Parliamentary Committees

Plumbing and Drainage and Other Legislation Amendment Bill 2015

Report No. 13, 55th Parliament

Transportation and Utilities Committee

March 2016

Transportation and Utilities Committee

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Acknowledgements

The Committee acknowledges the assistance provided by the Department of Housing and Public Works.

[1] On 18 Feb 2016, the House passed a motion that the current members of committees be discharged and appointed new members to parliamentary committees established by statute or standing orders.

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Abbreviations

AMCA	Air Conditioning and Mechanical Contractors Association
the Bill	Plumbing and Drainage and Other Legislation Amendment Bill 2015
BCC	Brisbane City Council
BCA	Building Code of Australia
the Council/STC	Service Trades Council
DHPW/the Department	Department of Housing and Public Works
FLP	fundamental legislative principle
LSA	*Legislative Standards Act 1992*
MPAQ	Master Plumbers Association of Queensland
MCCA	Ministerial Council on Consumer Affairs
POAQ	Property Owners' Association of Queensland
PIC	Plumbing Industry Council
PDA	*Plumbing and Drainage Act 2002*
QBCC	Queensland Building and Construction Commission
QBCC Act	*Queensland Building and Construction Commission Act 1991*
QPILCH	Queensland Public Interest Law Clearing House Inc.
REIQ	Real Estate Institute of Queensland
RTA	Residential Tenancies Authority
RTDs	Residential Tenancy Databases
RTRA Act	*Residential Tenancies and Rooming Accommodation Act 2008*
RTRA Regulation	Residential Tenancies and Rooming Accommodation Regulation 2009
SCAG	Standing Committee of Attorneys-General
the Minister	Minister for Housing and Public Works
the Tribunal or QCAT	Queensland Civil and Administrative Tribunal
OQPC	Office of the Queensland Parliamentary Counsel
SLC	Scrutiny of Legislation Committee

Chair's foreword

This report presents a summary of the Transportation and Utilities Committee's (formerly the Utilities, Science and Innovation Committee) examination of the Plumbing and Drainage and Other Legislation Amendment Bill 2015.

The Committee's task is to consider the policy outcomes to be achieved by the legislation, as well as 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.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on the Bill and provided evidence at the public hearing. I also thank the Committee's Secretariat and the Department of Housing and Public Works for their assistance.

I wish to take this opportunity to thank Mr Don Brown MP, the Member for Capalaba, Mr Dale Last MP, the Member for Burdekin, and Mr Chris Whiting MP, the Member for Murrumba, for their contribution to the Committee's work from 27 March 2015 until 18 February 2016.

I commend this Report to the House.

Mr Shane King MP
Chair

March 2016

Recommendations

Recommendation 1 **7**

The Committee recommends that the Plumbing and Drainage and Other Legislation Amendment Bill 2015 be passed.

Recommendation 2 **15**

The Committee recommends that the Minister for Housing and Public Works investigate legislative mechanisms to ensure that a person cannot be listed on a tenancy database if the amount owing is an unreasonably small amount, for example $20.

Recommendation 3 **18**

The Committee recommends that the Minister for Housing and Public Works amend proposed section 564(2) in the Bill to provide for a transition period of 6 months from commencement.

Recommendation 4 **20**

The Committee recommends that the Minister for Housing and Public Works amend the Bill to prohibit personal information of victims of domestic violence and family violence being listed on a tenancy database.

1. Introduction

1.1 Role of the Committee

The former Utilities, Science and Innovation Committee was a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[2]

The Committee's primary areas of responsibility were:

- Main Roads, Road Safety and Ports
- Energy and Water Supply
- Housing and Public Works
- Science, Information Technology and Innovation.

On 18 February 2016, the Committee's name changed to Transportation and Utilities Committee and its responsibilities were changed to:

- Transport and Commonwealth Games
- Main Roads, Road Safety, Ports, Energy and Water Supply.

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles (FLPs)
- for subordinate legislation – its lawfulness.

The Plumbing and Drainage and Other Legislation Amendment Bill 2015 (the Bill) was introduced into the House and referred to the Committee on 1 December 2015. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 1 March 2016.

Notwithstanding the change in the Committee's portfolio responsibilities on 18 February 2016, the Legislative Assembly agreed that responsibility for reporting on this Bill remain with this Committee.

1.2 Inquiry process

On 3 December 2015, the Committee wrote to the Department of Housing and Public Works (DHPW) seeking advice on the Bill and invited stakeholders and subscribers to lodge written submissions to its inquiry.

The Committee received 11 submissions (see **Appendix A**) as well as written advice from DHPW on the Bill, including answers to questions taken on notice at the public hearing, and in response to matters raised in submissions.

A public briefing on the Bill was held in Brisbane on 17 February 2016 with the DHPW. A public hearing was also held in Brisbane on 17 February 2016 where a total of 12 witnesses provided evidence to the Committee (see **Appendix B**).

The submissions, the transcript of the public briefing, and other inquiry-related documents are available on the Committee's webpage.

