessors, opposed the proposed amendments.<sup>28</sup>

UDIA commented that the proposals '... would conflict with and reduce existing Australian contract law around the contractual rights of property owners'. UDIA considered this '... would impact rental owner certainty and disincentive investment in housing at a time when additional housing is urgently required to address the severe undersupply of rental accommodation'.<sup>29</sup>

REIQ considered that the proposed amendments undermine the fundamental principle of contract and tenancy law that each party agree to a certain set of terms and conditions, including a fixed term during which those terms and conditions apply. REIQ stated that the Bill would 'abolish a lessor's right to choose not to renew the agreement' and that:

A lessor compelled to offer a tenancy agreement in which there is no opportunity for them to not renew beyond any stated term is, in effect, offering a perpetual lease that may only be ended by the tenant if and when they choose to do so.<sup>30</sup>

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<sup>24</sup> Member for South Brisbane, correspondence, 26 July 2021, pp 3-5.

<sup>25</sup> Bill, cl 26, 27, 28, 31 and 32.

<sup>26</sup> Bill, cl 27.

<sup>27</sup> Bill, cl 29 and 30.

<sup>28</sup> See, for example, submissions 10, 16, 17, 474, 550, 563, 582, 591, 661, 721, 722a, 743, 745, 750 and Form Submissions A, D, G and H.

<sup>29</sup> UDIA, submission 722a, p 2.

<sup>30</sup> REIQ, submission 661, p 3.

At the public hearing, the Queensland Law Society stated that the proposed amendments are

... inconsistent with fundamental principles of freedom to contract. We think it would undermine the very notion of a fixed-term tenancy.

...

The idea that when your contract is up you cannot end the contractual relationship is quite inconsistent with how the law of contract operates generally.<sup>31</sup>

One lessor queried 'What is the point of entering into a contract with an expiry date, if you cannot terminate on this date?'<sup>32</sup> Another lessor commented that tenants who refuse to sign a new lease would automatically change to a periodic tenancy, and the lessor or owner would have no means to remove the tenant.<sup>33</sup>

REIQ raised similar concerns about the removal of a lessor's right to end a periodic tenancy agreement 'without grounds'. REIQ considered that the creation of in perpetuity leases, with unilateral termination rights for tenants, would create a registerable interest over the property. In REIQ's view, this would lead to expensive and complicated registration requirements, potentially complicate the owner's ability to sell the property and frustrate efforts to obtain finance to purchase properties.<sup>34</sup>

In addition, REIQ considered that the proposed amendments would place further pressure on Residential Tenancies Authority (RTA) and QCAT due to an increase in disputes between tenants and lessors. REIQ also considered that, under the proposals, tenants with less strong rental histories and less stable incomes would find it hard to find a rental property, as lessors would put in place more stringent processes due to fears that lessors would be accepting 'tenants for life'.<sup>35</sup>

National Affordable Housing Providers Ltd (NAHP) raised concerns that the removal of 'without grounds' notices to leave would leave National Rental Affordability Scheme (NRAS) providers and owners with no mechanism to remove an ineligible tenant, which would result in the loss of the subsidy to the provider or owner.<sup>36</sup> ARAMA raised similar concerns that the proposal '... would allow a tenant to remain in a tenancy indefinitely and for as long as they wish'.<sup>37</sup>

The Real Estate Excellence Academy (REEA) raised concerns that an unintended consequence of the proposals was the impact on a lessor's insurance and risk. REEA, and others, advised that most landlord insurance policies provide no, or limited coverage, for periodic tenancies.<sup>38</sup>

SAA and the Asia Pacific Student Accommodation Association (APSAA) opposed the proposals.<sup>39</sup> APSAA considered that the restrictions on lessors evicting lessees 'without grounds' was not appropriately balanced. APSAA noted that lessees in student accommodation would be able to leave 'without grounds' and very minimal notice, which would undermine lease security for student accommodation providers.<sup>40</sup>

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<sup>31</sup> Queensland Law Society, public hearing transcript, Brisbane, 20 July 2021, p 24.

<sup>32</sup> Eoin Hickey, Submission 16, p 1.

<sup>33</sup> Keith Martin, Submission 607.

<sup>34</sup> REIQ, submission 661, p 4.

<sup>35</sup> REIQ, submission 661, p 6.

<sup>36</sup> NAHP, submission 709, p 2.

<sup>37</sup> ARAMA, submission 652, p 1.

<sup>38</sup> REEA, submission 121, p 3 AND submissions 170, 571, 575, 584, 586, 589, 592, 593, 596, 609, 612, 613, 624, 647, 682, 731, 735, 759 and Form Submissions F and G.

<sup>39</sup> Submissions 718 and 721.

<sup>40</sup> APSAA, submission 718, p 2.

Tenants Queensland, and a significant number of individual tenants, supported clauses 26 and 27 of the Bill.<sup>41</sup> Tenants Queensland considered that the proposals limited the reasonable grounds for a lessor ending a tenancy agreement and does not open up loopholes in those grounds. Tenants Queensland also supported the proposal to insert new section 292A into the RTRA Act to provide that a lessor may not give a tenant a notice to leave without reasonable grounds.<sup>42</sup>

At the public hearing, Tenants Queensland stated that it did not agree with arguments that removing end of a fixed term or no-fault ground evictions impinges on a lessor's liberty and flexibility of their commercial rights. Tenants Queensland stated:

It is appropriate to impose restrictions on landlords having unfettered rights to terminate a lease because tenants face higher risks than lessors. In this regard, residential tenancy differs and should appropriately differ from contract law as it deals with households rather than commercial parties.<sup>43</sup>

The Member for South Brisbane stated that:

The provisions in my bill which operate to remove no-grounds evictions would ensure that people can enjoy security in their homes, and would ensure that no one is evicted in such a situation.<sup>44</sup>

And

... removing no-grounds evictions is a key issue in terms of people's long-term security in their homes. People are able to be evicted if the house is for sale, they are able to be evicted at the end of a lease for no reason or they can be forced to leave because the rents have increased beyond what they are able to afford. You have those people re-entering the rental market and competing, often with thousands of other people, when they could have been kept safe in their homes.<sup>45</sup>

In relation to lessors wishing to sell their rental properties, the Member for South Brisbane stated:

In most cases, landlords will want to sell the house as vacant so tenants will be evicted. Often times those homes are then bought by other investors and put back on the rental market. That is unnecessary. People could have stayed in their homes over that period and had that security.<sup>46</sup>

...

This measure [in the Bill] would mean that, as a house is sold, people would be able to stay in their homes and have that security of tenure. If the new owner wants to live in the property, we have put provisions in place for extended notice periods. If someone is coming to live in the house for more than a year, there would be a six-month notice period and then the landlord or their family member would be able to live there.<sup>47</sup>

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<sup>41</sup> See, for example, submissions 19 to 27, 29 to 117, 119, 120, 122 to 125, 127 to 153, 155, 156, 158 to 169, 172 to 229, 231, 232 234 to 251, 253 to 365, 367 to 377, 379 to 413, 415 to 420, 421 to 424, 426 to 433, 436, 438 to 443, 445, 446, 448 to 455, 457 to 473, 475, 478 to 485, 487 to 490, 492 to 499, 501, 503 to 521, 523 to 526, 528 to 534, 535, 537 to 548, 551 to 553, 555 to 557, 559, 560, 565, 568, 570, 572, 573, 576 to 581, 585, 587, 590, 597, 600 to 606, 615, 618 to 621, 623, 628, 629, 632, 634, 637, 640 to 644, 648, 650, 651, 653, 654, 658, 660, 662, 665 to 667, 669, 670, 672 to 676, 678, 680, 681, 683 to 685, 687 to 690, 692, 696, 698 to 702, 723, 736, 737, 744, 746, 748, 749, 751 to 758, 760 to 764, 770, 772, 774, 776, 777, 780, 782, 784, 786 to 789, 792 to 795, 797, 799 to 802, 804 to 809, 811 to 813, 815 to 825, 832 to 835, 837, 839, 840, 842 to 844, 848, 850, 869, 871 to 873, 877 to 880, 882, 883, 885, 886, 888 to 890, 896, 900 and Form Submissions B and C.

<sup>42</sup> Tenants Queensland, submission 723, p 13.

<sup>43</sup> Tenants Queensland, public hearing transcript, Brisbane, 20 July 2021, p 3.

<sup>44</sup> Member for South Brisbane, correspondence, 26 July 2021, p 12.

<sup>45</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, p 4.

<sup>46</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, p 5.

<sup>47</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, p 5.

## 2.4 Minimum housing standards

The Bill amends the RTRA Act to provide that regulations made about prescribed minimum housing standards must cover the following matters:

- 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.<sup>48</sup>

### 2.4.1 Submitters' views and Member for South Brisbane's response

A number of individual tenants and lessors, supported the proposals, in particular, the inclusion of minimum standards for ventilation, cleanliness and insulation.<sup>49</sup> The Queenslanders with Disability Network considered that 'We would see savings particularly in other sectors if people's needs around their disability or their mental health were addressed'.<sup>50</sup>

REIQ, and other submitters, supported the introduction of minimum housing standards for rental properties that relate to health and safety and security matters. However, they did not support the introduction of minimum standards for matters, such as lighting, energy efficiency, ventilation and insulation and room dimensions, as proposed in the Bill.<sup>51</sup>

POAQ and UDIA did not support the Bill's proposals in relation to minimum housing standards.<sup>52</sup> POAQ considered that the RTRA Act already covered this issue and noted that all properties when

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<sup>48</sup> Bill, cl 6.