[2] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

1.3 Objectives of the Bill

The Explanatory Notes state that the objectives of the Bill are to amend:

- the *Plumbing and Drainage Act 2002* (PDA) and the *Queensland Building and Construction Commission Act 1991* (QBCC Act) to establish a dedicated plumbing industry regulatory body, to be called the Service Trades Council (the Council), within the Queensland Building and Construction Commission (QBCC)
- the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act) to:
  - implement uniform national law provisions on tenancy databases
  - allow approved housing providers to give tenancy guarantees to private lessors
- the *Housing Act 2003* to introduce a provision which deems that any development work for properties approved or used as public housing has been or will be lawfully carried out in accordance with the relevant legislation applying at the time.[3]

1.4 Consultation on the Bill

Establishment of the Service Trades Council (amendments to the PDA and the QBCC Act)

The Explanatory Notes state that DHPW met with industry stakeholders on 19 March 2015 to develop a model for the proposed regulatory body (Service Trades Council). DHPW then undertook a five week consultation period (17 July 2015 to 21 August 2015) with key industry stakeholders on an exposure draft of the Bill. Nine submissions (five from industry, and four from government bodies) were received, and all of these submissions supported the importance of a dedicated plumbing industry regulatory body.[4]

Consultation on the content of the Bill was also undertaken with the Department of the Premier and Cabinet, Queensland Treasury and Department of Justice and Attorney-General, and the Office of the Queensland Parliamentary Counsel.

The Explanatory Notes state that, given the proposed regulatory body has been publically known as an election commitment since July 2014, a decision was made that no further community consultation was required. Further, it is anticipated that there will be community support for the establishment of the Service Trades Council for the reason that it will assist in the protection of public health and safety and the environment.[5]

Amendment of the RTRA Act

The Explanatory Notes advise that consultation on the Bill's tenancy guarantees provisions was undertaken with the Department of the Premier and Cabinet and Queensland Treasury.

Targeted consultation on an exposure draft of the Bill's tenancy database provisions was undertaken in September 2015, including representatives from the Real Estate Institute of Queensland (REIQ), Property Owners' Association of Queensland (POAQ), Tenants' Queensland, QShelter and Caravanning Queensland. The consultation focused on whether the draft Bill accurately reflected the required changes to meet the national minimum standards. Feedback was received from REIQ, POAQ and QShelter, which was considered and incorporated in the draft Bill where appropriate.[6]

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[3] Explanatory Notes:1-3
[4] Explanatory Notes:8; Hansard, Minister introductory speech (PDOLA Bill) 1 December 2015: 2977
[5] Explanatory Notes:8
[6] Explanatory Notes:8-9

Amendment of the *Housing Act 2003*

The Department of Infrastructure, Local Government and Planning was informed of the Department's intention to introduce the Housing Act deeming provision. The Department advised that community consultation was not required as the proposed amendments clarify the intent of the relevant legislation.[7]

Consultation on the content of the Bill was undertaken with the Department of the Premier and Cabinet, Queensland Treasury and Department of Justice and Attorney-General.[8]

Committee comment

The Committee notes the extensive consultation undertaken by the Queensland Government in developing the parameters of the policy direction contained in the Bill and also the consultation undertaken with the key stakeholder groups on key aspects of the draft Bill.

1.5 Should the Bill be passed?

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

Committee comment

After examination of the Bill, including the policy objectives it seeks to achieve and consideration of the information provided by the Department of Housing and Public Works and stakeholders, the Committee has agreed to recommend that the Bill be passed.

Recommendation 1

The Committee recommends that the Plumbing and Drainage and Other Legislation Amendment Bill 2015 be passed.

[7] DHPW written brief, 11 Feb 2016:5-6

[8] Explanatory Notes:8

2. Examination of the Bill

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

2.1 Establishment of the Service Trades Council

The Bill proposes to amend the PDA and the QBCC Act to establish the Service Trades Council (the Council) as part of the Queensland Building and Construction Commission (QBCC), provide for its functions and powers and set out how the Council is to operate.

The Council will replace the former Plumbing Industry Council (PIC) which was abolished on 10 November 2014. The former PIC oversaw the licensing and conduct of plumbers and drainers in Queensland. After PIC was disbanded, its functions were transferred to the QBCC, following the former Transport, Housing and Local Government Committee's Report Number 14 – Inquiry into Operation and Performance of the Queensland Building Services Authority.[9]

The then Minister for Housing and Public Works explains in her introductory speech that the Bill will give effect to the Queensland Government's election commitment *"to re-establish a dedicated plumbing industry regulatory body within the Queensland Building and Construction Commission"*.[10]

Membership will consist of a range of expert industry and government representatives (including the QBCC) who will be appointed by the Governor in Council. However, while the Council will have similar membership, roles and functions to the PIC, it will take on changes which allow a more effective operation and to complement efficiencies achieved by the QBCC, such as its 'one-stop-shop' service for licensing and compliance.[11]

The Bill also includes a range of consequential amendments of the QBCC Act, for example, to alter the constitution of the QBCC so it includes the Council and to allow the Council to conduct internal reviews of decisions made by the QBCC Commissioner in relation to disciplinary matters involving plumbers and drainers.[12]

The Explanatory Notes clarify that the cost of the remuneration and allowances of members of the Council and the panels will be met from the QBCC's budget. Further, any costs that may be incurred by the QBCC in the implementation of the proposed amendments will be met through the existing resources of the QBCC.[13]

At the public briefing, the Committee asked about the costs involved in establishing the Council. The QBCC advised that the cost for the implementation of the Council is estimated to be a direct cost of $59,310 and an ongoing cost of $405,473 and will be funded through existing funding arrangements.[14]

2.1.1 Proposed functions and powers of the Service Trades Council

Four submitters indicated their general support for reinstating a plumbing industry regulatory body.[15] However, there were some suggestions submitted in relation to aspects of proposed clause 7 of the Bill which deals with the proposed establishment, functions and powers of the Council.