<sup>49</sup> See, for example, submissions 19 to 27, 29 to 117, 119, 120, 122 to 125, 127 to 153, 155, 156, 158 to 169, 172 to 229, 231, 232, 234 to 251, 253 to 365, 367 to 377, 379 to 413, 415 to 420, 421, 422 to 424, 426 to 433, 436, 438 to 443, 445, 446, 448 to 455, 457 to 473, 475 to 485, 487 to 490, 492 to 499, 501, 503 to 521, 523 to 526, 528 to 534, 537 to 548, 551 to 553, 555 to 557, 559, 560, 565, 568, 570, 572, 573, 576 to 581, 585, 587, 590, 597, 600 to 606, 615, 618 to 621, 623, 628, 629, 632, 634, 637, 640 to 644, 648, 650, 651, 653, 654, 658, 660, 662, 665 to 667, 669 to 670, 672 to 676, 678, 680, 681, 683 to 685, 687 to 690, 692, 696, 698 to 702, 736, 737, 744, 746, 748, 749, 751 to 758, 760 to 764, 770, 772, 774, 776, 777, 780, 782, 784, 786 to 789, 792 to 795, 797, 799 to 802, 804 to 809, 811 to 813, 815 to 825, 832 to 835, 837, 839, 840, 842 to 844, 848, 850, 869, 871 to 873, 877 to 880, 882, 883, 885, 886, 888 to 890, 896, 900 and Form Submission B.

<sup>50</sup> Queenslanders with Disability Network, public hearing transcript, Brisbane, 20 July 2021, p 13.

<sup>51</sup> REIQ, public hearing transcript, Brisbane, 20 July 2021, p 38; REIQ, submission 661, p 7 and Form Submissions D and H.

<sup>52</sup> See, for example, submissions 378, 582, 561, 562, 563, 591, 778 and 722a.

constructed are built to the minimum standard at the time of construction, eg dimensions of rooms, ventilation and insulation.<sup>53</sup>

In relation to the introduction of minimum housing standards, the Member for South Brisbane stated that:

We have heard so many stories from tenants who are living in subpar properties—I have mentioned some of these already—people who are living in properties that are unsafe. There was one young woman who reported that the kitchen sink was not working and she was told to just wash her dishes in the bathroom, which she had to do for months at a time while they did not have a working kitchen sink. Lots of people are dealing with air conditioning units or ceiling fans or ovens that do not work for long periods of time.

People have been injured. In the previous rental property I was in, someone put their foot through the floor at one point. Unsafe balconies is a very common bit of feedback that we get as well. People are dealing with rats and mould and the really serious health implications that come from that as well.

Implementing some minimum standards would mean that renters are able to go into a house and feel confident that that house is safe and secure and that they are not going to be at risk of any of these deficiencies in the property that can have a big impact on people's wellbeing and mental health as well.

This measure essentially moves the optional standards that are in regulation already and makes them mandatory under the act. ... We would eliminate a whole range of other issues—stress on the healthcare system and on the mental health care system—if people had these minimum standards and landlords were compelled to make sure properties were being properly maintained.<sup>54</sup>

## **2.5 Comprehensive information about the property**

The Bill would require the lessor, or lessor's agent, to provide the following information to prospective tenants:

- if the lessor has engaged an agent to sell the premises or prepared a contract of sale
- if a mortgagee has commenced a proceeding over the premises
- if the lessor is not the owner, that they have the right to let the premises
- if the premises have an embedded electricity network, and if so, the details of that network
- if there has been damp or mould on the premises within the last 3 years, and
- if the lessor knows about any contamination, asbestos, development applications, building defects, safety concerns, building work disputes, or body corporate disputes related to the premises.<sup>55</sup>

### **2.5.1 Submitters' views and Member for South Brisbane's response**

Tenants Queensland, and others, supported the proposal to introduce requirements for lessors to disclose material facts to prospective tenants and residents.<sup>56</sup>

POAQ, and other lessors, opposed the proposal in the Bill, noting that while under the Bill lessors would be prohibited from requesting certain information from prospective tenants, new section 57C of the RTRA would require lessors to disclose private information to tenants.<sup>57</sup>

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<sup>53</sup> POAQ, submission 582, p 1.

<sup>54</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, p 7.

<sup>55</sup> Bill, cl 8, inserts new section 57C into the RTRA Act; explanatory notes, p 8.

<sup>56</sup> Tenants Queensland, submission 723, p 33; submissions 421 and 476.

<sup>57</sup> POAQ, submission 582, p 1.

The Mareeba Community Housing Company raised concerns that the requirement to provide the personal and financial information of the property owner to the tenant is an infringement of the rights of the lessor and of no substance in the agreement between the agent, owner, and tenant.<sup>58</sup>

## **2.6 Prohibition on inappropriate rental application questions**

The Bill would prohibit the lessor, or lessor's agent, requesting the following information from a prospective tenant:

- whether or not the applicant has previously taken legal action, been a respondent to legal action, or has had a dispute with a lessor
- bond history, including whether or not they have had a claim made on their bond
- passport details, if they have provided other evidence of identity
- an unredacted bank statement, or
- residency status or nationality details, unless these are needed for a social housing service or NRAS assessment.<sup>59</sup>

### **2.6.1 Submitters' views**

Tenants Queensland, and individual tenants, supported the proposals to prohibit lessors from asking inappropriate and discriminatory questions, noting that it was aware of application processes which ask 'very intrusive and unreasonable questions'.<sup>60</sup> Tenants Queensland considered that regulating what information may be requested is a positive step and noted that this approach had recently been adopted in Victoria.<sup>61</sup>

NAHP and Community Housing Industry Association Queensland (CHIA Queensland) raised concerns about the proposal to prohibit a lessor, or lessor's agent, requesting unredacted bank statements.<sup>62</sup> NAHP advised that bank statements are often used as a form of income verification by tenants to establish their NRAS eligibility.

The NAHP, therefore, recommended that the Bill be amended to prohibit lessors requesting 'a statement from a prospective tenant's financial institution account from which information about daily transactions has not been redacted, other than if the information is required to assess the prospective tenant's eligibility for a social housing service or NRAS'.<sup>63</sup>

CHIA Queensland stated that for tenants who work in the 'gig economy', where traditional methods of verifying income, eg payslips, are not an option, the most assured way of confirming eligibility for

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<sup>58</sup> Mareeba Housing Company, submission 14, p 1.

<sup>59</sup> Bill, cl 8 inserts new section 57B into the RTRA Act.

<sup>60</sup> See, for example, submissions 19 to 27, 29 to 117, 119, 120, 122 to 125, 127 to 153, 155, 156, 158 to 169, 172 to 229, 231, 232, 234 to 251, 253 to 365, 367 to 377, 379 to 413, 415 to 420, 421 to 424, 426 to 433, 436, 438 to 443, 445, 446, 448 to 455, 457 to 473, 475, 476, 478 to 485, 487 to 490, 492 to 499, 501, 503 to 521, 523 to 526, 528 to 534, 535, 537 to 548, 551 to 553, 555 to 557, 559, 560, 565, 568, 570, 572, 573, 576 to 581, 585, 587, 590, 597, 600 to 606, 615, 618 to 621, 623, 628, 629, 632, 634, 637, 640 to 644, 648, 650, 651, 653, 654, 658, 660, 662, 665 to 667, 669 to 670, 672 to 676, 678, 680, 681, 683 to 685, 687 to 690, 692, 696, 698 to 702, 723, 736, 737, 744, 746, 748, 749, 751 to 758, 760 to 764, 770, 772, 774, 776, 777, 780, 782, 784, 786 to 789, 792 to 795, 797, 799 to 802, 804 to 809, 811 to 813, 815 to 825, 832 to 835, 837, 839, 840, 842 to 844, 848, 850, 869, 871 to 873, 877 to 880, 882, 883, 885, 886, 888 to 890, 896, 900 and Form Submission B.

<sup>61</sup> Tenants Queensland, submission 723, p 37.

<sup>62</sup> Submissions 709 and 717.

<sup>63</sup> NAHP, public hearing transcript, Brisbane, 20 July 2021, p 15; NAHP, submission 709, p 2.

income-based eligibility for income-test programs, or ability to pay rent, is by examining bank account details.<sup>64</sup>

APSAA requested an exemption from the provision for student accommodation providers, as they require particular information for the provision of resident services.<sup>65</sup> Similarly, SAA stated that it was important for purpose built student accommodation (PBSA) providers to understand the nationality of their lessee students in order to provide pastoral support. SAA also noted that PBSA is generally subject to planning restrictions which require occupants to be students and, therefore, PBSA need to be able to check student identification documents.<sup>66</sup>

POAQ, and other individual submitters, opposed the provisions in the Bill, stating that the lessor or agent must have the right to request particular information from prospective tenants to ensure that they can pay the rent and have a clean rental history.<sup>67</sup>

## **2.7 Prohibiting rental bidding and limiting rent increases**

The Bill inserts a new provision into the RTRA Act to prohibit lessors, or lessors' agents, accepting amounts in rent greater than the advertised amount (also known as 'rent bidding'). Contravention of this provision would be an offence attracting a maximum penalty of 60 penalty units.<sup>68</sup>

The Bill would also limit rent increases to once every 24 months, and by no more than the CPI per year, unless the tenant agrees, including if there is a period for which the property is not rented or if current tenants move out and new tenants enter on a new lease.<sup>69</sup>

The Bill provides that the lessor may apply to QCAT for an order if they wish to increase the rent above the limit described above and the tenant does not agree to the rent increase.<sup>70</sup>

### **2.7.1 Submitters' views and Member for South Brisbane's response**

Some submitters, including individual lessors, supported the prohibition of 'rent bidding', with individuals sharing their experiences of being priced out of their homes due to rent increases.<sup>71</sup>

Other submitters opposed the changes, noting that they were inconsistent with the residential property market, which is a highly competitive and volatile market.<sup>72</sup>

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<sup>64</sup> CHIA Queensland, submission 717, p 6.

<sup>65</sup> APSAA, public hearing transcript, Brisbane, 20 July 2021, p 17; APSAA, submission 718, p 2.

<sup>66</sup> SAA, submission 721, p 6.

<sup>67</sup> POAQ, submission 582, p 1; submissions 157, 252, 491, 549, 567, 591, 796 and 864.

<sup>68</sup> Bill, cl 7, inserts new section 57(2A) into the RTRA Act.

<sup>69</sup> Bill, cl 8, 9, 10, 11, 12, 13, 14 and 15.

<sup>70</sup> Bill, cl 12 and 15.

<sup>71</sup> See, for example, submissions 3, 19 to 27, 29 to 117, 119, 120, 122 to 125, 127 to 153, 155, 156, 158 to 169, 172 to 229, 231, 232, 234 to 251, 253 to 365, 367 to 377, 379 to 413, 415 to 424, 426 to 433, 436, 438 to 443, 445, 446, 448 to 455, 457 to 473, 475, 478 to 485, 487 to 490, 492 to 499, 501, 503 to 521, 523 to 526, 528 to 534, 535, 537 to 548, 551 to 553, 555 to 557, 559, 560, 565, 568, 570, 572, 573, 576 to 581, 585, 587, 590, 597, 600 to 606, 615, 618 to 621, 623, 628, 629, 632, 634, 637, 640 to 644, 648, 650, 651, 653, 654, 658, 660, 662, 665 to 667, 669 to 670, 672 to 676, 678, 680, 681, 683 to 685, 687 to 690, 692, 696, 698 to 702, 723, 736, 737, 744, 746, 748, 749, 751 to 758, 760 to 764, 770, 772, 774, 776, 777, 780, 782, 784, 786 to 789, 792 to 795, 797, 799 to 802, 804 to 809, 811 to 813, 815 to 825, 832 to 835, 837, 839, 840, 842 to 844, 848, 850, 869, 871 to 873, 877 to 880, 882, 883, 885, 886, 888 to 890, 896, 900 and Form Submission B.

<sup>72</sup> See, for example, submissions 6, 18, 157, 230, 563, 571, 575, 591 and Form Submission A.

REEA, and others, objected to the use of the word 'rent bidding', which it considered was emotive, unjust and misused. REEA noted that section 57 of the RTRA already requires that rent be advertised at a fixed amount and prohibits the use of words such as negotiable or price ranges.<sup>73</sup>

At the public briefing, the Member for South Brisbane stated that 'Rent bidding ... is a major barrier for people who are on low income who are trying to enter the rental market'.<sup>74</sup>

Submitters, including individual lessors, CHIA Queensland and UDIA, did not support the proposals to limit rent increases to once every 24 months and by no more than CPI.<sup>75</sup>

Some submitters suggested that a shorter period, such as six or 12 months would be more appropriate.<sup>76</sup> REIQ and REEA, and others, considered that the existing provisions in the RTRA Act which provide for rent increases during fixed term agreements and periodic agreements are adequate.<sup>77</sup> REIQ also questioned the need for what it sees as 'drastic legislative intervention' given that 'for over a decade, weekly median rent rates have been largely static (in some cases for 5 successive years) or have risen modestly'.<sup>78</sup> REIQ also observed that CPI restricted rent increases disregard lessor expenses that are not aligned to CPI, eg mortgage repayments and rates, repairs and maintenance and insurance payments.<sup>79</sup>

POAQ did not support the proposal, as it considered that it takes away the lessor's rights and would lead to extra work for QCAT.<sup>80</sup> CHIA Queensland stated that:

To render social housing landlords unable to adjust rents when household incomes increases would mean that households whose income rises would continue to benefit from a concessional rent for up to two years at the expense of others seeking accommodation who are on much lower incomes. It would also impair the financial viability of community housing organisations who already operate on extremely slender margins.<sup>81</sup>

APSAA and SAA considered that the proposals were unreasonable for the student accommodation sector.<sup>82</sup> APSAA noted the current impact of the COVID-19 pandemic on student numbers, in particular from overseas, and SAA noted that rental fees in student accommodation include additional services, eg utilities, internet services and pastoral support and residential activities.<sup>83</sup>

Other submitters, including from individual tenants, supported the provisions to limit rent increases by tying them to CPI.<sup>84</sup>

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<sup>73</sup> REEA, submission 121, p 2; submission 170, 584, 586, 589, 592, 593, 596, 609, 612, 613, 624, 647, 682, 731, 735, 759, 778, 847 and Form Submissions A, F and G.

<sup>74</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, p 3.

<sup>75</sup> For example, submissions 2, 3, 6, 7, 10, 14, 15, 16, 17, 18, 28, 121, 154, 157, 170, 171, 230, 233, 378, 421, 477, 491, 536, 549, 550, 561, 562, 563, 569, 571, 575, 584, 586, 589, 591, 592, 593, 596, 607, 609, 612, 613, 624, 647, 717, 722a, 682, 731, 735, 743, 745, 750, 759, 778, 796, 847, 853, 864 and Form Submissions A, F and G.

<sup>76</sup> Submission 491.

<sup>77</sup> REEA, submission 121, REIQ, submission 66; submissions 154, 170, 589, 592, 593, 596, 609, 612, 613, 624, 647, 682, 731, 735, 759 and Form Submissions A and F.

<sup>78</sup> REIQ, submission 661, p 10.

<sup>79</sup> REIQ, submission 661, pp 10 and 11.

<sup>80</sup> POAQ, submission 582, pp 1-2.

<sup>81</sup> CHIA Queensland, submission 717, p 6.

<sup>82</sup> Submissions 718 and 721.

<sup>83</sup> APSAA, submission 718, p 2 and SAA, submission 721, pp 3 and 6.

<sup>84</sup> See, for example, submissions 19 to 27, 29 to 117, 119, 120, 122 to 125, 127 to 153, 155, 156, 158 to 169, 172 to 229, 231, 232, 234 to 251, 253 to 365, 367 to 377, 379 to 413, 415 to 420, 422 to 424, 426 to 433,

The Member for South Brisbane stated that:

The bill proposes to bring rent increases in line with inflation and curb arbitrary rent increases which are not justified by improvements to the property and ban property managers and landlords from exempting rental bids. This is crucial. Rents are increasing three times faster than wages. Over a third of Queensland renters are in housing stress, and affordability is one of the biggest issues that renters face.<sup>85</sup>

In addition, the Member for South Brisbane advised that:

One of the key things here is the introduction of measures to manage the cost of rent. This is one of the biggest issues that tenants are facing and that is a tool that the state government has in its capacity to have a big impact upon.

Other states are moving ahead with similar kinds of tools. The ACT has introduced a rent cap that is linked to CPI and we have introduced something similar here as well. What we have at the moment is a system where, as the REIQ put it, rents are just up to the ebb and flow of the market based on the number of homes that are available at any given time. That really is not acceptable for housing, which is a fundamental right. It should not just be up to the ebb and flow of the market as to whether or not you can afford to rent a home. This key measure to introduce rent caps is really a way of managing how often and by how much rents increase so that people have long-term security in their homes and families are able to budget over a long period and have that safety and security for a period.<sup>86</sup>

## 2.8 Keeping pets at a premises

The Bill provides that a tenant, or rooming accommodation resident, has the right to keep a pet at the premises, if they notify the lessor or provider, in writing, of their intention to keep the pet, unless a by-law prohibits the keeping of an animal on the premises.<sup>87</sup>

Under the Bill, a lessor or provider may apply to QCAT for an order preventing the keeping of a pet at a premises. QCAT may make an order permitting, or not permitting, the keeping of a pet. In deciding the application, QCAT may consider the following matters:

- the type of pet the tenant intends to keep at the premises
- the character and nature of the premises
- the character and nature of appliances, fixtures and fittings on the premises
- a matter prescribed by regulation, or
- any other matter QCAT considers relevant.<sup>88</sup>

Any application to QCAT must be made within 14 days of the lessor or provider receiving a notice from the tenant or resident that they wish to keep a pet at the premises. If no application is made, it is deemed that permission to keep a pet has been granted.<sup>89</sup>

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436, 438 to 443, 445, 446, 448 to 455, 457 to 473, 475, 478 to 485, 487 to 490, 492 to 499, 501, 503 to 521, 523 to 526, 528 to 534, 535, 537 to 548, 551 to 553, 555 to 557, 559, 560, 565, 568, 570, 572, 573, 576 to 581, 585, 587, 590, 597, 600 to 606, 615, 618 to 621, 623, 628, 629, 632, 634, 637, 640 to 644, 648, 650, 651, 653, 654, 658, 660, 662, 665 to 667, 669 to 670, 672 to 676, 678, 680, 681, 683 to 685, 687 to 690, 692, 696, 698 to 702, 736, 737, 744, 746, 748, 749, 751 to 758, 760 to 764, 770, 772, 774, 776, 777, 780, 782, 784, 786 to 789, 792 to 795, 797, 799 to 802, 804 to 809, 811 to 813, 815 to 825, 832 to 835, 837, 839, 840, 842 to 844, 848, 850, 869, 871 to 873, 877 to 880, 882, 883, 885, 886, 888 to 890, 896, 900 and Form Submission B.

<sup>85</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, p 2.

<sup>86</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, p 4.

<sup>87</sup> Bill, cl 20, 21, 22, 23 and 25.

<sup>88</sup> Bill, cl 20, 21, 22, 23 and 25.

<sup>89</sup> Bill, cl 20, 21, 22, 23 and 25.