The Council's key functions will be:

- conferring on national policy development and implementation for the plumbing and drainage trade (the trade)

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[9] Explanatory Notes:1
[10] Minister's introductory speech (PDOLA Bill), 1 Dec 2015:2977
[11] DHPW written brief, 11 Feb 2016:3
[12] Explanatory Notes:4
[13] Explanatory Notes:6
[14] Public briefing transcript, 17 Feb 2016:7-8
[15] LGAQ Sub 4; AMCA Sub 6; MPAQ Sub 8; PUQ Sub 10

- reporting to the Minister for Housing and Public Works on any issue related to the trade referred to it by the Minister and any other issue the Council considers the Minister should know about
- making recommendations to the QBCC Commissioner about the performance of the Commissioner's functions under the PDA
- establishing a panel of the Council to assist the QBBC Commissioner in performing their functions in relation to licensing for the trade
- undertaking internal reviews of decisions made by the QBCC Commissioner in relation to disciplinary matters involving plumbers and drainers.[16]

Responsibility for construction and domestic gas-fitting

The Master Plumbers Association of Queensland (MPAQ) submitted that the Council should be responsible for construction and domestic gas-fitting.[17]

The Department responded that while proposed new section 6 of clause 7 does not explicitly reference these functions, proposed sub-section 6(g) provides for the Council to perform 'other functions' and that the Department is currently undertaking a review of all existing licences issued by the QBCC (including gas-fitting).[18]

The Department further advised that the MPAQ's proposal is anticipated to be dealt with by the licence review and any consequent legislative amendments will be able to rely on sub-section 6(g) without requiring further amendment to the PDA.[19]

The Department provided further information on the licensing review at the public briefing, advising that it includes all classes and grades of licence issued by the QBCC and that the review's objectives are to:

- simplify licence classes by removing duplication and redundant licence types
- modernise the licensing regime to reflect current industry practice
- increase mobility and employability across jurisdictions by removing unnecessary licensing requirements
- save costs for both industry and householders whilst maintaining high standards of competence within the building and construction industry.[20]

In response to a question from the Committee on what trades are included in the plumbing and drainage trade, specifically whether it includes fire, roofing, storm water and mechanical services, the Department advised:

> *At the moment the Council is restricted to plumbing and drainage, and that has been made clear. With regard to mechanical, gas fitting and fire, these are matters that are currently under review with part of the QBCC licensing review. There is deliberately no definition so that the act is future proof, should other licensing functions appropriately transfer over, so that is not even to restrict it to those four you have just itemised.*[21]

[16] Explanatory Notes:4
[17] MPAQ Sub8:2
[18] Public briefing transcript, 17 Feb 2016:6-7
[19] DHPW written brief, 11 Feb 2016:6; Public briefing transcript, 17 Feb 2016:2
[20] DHPW answer to QTON 1 at hearing 17 Feb 2016:1
[21] Public briefing transcript, 17 Feb 2016:6

At the public hearing, Services Trades Queensland, which represents the peak industry groups for the services trades (Master Plumbers Union, Master Plumbers' Association, the fire association and the Mechanical Services Association) indicated their support for trades to be consolidated:

> *Under the Plumbing and Drainage Act at the moment there are some restricted licences for fire protection, such as you would be aware—the sprinklers that are in here—as well as air conditioning, heating and cooling. At the moment, there are some licences across government—within the Department of Mines, for example—for gasfitters, which means that some plumbers have to get a QBCC licence and then go to the Department of Mines and get another licence. We probably support the consolidation of these trades within a one-stop shop for tradespeople but also for the contracting companies so that they know where they need to go within government to clarify anything. We support the bill in its form because we consider that that would allow that consolidation of services as well as efficiencies to government and just make the life of everybody in the trade easier.*[22]

<u>Committee comment</u>

The Committee notes the advice from the Department of Housing and Public Works that it is currently undertaking a review of all existing licences issued by the Queensland Building and Construction Commission (including gas-fitting licensing) and that it is anticipated that any changes resulting from this review will be able to be implemented without the need for further amendment to the *Plumbing and Drainage Act 2002*.

The Committee is satisfied with sub-section 6(g) of the Bill which allows the Service Trades Council to perform 'other functions' but does not explicitly state that the Service Trades Council is responsible for construction and domestic gas-fitting.

<u>Feedback on state and national policy issues</u>

The MPAQ submits that the Council should be able to provide feedback on all state and national policy matters that relate to plumbing, drainage, gas-fitting, fire, roofing, storm water and mechanical services.[23] The Department advises that, as a key stakeholder, the Council will be invited to confer regularly with the Department when it is developing strategic policy and additionally, proposed sub-section 6(b) of clause 7, provides that the Council may report to the Minister for Housing and Public Works on any issue relating to the trade.[24]

The Local Government Association of Queensland (LGAQ) submission does not support the Council considering policy matters and recommends the continuation of the existing Plumbing Industry Consultative Group (PICG) and Building Industry Consultative Group (BICG).[25]

The Department advised that these bodies will be continued to ensure a diversity of voices in providing policy feedback and that the Council will provide a dedicated avenue for plumbers and drainers to raise matters of importance to their industry, particularly in relation to licensing and disciplinary matters.[26]

<u>Committee comment</u>

The Committee is satisfied with proposed sub-section 6(b) of the Bill which allows the Service Trades Council to report to the Minister for Housing and Public Works on any issue relating to the plumbing and drainage trade, as well as the Department of Housing and Public Works' advice that the existing Plumbing Industry Consultative Group and Building Industry Consultative Group will continue to provide advice to the Minister to ensure a diversity of voices in providing policy feedback.