### **2.8.1 Submitters' views and Member for South Brisbane's response**

A significant number of submissions from individual tenants and some lessors supported the proposals in relation to keeping pets at a premise.<sup>90</sup> Tenants Queensland supported the Bill, stating 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 specified pet type) exclusion order.<sup>91</sup>

The Queenslanders with Disability Network stated that '... pets play a really important part in people's lives and in their health and wellbeing and often do relate to helping people in their home environment'.<sup>92</sup>

Tenants Queensland also noted that 'This system, requiring the lessor to take any dispute forward to the Tribunal, is working in both Victoria and the ACT'.<sup>93</sup> The Animal Welfare League of Queensland also supported the provisions in the Bill, stating that 'Tenants must be assured by legislation that they are allowed to keep their pets provided they do so responsibly'.<sup>94</sup>

Submitters including individual lessors, property owners, REIQ, POAQ, CHIA Queensland and UDIA, did not support the proposals, with a number of submitters stating that the provisions in the Government Bill provided a more practicable and reasonable approach. Such submitters 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.<sup>95</sup>

REIQ opposed the provisions in the Bill, but stated that it supported the introduction of measures and initiatives to encourage lessors to give consent for pets, including pet bonds, increased rent and the exclusion of pet damage from 'wear and tear' provisions.<sup>96</sup>

CHIA Queensland stated that the proposals '... would create an excessive and unnecessary increase in workload for the QCAT that could be avoided by the adoption of a clear legislative framework such as that proposed in the Housing Legislation Amendment Bill 2021'.<sup>97</sup>

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<sup>90</sup> See, for example, submissions 19 to 27, 29 to 117, 119, 120, 122 to 125, 127 to 153, 155, 156, 158 to 169, 172 to 229, 231, 232, 234 to 251, 253 to 365, 367 to 377, 379 to 413, 415 to 420, 422 to 424, 426 to 433, 436, 438 to 443, 445, 446, 448 to 455, 457 to 473, 475, 478 to 485, 487 to 490, 492 to 499, 501, 503 to 521, 523 to 526, 528 to 534, 535, 537 to 548, 551 to 553, 555 to 557, 559, 560, 565, 568, 570, 572, 573, 576 to 581, 585, 587, 590, 597, 600 to 606, 615, 618 to 621, 623, 628, 629, 632, 634, 637, 640 to 644, 648, 650, 651, 653, 654, 658, 660, 662, 665 to 667, 669 to 670, 672 to 676, 678, 680, 681, 683 to 685, 687 to 690, 692, 696, 698 to 702, 736, 737, 744, 746, 748, 749, 751 to 758, 760 to 764, 770, 772, 774, 776, 777, 780, 782, 784, 786 to 789, 792 to 795, 797, 799 to 802, 804 to 809, 811 to 813, 815 to 825, 832 to 835, 837, 839, 840, 842 to 844, 848, 850, 869, 871 to 873, 877 to 880, 882, 883, 885, 886, 888 to 890, 896, 900 and Form Submissions B and C.

<sup>91</sup> Tenants Queensland, submission 723, p 25.

<sup>92</sup> Queenslanders with Disability Network, public hearing transcript, Brisbane, 20 July 2021, p 13.

<sup>93</sup> Tenants Queensland, submission 723, p 26.

<sup>94</sup> Animal Welfare League of Queensland, submission 711, p 3.

<sup>95</sup> 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 to 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.

<sup>96</sup> REIQ, submission 661, p 9.

<sup>97</sup> CHIA Queensland, submission 717, p 6.

APSA considered that, given the communal nature of student accommodation, it is not appropriate, nor expected by tenants, that pets be permitted at the PBSA.<sup>98</sup> Similarly, SAA opposed the amendments, stating that PSBA buildings are unsuitable to house pets.<sup>99</sup>

The Member for South Brisbane advised that one of the major parts of feedback in response to the Government's *Open Doors* consultation was the ability of renters to keep a pet at the premises. The Member for South Brisbane advised:

... we have a bond in place if there is any damage, but there is very little evidence to show that pets cause major damage to a home. Often people who are renting with pets are very mindful of the potential damage and are looking after those properties. A lot of these measures give people the capacity to rent long term. Renting long term and not being able to have your pet with you can be very damaging for people's wellbeing.

...

Looking at some of the data from Victoria, where this has been in place for the last 12 months-plus, there are a very small number of cases that have come to a decision in VCAT, and the majority of those were found in favour of the tenants, so people are making reasonable decisions about what sorts of conditions pets can live in. One of the interesting bits of data that has come out of Victoria is that, in those 12 months, RSPCA Victoria report that the number of animals that have been surrendered has halved, so you can see how this has really allowed people the opportunity to live with their pets. As you mentioned, often there are companion pets for people suffering mental health issues and so on.<sup>100</sup>

The Member for South Brisbane stated that there is '... evidence from Australia and abroad suggesting that pets are no more likely to cause damage to a property than tenants without pets'.<sup>101</sup>

## **2.9 Allowing tenants to make minor modifications without consent**

The Bill provides that the tenant of a premises may make minor modifications to the premises without first obtaining the lessor's consent. The term *minor modifications* is defined as:

- painting walls of the premises
- installing picture hooks or nails in the premises or resident's room
- installing furniture anchors in the premises or resident's room
- installing shelving in the premises or resident's room, or
- making any other modification to the premises or resident's room prescribed by regulation.<sup>102</sup>

### **2.9.1 Submitters' views and Member for South Brisbane's response**

Tenants Queensland, and a number of individual submitters, supported the proposal to allow tenants to undertake minor modifications without obtaining the lessor's consent.<sup>103</sup>

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<sup>98</sup> APSA, submission 718, pp 2-3.

<sup>99</sup> SAA, submission 721, p 7.

<sup>100</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, pp 6-7.

<sup>101</sup> Member for South Brisbane, correspondence, 26 July 2021, p 15.

<sup>102</sup> Bill, cl 19, 23 and 44.

<sup>103</sup> See, for example, submissions 19 to 27, 29 to 117, 119, 120, 122 to 125, 127 to 153, 155, 156, 158 to 169, 172 to 229, 231, 232, 234 to 251, 253 to 365, 367 to 377, 379 to 413, 415 to 420, 422 to 424, 426 to 433, 436, 438 to 443, 445, 446, 448 to 455, 457 to 473, 475, 478 to 485, 487 to 490, 492 to 499, 501, 503 to 521, 523 to 526, 528 to 534, 535, 537 to 548, 551 to 553, 555 to 557, 559, 560, 565, 568, 570, 572, 573, 576 to 581, 585, 587, 590, 597, 600 to 606, 615, 618 to 621, 623, 628, 629, 632, 634, 637, 640 to 644, 648, 650, 651, 653, 654, 658, 660, 662, 665 to 667, 669 to 670, 672 to 676, 678, 680, 681, 683 to 685, 687 to 690,

Submitters considered that being able to personalise and make their home safe is an important reform.<sup>104</sup> At the public hearing, the Queensland Youth Housing Coalition stated:

For young people, having their own home is a pretty big deal and it is a huge part of their income to pay for it. Making your house a home is essential for a whole host of wellbeing indicators. ... Before you leave the property, it is easy to make it not even noticed that a modification was made.<sup>105</sup>

At the public hearing, the Queenslanders with Disability Network stated that '... minor modifications is of critical importance for Queenslanders with disability who need those modifications ... not for changing the aesthetics of the property but for need around their functionality and disability needs and as a matter of safety'.<sup>106</sup> PropertySafe stated that it supported the making of modifications to help prevent injury and potentially save lives, advising 'I do not see that landlords particularly should have major concerns with minor modifications to premises, especially if it is for the wellbeing of the tenant'.<sup>107</sup>

Some lessors did not raise objections to a tenant making minor modifications to a property, without consent, so long as the tenant was required to return the property to its original condition at the end of the tenancy.

Other submitters, including REIQ, opposed the proposed amendments, with certain submitters highlighting that the painting of walls was not a minor modification and could lead to substantial costs for lessors.<sup>108</sup>

SAA and APSAA considered that it was not appropriate in a student accommodation environment for residents to be making modifications, such as painting and installing shelves.<sup>109</sup> SAA noted that rooms within PBSA buildings are created to be uniform in colour, style and layout, and any modifications to share rooms and living spaces may lead to disagreement and tension between student residents.<sup>110</sup>

Other submitters considered that the proposed amendments were too vague and did not make sufficient provisions to deal with unforeseen damage, illegal works or injury.<sup>111</sup>

REIQ stated that it would support improvements to the current process for tenants to request the approval of lessors to make minor modifications, including the introduction of reasonable timeframes for owner response times and a process which gives greater certainty to tenants.<sup>112</sup>

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692, 696, 698 to 702, 723, 736, 737, 744, 746, 748, 749, 751 to 758, 760 to 764, 770, 772, 774, 776, 777, 780, 782, 784, 786 to 789, 792 to 795, 797, 799 to 802, 804 to 809, 811 to 813, 815 to 825, 832 to 835, 837, 839, 840, 842 to 844, 848, 850, 869, 871 to 873, 877 to 880, 882, 883, 885, 886, 888 to 890, 896, 900 and Form Submissions B and C.

<sup>104</sup> Form Submission C.

<sup>105</sup> Queensland Youth Housing Coalition, public hearing transcript, Brisbane, 20 July 2021, p 20.

<sup>106</sup> Queenslanders with Disability Network, public hearing transcript, Brisbane, 20 July 2021, p 12.

<sup>107</sup> PropertySafe, public hearing transcript, Brisbane, 20 July 2021, p 46.

<sup>108</sup> See, for example, submissions 2, 3, 6, 7, 14, 15, 121, 154, 170, 171, 435, 477, 536, 549, 550, 567, 571, 575, 582, 584, 586, 589, 591, 592, 593, 596, 607, 609, 612, 613, 624, 647, 661, 682, 731, 735, 743, 745, 750, 759, 778, 796, 847, 853 and 864 and Form Submissions A, D, F, G and H.

<sup>109</sup> Submission 718 and 722.

<sup>110</sup> SAA, submission 721, p 8.

<sup>111</sup> Submissions 12, 14, 16 to 18, 28, 157, 233, 421, 491 and 836.

<sup>112</sup> REIQ, submission 661, p 8.