[22] Public hearing transcript, 17 Feb 2016:9
[23] MPAQ Sub8:2
[24] DHPW written brief, 11 Feb 2016:6
[25] LGAQ Sub 4:1
[26] DHPW written brief, 11 Feb 2016:7

Review of QBCC regulatory activity

The MPAQ submitted that the Council should have the power to review areas of non-compliance, rectification of non-compliant work and the application of penalties by QBCC investigators.[27]

The Department confirmed that, under proposed new section 32C, the Council will be able to request reports about licensing and disciplinary functions performed by the QBCC Commissioner and penalty infringement notices issued by the QBCC.[28] Further:

> *This information will keep the STC informed of issues relating to the trade and, coupled with the ability to report directly to the Minister under new section 6(b), request government action in relation to those issues.*[29]

2.2 Amendments relating to tenancy guarantees and residential tenancy databases

The Bill proposes that the RTRA Act will be amended to regulate residential tenancy databases and allow approved housing providers to provide tenancy guarantees.

2.2.1 Tenancy guarantees

Clause 25 of the Bill proposes to amend the RTRA Act to allow approved housing providers to give tenancy guarantees to private lessors.

At the public briefing, the Department explained that:

> *… tenancy guarantees assist people to access or sustain private rental accommodation by indemnifying lessors against a loss or expense caused by a tenant breaching their rental agreement. The guarantee covers situations where the tenant's rental bond is not sufficient to cover the amount owing as capped at four weeks rent, or $1,000. Currently, the Residential Tenancies Act allows the Department of Housing and Public Works to provide tenancy guarantees to private landlords*.[30]

As part of the Logan Renewal Initiative, the Department is in the process of transferring the tenancy and property management of a number of public housing properties to Logan City Community Housing Limited.[31] The amendments proposed in the Bill will allow approved housing providers, such the Logan City Community Housing Limited, to provide those tenancy guarantees.

Stakeholders did not raise any concerns regarding these proposed amendments in submissions received by the Committee.

2.2.2 Regulation of residential tenancy databases

Clause 26 to 35 of the Bill proposes to amend the RTRA Act to bring Queensland in line with all other States (except the Northern Territory)[32] and meet the national uniform law for Residential Tenancy Databases (RTDs) adopted by the Ministerial Council on Consumer Affairs (MCCA) in December 2010, with some additions to ensure the provisions operate effectively in Queensland.[33] The amendments include obligations:

[27] MPAQ Sub 8:2
[28] DHPW written brief, 11 Feb 2016:7
[29] DHPW written brief, 11 Feb 2016:7
[30] Public briefing transcript, 17 Feb 2016:3
[31] Explanatory Notes:4
[32] Public briefing transcript, 17 Feb 2016:3
[33] RTDs are privately owned databases that contain information about an individual's tenancy history. Most real estate agents subscribe to one or more RTDs and use them to screen prospective tenants for the purpose of renting private residential properties.

- for lessors and agents to disclose information to applicants about the database/s they use
- to advise an applicant if they are found to be on a tenancy database and to advise a database operator if a listing needs to be amended or removed
- for database operators to amend or remove listings consistent with advice from lessors and agents
- to ensure listings do not remain on databases longer than three years
- for lessors, agents and operators who made the listing to provide the tenant with a copy of the information on the database on request (a reasonable fee can be charged for providing the copy).[34]

In her introductory speech, the then Minister for Housing and Public Works explained the development of the provisions regulating the listing of information on tenancy databases:

> *These provisions were first introduced in Queensland in 2003, and were developed to deal with incorrect, unfair or misleading listings. This bill maintains those existing provisions, with some changes, and places a number of further obligations on lessors and their agents. These include obligations to disclose information to applicants about databases they are using, to advise applicants if they are on a tenancy database and to advise a database operator if a listing needs to be amended or removed.*
>
> *...*
>
> *Public and industry consultation on these amendments was undertaken between November and December 2009, and the national uniform law on residential tenancy databases was adopted by the Ministerial Council on Consumer Affairs in December 2010.*[35]

In May 2011, the Residential Tenancies and Rooming Accommodation Amendment Bill 2011 was introduced into Parliament and was referred to the then Community Affairs Committee, which considered the Bill and tabled a report on 17 November 2011. The 2011 Bill lapsed when the 54th Parliament was dissolved in February 2012. A number of the recommendations made by the former Community Affairs Committee have been included in the 2015 Bill.

The Explanatory Notes to the 2015 Bill note that the Bill includes some amendments which are not included in the national minimum standards.[36] These include an extra-territoriality provision to ensure that the provisions are applicable to rental properties in Queensland even if the person/tenancy database operator to whom the law applies resides in another state.

The Committee considered issues raised in submissions on the tenancy database amendments and these are discussed below.

Informing prospective tenants of any listings

Proposed new section 458B applies where a lessor or their agent uses a tenancy database for checking the tenancy history of the applicant, finds the person is listed on the database. The proposed section requires the lessor or agent to give written notice to the applicant within 7 days advising that personal information about them is in the database, stating the name of the database, details about who has listed the information (listing entity), and how and in what circumstances the applicant can have the personal information removed or amended and how they can obtain a copy of the personal information.[37]

The Property Owners' Association of Queensland (POAQ) supports prospective tenants being advised that tenancy databases will be checked, but objects to the proposed requirement that the person

[34] DHPW written brief, 11 Feb 2016:3-4
[35] Minister's introductory speech (PDOLA Bill) 1 Dec 2015: 2977
[36] Explanatory Notes:2
[37] Explanatory Notes:22

checking the tenant's rental history must inform the prospective tenant of listings and the ways in which a listing can be removed. The POAQ submits that this should not be the responsibility of the person making an inquiry, and that prior to being listed on the database, the tenant should have been informed about a listing and if the reason for the original listing has been resolved, then at that time, the tenant should have been advised of the procedure for their name to be removed from the database.[38]