The Member for South Brisbane stated that 'Many people are now renting long term, and should be able to make a house feel like a home while they are living there'. The Member for South Brisbane considered that the proposed amendments would improve people's wellbeing and quality of life, particularly for:

- parents of young children to be able to install furniture anchors and baby gates
- ageing and elderly people to be able to install safety and mobility aids
- people with disability to be able to install safety and mobility aids, and
- victim/survivors of domestic violence to be able to install safety equipment.<sup>113</sup>

At the public briefing, the Member for South Brisbane stated that:

The right for tenants to make minor modifications is really important, given that so many people are renting and renting long term. Having the ability to make a home feel like your own is a really important part of people's wellbeing. Also, people have a greater sense of responsibility and ownership over that home and are likely to be looking after it more so if they are able to create that space as if it is their own. The provisions we have put in place are for people to be able to make minor modifications on both a rental property and rooming accommodation.

...

Really, given that this is your home and you are paying rent, you should be able to move ahead without getting permission. If there is any damage or things that need to be undone, there is already bond in place to amend that. Most importantly, this is about giving people dignity in their own homes.<sup>114</sup>

In addition, the Member for South Brisbane stated that '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'.<sup>115</sup>

## **2.10 Notice periods for entry to the premises**

The Bill increases the notice period for entry by the lessor for entry, other than an entry to inspect the premises (currently 7 days), from 24 hours to 48 hours.<sup>116</sup>

### **2.10.1 Submitters' views**

A number of individual submitters supported the proposal.<sup>117</sup> POAQ, and a number of individual lessors, opposed the proposed amendments.<sup>118</sup> APSAA noted that student accommodation providers undertake welfare check-ins and other safety procedures, as part of their duty of care to residents. APSAA considered that it would be impractical to undertake these checks in the proposed reduced notice periods and requested an exemption for student accommodation providers.<sup>119</sup>

## **2.11 Forwarding of water bills by lessors**

The Bill would require a lessor to forward a copy of a bill containing water charges to the tenant within one month of it being issued, when a tenant is required to pay an amount for the water consumption charges for the premises.<sup>120</sup>

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<sup>113</sup> Member for South Brisbane, correspondence, 26 July 2021, p 15.

<sup>114</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, p 6.

<sup>115</sup> Member for South Brisbane, correspondence, 26 July 2021, p 15.

<sup>116</sup> Bill, cl 18 and 24.

<sup>117</sup> See, for example, submission 421.

<sup>118</sup> Submissions 157, 492, 582, 591, 796 and 864.

<sup>119</sup> APSAA, public hearing transcript, Brisbane, 20 July 2021, p 17; APSAA, submission 718, p 2.

<sup>120</sup> Bill, cl 16.

### **2.11.1 Submitters' views and Member for South Brisbane's response**

Tenants Queensland supported the provisions in the Bill requiring lessors to provide water bills to tenants within a reasonable timeframe.<sup>121</sup> Other submitters, including some lessors, supported the proposals.<sup>122</sup>

POAQ opposed the proposed amendments and noted that the RTA already states that water bills must be paid within one month.<sup>123</sup>

The Member for South Brisbane advised that:

We developed this provision after feedback from stakeholders and tenants who, at times, receive many water bills in one go, and then people are suddenly liable for hundreds or thousands of dollars in their water bill which they really struggle to pay.<sup>124</sup>

### **2.12 Removal of rooming accommodation residents**

The Bill would remove the ability for a lessor to remove a resident under a rooming accommodation agreement without a QCAT order, to bring the rights of tenants in rooming accommodation in line with tenant's rights in other residential rental accommodation.<sup>125</sup>

The Bill also amends the *Police Powers and Responsibilities Act 2000* to reflect the amendment regarding lessor's rights to remove a resident without a QCAT order.<sup>126</sup>

#### **2.12.1 Submitters' views**

Tenants Queensland supported the proposed removal of the power to evict a rooming accommodation resident without a QCAT order.<sup>127</sup>

POAQ, APSAA and other submitters, did not support the proposal.<sup>128</sup> APSAA advised that the removal of a resident is '... often due to safety and wellbeing concerns from other residents, and delays in taking appropriate action by providers due to these changes could compromise student safety'.<sup>129</sup> POAQ considered that no changes should be made, stating that 'Protection is needed for the safety of all parties whether it be lessors, providers, tenants or residents'.<sup>130</sup>

### **2.13 Proposed additional amendments**

The Member for South Brisbane informed the committee of her intention to amend the Bill to include protections for survivors/victims of domestic and family violence, including:

- 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.

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<sup>121</sup> Tenants Queensland, submission 723, p 34.

<sup>122</sup> See, for example, submissions 2, 3 and 421.

<sup>123</sup> POAQ, submission 582.

<sup>124</sup> Member for South Brisbane, public briefing transcript, Brisbane, 14 June 2021, p 8.

<sup>125</sup> Bill, cl 34 to 42.

<sup>126</sup> Bill, cl 2 to 4.

<sup>127</sup> Tenants Queensland, submission 723, p 16.

<sup>128</sup> Submissions 157, 582, 713 and 836.

<sup>129</sup> APSAA, submission 718, p 3.

<sup>130</sup> POAQ, submission 582, p 1.

The Member for South Brisbane also advised that she would move amendments to regulate third party platforms and to require that tenants be offered a free, direct debit to a bank account as an available rental payment method.<sup>131</sup>

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<sup>131</sup> Member for South Brisbane, correspondence, 26 July 2021, p 21-22.

### 3 Compliance with the *Legislative Standards Act 1992*

#### 3.1 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.

##### 3.1.1 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.

###### 3.1.1.1 *Clauses 7, 8, 15, 27, 33, 36, 38 – penalties should be reasonable and proportionate*

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

- clause 7 makes it an offence for a lessor, or lessor's agent, to enter into a residential tenancy agreement for a premises that includes a greater amount of rent than was stated in an advertisement or offer for the premises. The maximum penalty is 60 penalty units (\$8,271)<sup>132</sup>
- clause 8, inserts new section 57A, to make it an offence for a lessor to advertise, offer or accept rent for a premises for an amount of rent greater than the indexed rent amount.<sup>133</sup> The maximum penalty is 100 penalty units (\$13,785). Clause 9 contains an equivalent offence and penalty for rooming accommodation providers
- clause 8, inserts new section 57B, to make it an offence for a lessor, or agent, to request particular information from a prospective tenant, as part of the application process. The information includes, information about the tenant's past legal disputes with lessors, their rental bond history, details about the tenant's passport if other identity information is available, financial statements and residency status or nationality. The maximum penalty is 60 penalty units (\$8,271)
- clause 8, inserts new section 57C, to make it an offence for a lessor, or agent, not to provide a prospective tenant with certain information before entering into a residential tenancy agreement. The information includes, if an agent has been engaged to sell the property, if a mortgagee is taking action over the premises, if the lessor is not the owner of the property that the lessor has the right to let the premises, details about the electricity network, if mould or damp has been detected in the property within the last 3 years and if the lessor is aware of other building matters relevant to the property. The maximum penalty is 60 penalty units (\$8,271)

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<sup>132</sup> 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).

<sup>133</sup> The formula to calculate the indexed rent amount is set out in clause 8 (proposed s 57A(4)) and is based on the CPI.

- clause 15, inserts new section 105C, to make it an offence for a provider of rooming accommodation to increase the rent more than once every 2 years. The maximum penalty is 20 penalty units (\$2,757)<sup>134</sup>
- clauses 27 (inserts new section 292A) and 36 provide that it is an offence for lessors and providers to issue a notice to leave (in relation to occupation by lessor/provider or close relative or major renovation) without reasonable grounds. The maximum penalty is 50 penalty units (\$6,892.50)
- clause 38, inserts new section 389D, to make it an offence for a person to recover possession of a rental premises (rooming accommodation) other than in a way authorised under the Act. The maximum penalty is 50 penalty units (\$6,892.50), and
- clause 38, inserts new section 389E, to make it an offence for a person to obstruct a person in the exercise of a power under a warrant of possession (in relation to rooming accommodation), unless the person has reasonable excuse. The maximum penalty is 10 penalty units (\$1,378.50).

Additionally, clause 33 amends section 354 of the RTRA Act to significantly reduce the penalty for the current offence of obstructing a person executing a warrant for possession (in relation to a residential tenancy) from 50 penalty units (\$6,892.50) to 10 penalty units (\$1,378.50).<sup>135</sup>

The creation of new offences and the alteration of existing penalties affect 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.<sup>136</sup>

#### Committee comment

The committee notes that the explanatory notes do not directly address the fundamental legislative principle issue regarding the proportionality of proposed penalties. More generally, the explanatory notes do cite safe and secure housing for tenants, and rental affordability, as the primary justifications for the measures introduced by the Bill.<sup>137</sup>

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 cash<sup>138</sup>) to 80 penalty units (eg pretending to be an authorised person<sup>139</sup>). The majority of the penalties proposed in this Bill,

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<sup>134</sup> Note that whilst the Bill does not introduce the equivalent offence in relation to a residential tenancy agreement (as it already exists in s 93 of the RTRA), the result of cl 13 of the Bill is that it will be an offence for a lessor to increase existing rent more than once every 2 years (previously 6 months) with the maximum penalty of 20 penalty units.

<sup>135</sup> See also clause 38 which would insert an identical provision (new section 389E) with respect to rooming accommodation.

<sup>136</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

<sup>137</sup> Explanatory notes, p 2.

<sup>138</sup> RTRA, s 88(1).

<sup>139</sup> RTRA, s 453.

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

The committee notes, however, that the penalties proposed by clauses 8 and 9 of 100 penalty units (if a lessor or provider advertises, offers or accepts rent greater than the indexed amount) would represent the highest penalties in the RTRA Act. In addition, clauses 33 and 38 would result in a significantly reduced penalty for the offence of obstructing a person executing a warrant for possession, from 50 penalty units (\$6,892.50) to 10 penalty units (\$1,378.50).

The committee considers that the new penalties proposed by the Bill would affect the rights and liberties of individuals by imposing higher penalties for certain offences and reducing the penalties for other existing offences.