Queensland Public Interest Law Clearing House Incorporated (QPILCH) detailed its support for proposed new section 458B at the public hearing:

> *Our experience is that at the time the tenancy ends our clients are often going through a number of circumstances of disadvantage. There may be a connection with domestic violence, mental health issues or other instances that do mean that they are transitioning directly from the tenancy that is the basis of the listing into some form of emergency accommodation, transitional housing or that more traditional understanding of homelessness. I would accept Mr McBryde's comments about his practical experience that the existing provisions to notify a person of the proposed listing that the current act has in place in practice still mean that it is unlikely that a client of ours might be notified at the time they leave the tenancy that the listing has been put in place. That is one of the reasons we strongly support the proposed legislation around section 458A and B, that there is that notice at the time they are applying for a further tenancy that they have been listed.*[39]

The Department noted that other submissions indicate that tenants are not always informed about listings and listing processes or may not understand the process or have the capacity to find out. Further, although the listing person is required to make reasonable attempts to inform the person of the proposed listing, this may not occur in some circumstances.[40]

At the public briefing, the Residential Tenancies Authority (RTA) advised that the proposed requirement to inform an applicant within 7 days if they are found to be listed on the database is a national minimum standard.[41]

Committee comment

The Committee notes the Property Owners' Association of Queensland's argument against the proposal in the Bill (section 458B) that requires lessors or their agents who check a database to advise prospective tenants within 7 days of any existing listings and of the ways in which the listing can be removed.

However, the Committee is satisfied with the proposed new requirement on the basis of:

- the Department of Housing and Public Works' advice that in some circumstances tenants may not be informed of listings at the time of the listing, or may not understand the listing process, despite the listing person making reasonable inquiries to locate the tenant
- the advice from the Residential Tenancies Authority that the requirement to notify prospective tenants of any existing listings is one of the national minimum standards.

[38] POAQ Sub 3:1
[39] Public hearing transcript, 17 Feb 2016:13
[40] DHPW written brief, 11 Feb 2016:8
[41] Public briefing transcript, 17 Feb 2016:5

Amount owed by the tenant

EnhanceCare submitted that tenants have been listed for owing as little as $20 in the instance where "*people do not actually pay a bond or they pay very little in relation to that*".[42] EnhanceCare also advised that in their experience it is difficult to remove a person who is listed for an amount that they consider unjust or trivial:

> *...When we do go to the tribunal in relation to an unjust listing under section 461 of the act, we find that the common theme amongst the adjudicators is that a person cannot just be removed because it is unjust or trivial; they can still be listed and they have to pay the amount before they can be removed. Yes, the amount is small and, yes, it can be considered trivial; however, in that respect we do feel that there needs to be some sort of prohibition so that people cannot be listed for trivial things and that the adjudicators will be able to take them off or do something about it in respect of it being unjust.*[43]

EnhanceCare recommended stronger legislative protection for tenants with a new section be added to section 459 stating that a tenant must not be listed on a tenancy database if the listing relates to an amount under the value of $300 whether arising from damage, rent arrears or failure to perform obligations under this Act.[44]

The Department responded that the Residential Tenancies and Rooming Accommodation Regulation 2009 (RTRA Regulation) (Part 4, section 13) provides that the amount owing must be more than the rental bond and any tenancy guarantee before information can be listed on the database. The Department further advised that it would be inconsistent with the national minimum standards to set further limits on the amount that must be owed.[45]

The Department provided further information on this issue at the public briefing:

> *… EnhanceCare may well be saying, having had some further conversations with them, that in some cases a bond is not taken or a very low bond is taken, and their point is that there should be a minimum threshold. The national standards do not contemplate that. They basically say that you can be listed for any amount over the bond. Our position is that it is a lot rarer that bonds are not taken, and if there is a debt owing then it is reasonable to be listed…….*
>
> *The other thing is that there is a safety net under Queensland law currently, which would continue, which is that a person could apply to the tribunal either on the grounds it is inaccurate or trivial or, alternatively, on the grounds it is unjust having regard to the circumstances. If the amount proposed to be listed is $20, you can apply to the tribunal to make a determination that that is unfair in those circumstances having regard to your personal circumstances. We would think, even if there is no bond, that there is still a safety net for people in particular need.*[46]

Committee comment

The Committee notes EnhanceCare's submission for stronger legislative protection to prevent the listing of a person for owing as little as $20 and the suggestion that section 459 be amended to include a provision that a tenant must not be listed on a tenancy database if the listing is for an amount under the value of $300.

The Committee also notes the Department of Housing and Public Work's advice that there is a current requirement in the Residential Tenancies and Rooming Accommodation Regulation 2009 that the

[42] Public hearing transcript, 17 Feb 2016:12
[43] Public hearing transcript, 17 Feb 2016:12
[44] EnhanceCare Sub 7:7-8
[45] DHPW written brief, 11 Feb 2016:8
[46] Public briefing transcript, 17 Feb 2016:6

amount owing must be more than the rental bond and any tenancy guarantee before listing on the database.

However, the Committee is concerned that in situations where a tenant does not pay a rental bond it is possible that they could be listed on the database for owing as little as $20. The Committee is therefore recommending the Minister for Housing and Public Works investigate legislative mechanisms to ensure that a person cannot be listed on a tenancy database if the amount owing is an unreasonably small amount, for example $20.

Recommendation 2

The Committee recommends that the Minister for Housing and Public Works investigate legislative mechanisms to ensure that a person cannot be listed on a tenancy database if the amount owing is an unreasonably small amount, for example $20.