*3.1.1.2 Clauses 8, 13, 14, 18, 19, 26, 27 and 29 - general rights and liberties – common law property rights*

A number of clauses in the Bill have the potential to limit a lessor's right to deal with their property, or amount to more onerous obligations than at present, on the lessor in dealing with their property. These include:

- clause 8, which requires lessors (or agents) to provide more comprehensive information about the property to prospective tenants
- clauses 10 and 13, which limit the amount of times that a lessor may increase the rent for a property (once every 2 years) and limit the amount of the increase to no more than CPI<sup>140</sup> per year (note these clauses will apply to existing tenancy agreements as well as tenancy agreements entered into after the Bill takes effect)
- clause 18, which extends the amount of notice a lessor must give a tenant before entering the premises
- clause 19, which allows tenants to make minor modifications to a rental property without the landlord's consent
- clauses 26 and 27, which remove the ability for lessors to evict tenants on 'no grounds' or because they have entered into a contract to sell the property with vacant possession, and
- clause 29, which extends the amount of notice that lessors have to give tenants in various circumstances to leave the premises.

The above mentioned clauses apply to residential tenancy agreements, however, the Bill contains similar clauses in relation to rooming accommodation agreements.<sup>141</sup> 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.<sup>142</sup> Two of the most important principles protective of property rights are set out in the LSA, being that a power to enter

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<sup>140</sup> CPI is defined in cl 11: In this section—*CPI*, for a quarter, means the all groups consumer price index for Brisbane published by the Australian Statistician for that quarter. *Quarter* means any of the following periods in a year—(a) 1 January to 31 March; (b) 1 April to 30 June; (c) 1 July to 30 September; (d) 1 October to 31 December.

<sup>141</sup> See, for example, Bill, cl 14 and 15 (rent increases), 23 (minor modifications), 24 (notice) and 35 (grounds for eviction and notice).

<sup>142</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 95.

premises should be supported by a warrant and that compulsory acquisition of property should be only with fair compensation.<sup>143</sup>

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.

#### Committee comment

The committee notes that the explanatory notes do not directly address the general property rights of owners of leased residential property or rooming accommodation. However, the general property rights of owners is addressed in the Statement of Compatibility, tabled with the Bill. The Member for South Brisbane stated:

It is considered that any impact that the amendments in the Bill make upon the property rights and liberties of individuals in this context is justified, having regard to the balance between the human rights of tenants and those of lessors.<sup>144</sup>

The Statement of Compatibility cites the purpose of the limitations on lessor's property rights is to improve tenants' rights to enjoy a safe and secure home.<sup>145</sup>

Based on the statement of compatibility, the committee considers that it could be concluded that the justification for any impact on the general rights and liberties of property owners is to improve the existing balance of power between renters and lessors and that any limitations on property rights are outweighed by the benefits to the community in ensuring tenants have adequate rights to enjoy a safe and secure home.<sup>146</sup>

### **3.2 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.

Explanatory notes were tabled with the introduction of the Bill. The explanatory notes did not address all issues of fundamental legislative principles that arose, however the notes are fairly detailed and otherwise 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.

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<sup>143</sup> LSA, s 4(3)(e) and (i).

<sup>144</sup> Statement of compatibility, p 2.

<sup>145</sup> Statement of compatibility, p 3.

<sup>146</sup> Statement of compatibility, pp 4-5.

## 4 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.<sup>147</sup>

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).<sup>148</sup>

The HRA protects fundamental human rights drawn from international human rights law.<sup>149</sup> 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. In general, 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.

### 4.1 Human rights compatibility

The committee considers that the Bill's provisions can be separated into three categories:

- provisions regarding the use of rental property by tenants
- provisions regarding security of tenure, and
- provisions regarding rental rates.

The committee notes that all of these provisions engage the right to property of landlords, under section 24(1) of the HRA. However, the committee considers that the provisions regarding the use of rental property by tenants and security of tenure are compatible with the requirements of the HRA overall, including the requirement that limitations on the right to property should not be arbitrary under section 24(2), or failing that reasonably justifiable under section 13 of the HRA.

This is especially true when one considers the increasing importance of rental property to the right of access to housing, and physical and psychological security of the person, in a market in which home-ownership is increasingly out of reach for low-income and younger Queensland residents, and the degree to which these interests are supported by a range of other rights and values found in the HRA.

The committee also considers that these provisions are compatible with the right to freedom of expression in section 21 of the HRA, at least when read in conjunction with section 13 of the HRA.

While noting that the Bill places restrictions on speech, the committee considers that such restrictions do not affect core speech interests, and are justified by public interest factors.

The committee considers that there is greater doubts about the justifiability of the third set of provisions – regarding rental rates, and their compatibility with sections 13 and 24 of the HRA. In evaluating the human rights impacts of these provisions, their possible economic consequences must be considered. Economists have consistently shown that rent control provisions, when

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<sup>147</sup> HRA, s 39.

<sup>148</sup> HRA, s 8.

<sup>149</sup> 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.

unaccompanied by significant supply-side incentives and investments, tend to reduce rental supply, and the quality and maintenance of rental apartments, in ways that deliver few medium-term benefits to tenants.<sup>150</sup>

Such provisions also impact the rights and legitimate expectations of lessors in ways that are significant. The committee considers that provision for rental increases in line with inflation/the CPI, as well as statutory exceptions, minimises this impact to some degree. However, lessors may have expected to see greater increases than the CPI and may have made investment decisions accordingly.

The committee, however, considers that the potential economic impact and expectations of landlords is not sufficient to render the relevant provisions incompatible with section 13 of the HRA.

While the committee considers that the provisions regarding rental rates are arguably not proportionate to their objective of increasing access to affordable rental accommodation, it equally believes that the word 'arbitrary' in section 13 of the HRA should be construed as referring to manifestly, rather than simply arguably disproportionate restrictions on the right to property.

#### **4.1.1 Nature of the human rights**

##### **4.1.1.1 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 prevents a person from exercising their right in a way that is 'practical and effective',<sup>151</sup> or, for example, 'the ability to use or develop [their] land'.<sup>152</sup> 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'.<sup>153</sup>

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. For example, it would prevent lessors and providers from restricting the entry of pets into their property, restricting minor modifications made to their property, setting the price at which they are willing to allow others to lease their properties and determining the circumstances in which they wish to evict tenants from their property.

However, 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:

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<sup>150</sup> See, for example, R Diamond, T McQuade and F Qian, 'The effects of rent control expansion on tenants, landlords, and inequality: evidence from San Francisco', *American Economic Review*, (2019) 109(9), p 3365; DH Autor, C J Palmer & PA Pathak, 'Housing market spillovers: evidence from the end of rent control in Cambridge', *Journal of Political Economy*, (2014) 122(3), p 661; DP Sims, 'Rent control rationing and community composition: evidence from Massachusetts', *BE Journal of Economic Analysis & Policy*, (2011) 11(1), p 25; Jeremy Bulow & Paul Klemperer, 'Regulated prices, rent seeking, and consumer surplus' (2012) 120(1) *Journal of Political Economy* 160; DP Sims, 'Out of control: what can we learn from the end of Massachusetts rent control?' *Journal of Urban Economics* (2007) 61(1), p 129.

<sup>151</sup> *PJB v Melbourne Health (Patrick's Case)* [2011] VSC 327 at [89], citing *Zwierzynski v Poland* (2004) 38 EHRR 6 at [69].

<sup>152</sup> *Swancom Pty Ltd v Yarra CC (Red Dot)* [2009] VCAT 923 at [22].

<sup>153</sup> *PJB v Melbourne Health (Patrick's Case)* [2011] VSC 327 at [87].

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.

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.<sup>154</sup>

Section 24 of the HRA is modelled on Article 17 of the Universal Declaration of Human Rights. In addition, 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 Victoria 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.<sup>155</sup> 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.

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 has considered the issue in terms of the factors set out in section 13 of the HRA, 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 s 24(2) of the HRA – and if they do, the committee may not need actually to reach the question of compatibility under s 13 of the HRA, as opposed to the 'internal' limitation clause found in s 24(2).<sup>156</sup>

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

The committee notes that the rights limitations set out in the Bill are intended to address serious housing challenges in Queensland.

The explanatory notes describes a 'growing rental crisis' and an 'enduring imbalance of power and rights between tenants and lessors'.<sup>157</sup> In support of this claim, the explanatory notes describes surveys which report high levels of dissatisfaction and stress among tenants, and a growing disparity between rent increases and wage growth.<sup>158</sup> The Bill also aims to improve the fairness of rent costs, such as by curbing 'arbitrary' rent increases that are not correlated to property improvements.<sup>159</sup>

The explanatory notes further clarify that the Bill seeks to improve renters' 'safety, security and enjoyment of their home'.<sup>160</sup> Citing government data, the explanatory notes establish that one in five

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<sup>154</sup> Human Rights Bill 2018, explanatory notes, p 22.

<sup>155</sup> See, for example, *Beyeler v. Italy* (2001) 33 EHRR 52.

<sup>156</sup> 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) at 178-79.

<sup>157</sup> Explanatory notes, p 1.

<sup>158</sup> Explanatory notes, pp 1-2, citing *Rental Affordability Snapshot*, Anglicare Australia (April 2021); *Open Doors to Renting Reform*, Government of Queensland; *Housing Occupancy and Costs*, Australian Bureau of Statistics (2019); *Double Return: How investing in social housing can address the growing homelessness crisis and boost Australia's economic recovery*, Equity Economics (December 2020).

<sup>159</sup> Explanatory notes, p 2.

<sup>160</sup> Explanatory notes, p 2.

moves in the private rental market are involuntary, suggesting that tenant eviction is not uncommon.<sup>161</sup>

The explanatory notes argue that the threat of 'no grounds' eviction prevents tenants from requesting improvements to their homes, giving rise to health and safety issues.<sup>162</sup> Finally, the explanatory notes clarify that a purpose of the Bill is for rental properties to 'feel like home' for tenants, by allowing minor modifications and keeping pets without express permission from lessors. The committee is reasonably satisfied that there is a sufficiently close relationship between the Bill's purpose and the proposed policy measures.

The committee considers that the purpose of the limitation – promoting rental quality and affordability – is undoubtedly an important one. The committee notes that the purposes of the Bill are consistent with the human rights of renters. First, the Bill would promote the property interests of renters. A leasehold contract is a property interest. Provisions of the Bill, such as the protections against eviction contained in clause 27, 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 permitting renters to make decisions about owning pets and making minor modifications to their homes (clauses 19 and 23). By limiting rent increases and the grounds of permissible evictions, the Bill also allows renters to feel secure in the privacy of their homes. The committee notes that the European Court of Human Rights has recognised the privacy interest of 'any person at risk of losing his home'.<sup>163</sup> Restrictions on the questions that lessors may ask of prospective tenants, contained in clause 8 of the Bill, also promote the privacy interests of tenants who do not wish to disclose personal information about themselves or their history.

The Bill also promotes renters' rights to housing, undoubtedly an important interest.<sup>164</sup> The committee notes that while the HRA does not contain a right to housing, section 12 of the HRA 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 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'.<sup>165</sup> 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 Committee on Economic Social and Cultural Rights, the international body charged with interpreting this right, has identified legal security of tenure, affordability, and habitability as components of what makes housing 'adequate'.<sup>166</sup> Specifically, the Committee on Economic Social and Cultural Rights has concluded that 'tenants should be protected by appropriate means against unreasonable rent levels or rent increases'.<sup>167</sup>

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<sup>161</sup> Explanatory notes, p 2.

<sup>162</sup> Explanatory notes, p 2, citing *Open Doors to Renting Reform*, Government of Queensland.

<sup>163</sup> *McCann v UK* [2008] ECHR 19009/04.

<sup>164</sup> 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'.

<sup>165</sup> This follows references to the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights.

<sup>166</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing*, December 1991.

<sup>167</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing*, December 1991, p 3.

Furthermore, some of the Bill's provisions promote tenants' interests in equality. The value of this interest is reflected in section 15 of the HRA, which includes the right of every person 'to equal and effective protection against discrimination'. The most obviously relevant provision is clause 8, which prevents lessors from requesting (among other things) 'details of the prospective tenant's residency status or nationality'.<sup>168</sup> More broadly, the Bill's explanatory notes and Member for South Brisbane's introductory speech suggest a broader intention to promote social equality. This is undoubtedly an important interest connected to housing. As the European Court of Human Rights has observed, 'aims of making accommodation more easily available at reasonable prices to less affluent members of the population while at the same time providing incentives for improvements' is a policy aim consistent with the public interest.<sup>169</sup>

To be clear, the Bill's promotion of certain human rights interests does not automatically excuse any limitation of the rights of lessors and providers, and the rights of both groups must be balanced against one another. Nevertheless, the fact that the Bill promotes interests that are consistent with the HRA and broader human rights commitments underscores to 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.<sup>170</sup>

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.<sup>171</sup>

#### Whether there is a fair balance between the right and the limitations

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'. The committee considers that it is possible to contemplate several possible means of achieving the purposes of improving rent affordability and quality that are less restrictive of the right to property. These include the following approaches.

The Bill could limit rent control provisions to new tenancies only. Clause 43 of the Bill provides that restrictions on rent increases apply to tenancy contracts that have been entered into prior to the legislation coming into force. It, therefore, interferes with the property interests already created by contract. These interests were likely created under the expectation that lessors and providers would

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<sup>168</sup> An exception exists 'if the details are required to assess the prospective tenant's eligibility for a social housing service or NRAS'.

<sup>169</sup> *Mellacher v Austria* [1989] ECHR 25 at [47].

<sup>170</sup> *PJB v Melbourne Health (Patrick's Case)* [2011] VSC 327 at [93], citing *Grey v Harrison* [1997] 2 VR 359, 366.

<sup>171</sup> *Czapska v Poland* (2007) 45 EHRR 4 at 11.

have the option to increase the advertised rental price at a rate higher than that permitted by the Bill. Interference with property interests that precede the Bill is undoubtedly a more intrusive restriction of property rights. As the European Court of Human Rights has observed, 'it must be open to the legislature to take measures affecting the further execution of previously concluded contracts in order to attain the aim of the policy adopted'.<sup>172</sup> Nevertheless, the Legislative Assembly may wish to consider whether the Bill's aims could be attained without this more restrictive intrusion.

The Bill's rent stabilisation provisions could be replaced with targeted rent subsidies for low-income renters. This targeted approach would be a lesser intrusion on the rights of lessors and providers because it would not limit their ability to determine the price at which they are willing to lease their property. Furthermore, such a policy could, in practice, be more effective in promoting the interests of renters. Some evidence suggests that targeted subsidies are less likely to distort the operation of housing markets.<sup>173</sup> By placing fewer restrictions on lessors' and providers' abilities to generate a profit from their properties, targeted subsidies may be less likely to reduce market supply or disincentivise owners' from making improvements on their properties.

A further approach would be to not increase criminal penalties or creating new offences. In several provisions, the Bill creates new offences or increases penalties for existing offences.<sup>174</sup> Some of these offences carry severe financial penalties. For example, clause 8(2) of the Bill creates an offence of advertising a residential tenancy, or entering into a residential tenancy agreement, for a premises that includes an amount of rent greater than the permissible indexed rent amount. The offence carries a maximum penalty of 100 penalty units, which we understand amounts to \$13,345 for an individual, or \$66,725 for a company.<sup>175</sup> Significantly, offences under the Act are criminal, and prosecutable in the Magistrates Court.<sup>176</sup> Although not all offences are likely to result in prosecution, these penalties are severe and the Legislative Assembly may wish to consider whether policy objectives could be achieved through the application of lesser penalties, or civil penalties.

Whether alternative means would achieve the same purpose with the same effectiveness as the measures selected by the Bill is ultimately a question on which the legislature is entitled to some deference, especially in this context of complex social and economic policy. Nevertheless, the committee notes that there is a significant body of economic evidence which suggests that rent control measures may have adverse impacts on housing markets, at least in the absence of significant supply-side incentives and investments.<sup>177</sup> While the committee highlight these less restrictive possibilities, it does not consider that their existence renders the Bill incompatible with the HRA as an

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<sup>172</sup> *Mellacher v Austria* [1989] ECHR 16 at [52].

<sup>173</sup> See e.g. discussion in Diamond, T. McQuade & F Qian, *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco* (2019) 109(9) *American Economic Review*, 3.

<sup>174</sup> Clauses 7, 8, 9, 15, 27, 36, and 38.

<sup>175</sup> RTA: Queensland Government, 'Penalties and Prosecutions', <https://www.rta.qld.gov.au/investigations/investigations/penalties-and-prosecutions>.

<sup>176</sup> RTA: Queensland Government, 'Penalties and Prosecutions', <https://www.rta.qld.gov.au/investigations/investigations/penalties-and-prosecutions>.

<sup>177</sup> See for example R Diamond, T McQuade and F Qian, 'The effects of rent control expansion on tenants, landlords, and inequality: evidence from San Francisco', *American Economic Review*, (2019) 109(9), p 3365; DH Autor, C J Palmer & PA Pathak, 'Housing market spillovers: evidence from the end of rent control in Cambridge', *Journal of Political Economy*, (2014) 122(3), p 661; DP Sims, 'Rent control rationing and community composition: evidence from Massachusetts', *BE Journal of Economic Analysis & Policy*, (2011) 11(1), p 25; Jeremy Bulow & Paul Klemperer, 'Regulated prices, rent seeking, and consumer surplus' (2012) 120(1) *Journal of Political Economy* 160; DP Sims, 'Out of control: what can we learn from the end of Massachusetts rent control?' *Journal of Urban Economics* (2007) 61(1), p 129.

arbitrary deprivation of property. The committee notes that the legislative branch has a wide margin of appreciation 'in choosing the form and deciding the extent of control over the use of property'.<sup>178</sup>

On balance, the committee considers that the deprivation of property rights is not arbitrary and, therefore, 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. While the Bill does contain some restrictions on property interests, we consider that there are important safeguards which limit the extent of these restrictions. For example, the Bill maintains some specific grounds on which tenants can be evicted, many of which protect the most fundamental aspects of an individual's property rights.<sup>179</sup> The Bill also allows for restrictions on rent increases to be relaxed in certain circumstances,<sup>180</sup> and a tenant's right to keep a pet is subject to relevant bylaws and Tribunal orders.<sup>181</sup> Unlike some rent control measures which have been found to violate international human rights standards, there is no suggestion here that the Bill would make it impossible for lessors and providers to recover maintenance costs,<sup>182</sup> or render evictions impossible in all circumstances.<sup>183</sup>

The committee also notes the pressing social need for more affordable and higher quality housing, as well as the Legislative Assembly's entitlement to deference in determining the most appropriate means to achieve these aims.

The committee also emphasise that many aspects of the Bill comfortably meet the HRA section 24 standard of non-arbitrariness. In particular, provisions aimed at improving the security and quality of tenure – such as restrictions on questions asked of lessees, allowing lessees to own a pet, requiring more lessor and provider disclosure, and restricting the lawful grounds of eviction – are clearly non-arbitrary. However, the provisions aimed at rent stabilisation are more open to doubt. This is largely because of their efficacy: if these provisions lead to a shortage in housing supply or disincentivise lessors from maintaining their properties, then these provisions will deprive owners of property interests without enhancing the interests of renters.

While the committee does not go so far as concluding that these provisions are arbitrary, the potential for unintended consequences means that the Legislative Assembly may wish to pay particularly close attention in its scrutiny of these provisions.

#### 4.1.1.2 Human Rights Act 2019, section 21 – freedom of expression

Clause 8, which proposes to insert new sections 57B and 57C into the RTRA Act, engage the right to freedom of expression by restricting the questions that lessors may ask of prospective tenants and mandating the disclosure of certain information.