Fees for providing a copy of listed personal information

Proposed sub-sections 459C(1) and 459C(2) require a lessor or their agent, or a database operator who lists personal information on a tenancy database to give the listed person a copy of the information within 14 days after it is requested and any fee for providing has been paid. Any fee for giving the information is to be paid by the listed person and proposed sub-section 459C(3) clarifies that any fee charged must not be excessive.[47]

EnhanceCare raised an issue around the interpretation of whether these fees are excessive and suggests an amount of $20 be set as a maximum fee to be adjusted by the Consumer Price Index and that a waiver be provided to recipients of Commonwealth pensions.[48]

The Department does not support this proposal on the basis that the wording of the provision is modelled on a Commonwealth *Privacy Act 1988* provision on costs of access to information and that specifying a fee may result in a fee being charged where it would otherwise not be.[49]

Committee comment

The Committee notes EnhanceCare's concerns around the interpretation of whether a fee for providing a copy of listed personal information is considered 'excessive' and that an amount of $20 be set as a maximum fee to be adjusted by the Consumer Price Index, and also its suggestion that a waiver be provided to recipients of Commonwealth pensions.

However, the Committee is satisfied with the Department of Housing and Public Works' advice that proposed sub-section 459C(3)(a) is modelled on a provision of the Commonwealth *Privacy Act 1988* on costs of access to information and that specifying a fee may result in a fee being charged where it would otherwise not be charged.

Limiting listing to a period of three years

Proposed section 459D imposes a limit on the length of time a listing can be kept on a database to three years and provides that where a database operator is advised that information is out of date where it relates to an amount owed, must remove the incorrect information within 14 days.[50]

[47] Explanatory Notes:23
[48] EnhanceCare Sub 7:9-10
[49] DHPW written brief, 11 Feb 2016:8
[50] Explanatory Notes:23

Two submissions, POAQ and Harcourts (Ashmore), do not support limiting listings to three years on the basis that this will increase the risk to lessors. POAQ provided further details at the public hearing:

> *… it is our experience that very few tenants who get listed on databases ever pay off their debt. We get a lot of cases where it is alleged that tenants pay off their bills and sort themselves out. That does not happen. I have never heard a member say that he had listed a tenant for default in rent arrears and then subsequently the debt has been paid and that he should remove the person. So we believe that, if a debt is owing, a landlord should be able to follow it up for more than three years. Certainly, prospective landlords should know about debts that are more than three years old*.[51]

The POAQ recommends five years would be more appropriate as tenants who have not repaid the amount owing, or costs of damage, within three years, then the tenant is still a risk.[52]

The Department advised that the three year limitation was established as part of the minimum national standards as a fair period considering the nature of the debt and cannot be changed.[53] Further, the RTA does not support a Queensland-specific time period.[54]

Committee comment

The Committee is satisfied with proposed section 459D which provides that a listing on the database must be removed within three years on the basis that the proposed three year period is consistent with the minimum national standards.

Removing bankrupt persons from the database

EnhanceCare suggested the insertion of a new section 459E to clause 30 of the Bill which requires the removal of personal information where the tenant becomes bankrupt. This proposal is based on the fact that EnhanceCare's service has recorded instances where tenants have filed for voluntary bankruptcy and listed the person whom they owe money to on a tenancy database as a creditor. They then make application under section 461 of the RTRA Act for the listing to be removed on the basis it is 'unjust' as they have no ability to meet any form of repayment plan in the foreseeable future. EnhanceCare advised that this application is often rejected even though "*the listing serves no real purpose*".[55]

The submission argues the current legislation is deficient in protecting bankrupted tenants from "*ongoing persecution resulting from dire financial constraints*" and is not conducive to assisting them finding suitable accommodation.[56]

At the public hearing, EnhanceCare provided further explanation:

> *It has been my experience as a tenant advice worker that a number of tenants have declared themselves bankrupt. As part of the listing of the creditors, they have listed their real estate agency. They really have no funds to pay anybody at all and then they are subsequently listed on TICA. They cannot get their name removed from TICA until they pay the debt owing to the real estate agency. You can see there is a catch 22 there because under the bankruptcy laws they are not required to pay that debt, but they cannot get their name off TICA unless they pay that debt. They cannot get housing because their name is listed on TICA. So they are in a quandary as to what to do and they end up homeless.*[57]

[51] Public hearing transcript, 17 Feb 2016:11
[52] POAQ Sub 3:2; Harcourts Ashmore Sub 2:1
[53] DHPW written brief, 11 Feb 2016:9
[54] Public briefing transcript, 17 Feb 2016:3
[55] EnhanceCare Sub 7:7-8
[56] EnhanceCare Sub 7:7
[57] Public hearing transcript, 17 Feb 2016:12

The Department does not support this suggestion on the basis that it would be inconsistent with the national minimum standards and is not considered fair to lessors as it is an indicator of a tenant's ongoing ability to pay rent.[58]

Committee comment

The Committee notes EnhanceCare's submission that a new section be inserted into the Bill to require removal of personal information from a tenancy database where the tenant becomes bankrupt.

The Committee does not support this recommendation based on the Department of Housing and Public Works' advice that the removal of bankrupt persons from the database would be inconsistent with the national minimum standards and is not considered fair to lessors.

Allowing registrars to make orders

EnhanceCare submits that, given the potential for a backlog of tenants applying to the Queensland Civil and Administrative Tribunal (the Tribunal) about listings being retained in a tenancy database for longer than 3 years, a registrar (a registrar under the Queensland Civil and Administrative Tribunal Act) should be able to make an order in respect of such an application rather than having to go to the Tribunal. EnhanceCare suggests an amendment to section 460 (Application to tribunal about breach) of the RTRA Act to allow an application made to the Tribunal about a breach to be decided by a tribunal or registrar.[59]

The Department does not support the proposal based on their previous experience and advises that listings on tenancy databases were first regulated in Queensland in 2003 and allowed applications to the Tribunal to have old listings removed that were unjust or inaccurate. The Department reassured the Committee that:

> *There was no evidence of a marked increase in Tribunal matters due to the new requirements and it is not expected that any increase in Tribunal applications cannot be handled administratively.*[60]

Committee comment

The Committee notes the submission by EnhanceCare that due to a potential backlog of applications for old listings to be removed, the applications should be able to be considered by registrars as well as by the Queensland Civil and Administrative Tribunal.

The Committee does not support this proposal based on the Department of Housing and Public Work's advice that, given prior experience there will not necessarily be a significant increase in applications and, if there is, the Queensland Civil and Administrative Tribunal will have the capacity to process the applications.

Transitional provisions relating to existing provisions

Proposed new section 564(2) inserts a transitional provision that will provide database operators 12 months from commencement to remove listings which are then two or more years old.[61]

QPILCH welcomes the proposed requirement to remove personal information about a person after three years and notes that proposed new section 459D will extend this to existing listings. It raises a concern that people with historic listings (over 2 years old) will have to wait an additional year after the commencement of the amendments for the listings to be removed. While QPILCH notes that proposed new section 564(2) will allow sufficient time for database operators to comply with the new requirements they do not believe there is sufficient evidence that it would be onerous for operators

[58] DHPW written brief, 11 Feb 2016:9 and Public briefing transcript, 17 Feb 2016:4
[59] EnhanceCare Sub 7:8-9
[60] DHPW written brief, 11 Feb 2016:9
[61] Explanatory Notes:25

to comply with the requirement to remove old listings immediately on commencement. The submission therefore suggests the proposed limit of three years be applied to all tenants with existing listings and that Parliament could consider delaying commencement of the penalty for non-removal rather than delaying the obligation to remove existing listings that are over three years old.[62]

The Department responded that section 564(2) was drafted to address a potential breach of fundamental legislative principles (FLPs) where it may be considered to be imposing obligations retrospectively by applying the new provisions to listings made before commencement. The Department advised that proposed section 564(2) will not prevent people who made a listing or database operators from removing pre-existing listings of three or more years prior to the 12 month deadline or prevent Tribunal orders being made to remove listings of three or more years from the database during the transition period.

Committee comment

The Committee notes Queensland Public Interest Law Clearing House Inc.'s proposal that the three year limit on listings should be automatically applied to all existing listings as well as new listings, and that all operators should be required to immediately remove listings over three years at the commencement of the Bill's provisions.

The Committee has considered the Department of Housing and Public Works' advice that proposed new sub-section 564(2) was drafted to address a potential breach of fundamental legislative principle regarding retrospectively, and that it will not prevent the removal of an existing listing, or prevent Tribunal orders being made to remove existing listings from the database during the proposed transition period of one year.

The Committee supports the introduction of a transition period but is of the view that a 6 month transition period would provide adequate time for listings over three years to be removed from a database.

Recommendation 3

The Committee recommends that the Minister for Housing and Public Works amend proposed sub-section 564(2) in the Bill to provide for a transition period of 6 months from commencement.

Listing tenants before the end of the tenancy

The current provisions of the RTRA Act (Chapter 9, sub-section 459(1)(b) Restriction on listing), and the national minimum standards, currently prohibit the listing of tenants on a tenancy database until after the end of the tenancy agreement.

Harcourts (Ashmore) and POAQ submit that tenants should be able to be listed on a database before the end of their tenancy as the current legislation allows tenants to move into a new property before the previous property manager has been able to put the listing on the database resulting in a "problem tenancy" being passed on to a new lessor.[63] POAQ provided further explanation at the public hearing:

> *… quite often before a tenancy ends we know that the tenant is going to default. We know that they are two months in arrears in rent, so it has well and truly exceeded the bond. There is a lot of damage there. We think that, at that point where we are trying to get rid of them through an application to QCAT and so on, where there is going to clearly be a defaulting tenant, we should be able to list them so that when they go to the next situation or to another*

[62] QPILCH Sub 9:3-4

[63] Harcourts Ashmore, Sub 2:1; POAQ, Sub 3:2

> *landlord seeking rental accommodation they are on the database so that the next person can be protected.*[64]

QPILCH commented on this proposal at the hearing:

> *… about the possibility of having a tenant listed for a breach prior to the end of the tenancy, it is my submission that listing a tenant at the end of a tenancy still offers those protections for future real estate agents and future property owners to assess the tenant's potential risk, and on that basis it serves its purpose within the various tools, as Mr McBryde pointed out, for assessing the adequacy of a tenant.*[65]

The Department does not support the proposal to be able to list before the end of a tenancy on the basis that:

- a tenant has obligations under the tenancy agreement and has until the end of the contract period to address any breaches, such as rent arrears or damage, and the RTRA Act has processes to follow for breaches
- checking potential tenants against tenancy databases is only one tool available to lessors/agents for assessing the suitability of the applicant and best practice for tenant assessment would also include reference checks, proof of the ability to pay rent, and rental history
- listing tenants before the end of the tenancy is not allowed under the national minimum standards.[66]

Committee comment

The Committee notes the suggestion by Harcourts (Ashmore) and the Property Owners' Association of Queensland that the *Residential Tenancies and Rooming Accommodation Act 2008* be amended to allow a listing on the tenancy database before the end of the tenancy agreement. However, the Committee does not support this proposal on the basis that:

- checking potential tenants against databases is only one tool available to lessors/agents for assessing the suitability of an applicant
- it would undermine the existing processes established to remedy breaches
- it is inconsistent with national minimum standards.