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.

New section 57B would prevent lessors from asking tenants a range of questions related to previous tenancy disputes; rental bond history; identity; bank statements; and residency status or nationality. Moreover, it imposes criminal penalties for asking such information. The Bill thus limits the ability of

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<sup>178</sup> *Aquilina v Malta* App no 28040, IHRL 1657 (ECHR 2011), at [61]. See also *Mellacher v Austria* [1989] ECHR 16 at [45].

<sup>179</sup> Bill, cl 27.

<sup>180</sup> Bill, cl 12.

<sup>181</sup> Bill, cl 20.

<sup>182</sup> *Czapska v Poland* (2007) 45 EHRR 4 at 11.

<sup>183</sup> *Aquilina v Malta* App no 28040, IHRL 1657 (ECHR 2011), at [23]; *Immobiliare Saffi v Italy*, App. No. 22774/93, [1999] ECHR 65.

lessors and providers to 'receive and impart' certain 'information', and thus is prima facie inconsistent with section 21 of the HRA.

New section 57C would require lessors to disclose certain information to tenants. This includes whether the lessor plans to sell the property; whether the property is subject to mortgagee action; the lessor's right to let the premises; and details concerning the relevant electricity network. Failure to disclose such information is punishable by criminal sanction. The Bill thus mandates certain speech acts, removing lessors' ability to decide whether to receive or impart information. The committee considers that this is prima facie inconsistent with the broad language of section 21(2) of the HRA.

Can the inconsistency 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 interests, whereas the Bill protects important public interests including human rights interests.

The expression at issue in this instance is 'commercial speech': that is, speech that takes place in the context of commercial transactions. While such may be covered by the broad scope of section 21 of the HRA, an individual's interest in such statements is unlikely to be at the heart of their free speech interests. 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. A commercial transaction will rarely touch on these values.

On the other hand, 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.<sup>184</sup> 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 ...<sup>185</sup>

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.<sup>186</sup> 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'.<sup>187</sup>

The committee considers that the interests which underpin the rights restrictions in this case are at least as pressing as the consumer protection interests at issue in *Global Sportsman* and *Noone*. The mandatory disclosures required by lessors are consumer protection requirements, ensuring that tenants are aware of any circumstances which could make the premises less desirable. The provisions protect the privacy interests of tenants not to have to disclose personal details about their identity and history. Furthermore, the provisions protect tenants' interests in not being discriminated against based on prior (and possibly irrelevant) conduct, or aspects of their personal identity (such as

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<sup>184</sup> *Global Sportsman Pty Ltd v Mirror Newspapers Pty Ltd* [1984] FCA 180, (1984) 2 FCR 82.

<sup>185</sup> *Global Sportsman Pty Ltd v Mirror Newspapers Pty Ltd* [1984] FCA 180, (1984) 2 FCR 86, cited in *Noone (DCAV) v Operation Smile (Aust) Inc Noone* [2012] VSCA 91 at [145].

<sup>186</sup> [2012] VSCA 91.

<sup>187</sup> *Noone (DCAV) v Operation Smile (Aust) Inc Noone* [2012] VSCA 91 at [147].

nationality). The provisions are also specific and narrow, and therefore unlikely to be interpreted more widely than the legislative intent.

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.

The committee notes that consideration could be given to whether these interests could be protected with civil rather than criminal penalties. While the Legislative Assembly has a wide margin of appreciation, it may wish to consider whether the goals of the Bill could be achieved by civil penalties.

#### **4.2 Statement of compatibility**

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>	<b>Sub #</b>	<b>Submitter</b>
001	Sohale and Shohreh Alfatooni	033	Confidential
002	Fariborz and Ivy Rameshfar	034	Campaign submission
003	Bridget Noble	035	Campaign submission
004	Kaufmann Isle	036	Campaign submission
005	Rodney Clarke	037	Campaign submission
006	Nita and Henry Skewpeck	038	Campaign submission
007	Darrin Beech	039	Campaign submission
008	Susan Fauser	040	Campaign submission
009	Nikoletta Nagy	041	Campaign submission
010	Darryl Blackburn	042	Campaign submission
011	Alemka Russell	043	Campaign submission
012	Robert Cousin	044	Campaign submission
013	Gavin Shreiweis	045	Campaign submission
014	Mareeba Community Housing Company Ltd	046	Campaign submission
015	Greg McCosker	047	Campaign submission
016	Eoin Hickey	048	Campaign submission
017	James Reeve	049	Campaign submission
018	Ernest Tong	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	Not relevant to Bill	188	Campaign submission
155	Campaign submission	189	Campaign submission
156	Campaign submission	190	Campaign submission
157	John and Ros Neill	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	Campaign submission
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	Roselea Miller
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	Not relevant to Bill	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
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302	Confidential	336	Campaign submission

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342	Campaign submission	376	Campaign submission
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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
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356	Campaign submission	390	Campaign submission
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358	Campaign submission	392	Campaign submission
359	Campaign submission	393	Campaign submission
360	Robyn Evans	394	Campaign submission
361	Campaign submission	395	Campaign submission
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366	Andrew and Miranda van Veen	400	Campaign submission
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422	Campaign submission	456	Michael Mangelakis
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425	Alan Cox	459	Campaign submission
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435	Marcus Hodges	469	Campaign submission
436	Campaign submission	470	Campaign submission
437	Keith Pien	471	Campaign submission
438	Campaign submission	472	Campaign submission

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474	Chewkang Lee	508	Campaign submission
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477	Mark McDonald	511	Campaign submission
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479	Campaign submission	513	Campaign submission
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491	Confidential	525	Campaign submission
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541	Campaign submission	575	Australian Proprietors Alliance Incorporated
542	Campaign submission	576	Campaign submission
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547	Campaign submission	581	Campaign submission
548	Campaign submission	582	Property Owners' Association of Queensland Inc
549	Noel Wheeler	583	Campaign submission
550	Dr David Gallant	584	Arno Hsu
551	Campaign submission	585	Campaign submission
552	Campaign submission	586	Mosa and Forinka Vidinovski
553	Campaign submission	587	Campaign submission
554	Not relevant to Bill	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	Not relevant to Bill	597	Campaign submission
564	Jeffrey Cirson	598	Rod Smith
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	Peter Munster	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	Australian Resident Accommodation Managers' Association
619	Campaign submission	653	Campaign submission
620	Campaign submission	654	Campaign submission
621	Campaign submission	655	Not relevant to Bill
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 Pirotta	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	Not relevant to Bill	670	Campaign submission
637	Campaign submission	671	Gabrielle McCullough
638	Queenslanders with Disability Network Ltd	672	Campaign submission
639	Rebecca Pate	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	Not relevant to Bill
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
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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
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762	Campaign submission	796	Lynne Neal
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764	Campaign submission	798	Barry and Leanne Binnie
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766	Campaign submission	800	Campaign submission
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768	Ming Ang	802	Campaign submission
769	Nicholas McQueen	803	George Stewart
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771	Maria Caranese	805	Campaign submission
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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
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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 – Attendees at public briefing

### Private Member

- Dr Amy MacMahon MP, Member for South Brisbane

## 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 Queensland**

- 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

## **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 report<sup>1</sup> 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".<sup>2</sup> 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.<sup>3</sup>

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 acknowledges<sup>4</sup>). 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".<sup>5</sup>

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.

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<sup>1</sup> Report No. 8, 57th Parliament, CSS Committee, August 2021, p. 30.

<sup>2</sup> Report No. 8, 57th Parliament, CSS Committee, August 2021, p. 31.

<sup>3</sup> Report No. 8, 57th Parliament, CSS Committee, August 2021, p. 5.

<sup>4</sup> "...with tenants generally having less power than lessors particularly in competitive markets" Report No. 7, 57th Parliament, CSS Committee, August 2021, p. 51.

<sup>5</sup> 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."*<sup>6</sup>

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<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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<sup>7</sup> [https://grattan.edu.au/wp-content/uploads/2014/03/800\\_Renovating\\_Housing.pdf](https://grattan.edu.au/wp-content/uploads/2014/03/800_Renovating_Housing.pdf)

<sup>8</sup> <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.<sup>9</sup> 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.<sup>10</sup>

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 report<sup>11</sup> 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."*

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<sup>9</sup> Household, Income and Labour Dynamics in Australia Survey, the Melbourne Institute

<sup>10</sup> Report No. 7, 57th Parliament, CSS Committee, August 2021, p. 51.

<sup>11</sup> 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 2001-2017<sup>12</sup>. Over this same time period, the median rent in Queensland rose from \$200 per week to \$330 per week<sup>13</sup>.

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

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<sup>12</sup> Regional housing supply and demand in Australia, Phillips, B & Joseph, 2017

<sup>13</sup> 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"<sup>14</sup> - 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.

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<sup>14</sup> 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”.<sup>15</sup>

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<sup>15</sup> 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 owners<sup>16</sup> 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

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<sup>16</sup> <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.<sup>17</sup>

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.

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<sup>17</sup> <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.<sup>18</sup> 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.<sup>19</sup>

***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.

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<sup>18</sup> Report No. 7, 57th Parliament, CSS Committee, August 2021, p. 44.

<sup>19</sup> 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.<sup>20</sup>

Thankfully, the Queensland Human Rights Commissioner intervened to put this spurious argument to bed, issuing a statement on 8 July 2021.<sup>21</sup> 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 Bill<sup>22</sup> 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*.

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<sup>20</sup> Report No. 8, 57th Parliament, CSS Committee, August 2021, p. 27-28.

<sup>21</sup>

[https://www.qhrc.qld.gov.au/\\_data/assets/pdf\\_file/0006/33747/2021.07.08-Media-statement-re-proposed-Qld-tenancy-reforms.pdf](https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0006/33747/2021.07.08-Media-statement-re-proposed-Qld-tenancy-reforms.pdf)

<sup>22</sup> 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

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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](http://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](http://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](http://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**