Restricting listings resulting from acts of domestic violence

The RTA advised the Committee that South Australia has recently introduced amendments that prohibit personal information of victims of domestic violence and family violence being listed on a database, in particular if the nature of the breach resulted from an act of abuse or domestic abuse against the applicant. The RTA suggests similar changes should be made to the RTRA Act.[67]

The Department advises that the South Australian provisions are more extensive than any other jurisdiction and extend beyond the national minimum standards, but are in line with the Queensland Government's commitments to address domestic violence. The Department is considering amendments to address this issue.[68]

[64] Public hearing transcript, 17 Feb 2016:11-12
[65] Public hearing transcript, 17 Feb 2016:15
[66] DHPW written brief, 11 Feb 2016:10
[67] RTA Sub 11:2
[68] DHPW written brief, 11 Feb 2016:10

Committee comment

The Committee supports the Residential Tenancies Authority's suggestion that Queensland consider the adoption of provisions in line with those recently introduced in South Australia that prohibit personal information of victims of domestic violence and family violence being listed on a tenancy database and notes that these provisions are in line with the Queensland Government's commitments to address domestic violence.

The Committee is therefore recommending that the Minister for Housing and Public Works amend this Bill to include provisions that are in line with the South Australian amendments.

Recommendation 4

The Committee recommends that the Minister for Housing and Public Works amend the Bill to prohibit personal information of victims of domestic violence and family violence being listed on a tenancy database.

2.3 Amendment of the *Housing Act 2003*

2.3.1 Deeming provision

Clause 4 of the Bill proposes to insert a new part 9, division 2B (Development of public housing premises), which includes new sections 94F to 94H, to amend the *Housing Act 2003* to provide that all development and building work for properties approved or used as public housing has been done lawfully in accordance with relevant laws at the time. The provision applies to all past, existing and future public housing.[69]

The then Minister for Housing and Public Works in her introductory speech explained that:

> *… under the Sustainable Planning Act 2009, the construction of public housing and associated developments is exempt from development approvals, with building work self-assessable by the department against applicable codes. Subsequently, these properties do not have the local authority development or building approvals normally expected in the private sector.*[70]

The Minister further stated that, to allay potential concerns and to provide security and certainty for future owners and financiers in relation to public housing that may be transferred, the Bill proposes to amend the *Housing Act 2003* to introduce a deeming provision that, *"when and if properties approved or used as public housing are transferred to another entity, all development and building work has been done lawfully and in accordance with the relevant laws at the time"*. [71]

The Explanatory Notes stated that the proposed deeming provision will provide security and certainty for future owners and financiers by removing any uncertainty arising from normal approvals not being in place.[72]

The Brisbane City Council (BCC) submitted that it considers the proposed deeming provision is unclear as to whether State public housing developments need to comply with applicable laws and also whether these developments need to comply with Brisbane City Plan 2014 or the Building Code of Australia (BCA). It submits that having regard to both clause 94G (development of public housing premises) and 94H (transfer of public housing premises), BCC recommends that the *Housing Act 2003* include provisions that require public housing to meet the standard of legislation, such as the BCA and local government planning schemes, prior to transfer of a public housing property to an individual or

[69] Explanatory Notes:1
[70] Minister introductory speech (PDOLA Bill) 1 Dec 2015:2978
[71] Minister introductory speech (PDOLA Bill) 1 Dec 2015:2978
[72] Explanatory Notes:3

other entity. BCC also submits that it does not support the related amendment to the *Sustainable Planning Act 2009* in that the amendment refers to the clauses 94G and 94H of the *Housing Act 2003*.[73]

The Department advised that there are current requirements and processes to ensure that all public housing properties meet the same building standards as private sector housing stock as follows:

- under the *Sustainable Planning Act 2009*, development for public housing is exempt development under the planning scheme or a temporary local planning instrument and to that extent does not require development approvals
- building work by or for the State is self-assessable development which does not require a development approval but must be carried out under applicable codes, which includes the BCA
- the Department has internal processes in place before it develops for public housing, including seeking comment from the local authority in relation to each project
- the Department is required under the *Sustainable Planning Act 2009* to publically notify public housing development which is considered to be substantially inconsistent with the relevant planning scheme (any submissions received are considered by the Director-General as part of the decision process to proceed with a project).[74]

The Department also referred to proposed clause 4, new section 94H(5) which provides that the deeming provision does not affect the transferee's obligation to comply with all applicable laws for development of premises started on or after the transfer of the premises.[75]

<u>Public housing approval process</u>

The Department provided advice at the public briefing that:

> *Under the Sustainable Planning Act, the construction of public housing is exempt from obtaining development approval and all building work is self-assessable against applicable codes. As a result, public housing properties do not have the development and building approvals that are normally obtained by the private sector.* [76]

The Committee sought further clarification from the Department on public housing approval process under *the Sustainable Planning Act 2009,* including whether or not members of the community are able to appeal the determination made by the Director-General of the Department.[77] The Department provided a written response to the Committee, advising that under the *Sustainable Planning Act 2009*, the consequence of the development for public housing being exempt development is that a development permit is not required for the development, which means:

- *it is not necessary for the State to submit a development application or comply with requirements about public notification of that application that might otherwise be required; and*
- *a person cannot make a submission about any development application or appeal the decision on the development application.*[78]

The Department further clarified how the exemption applies:

- *The consequence of the development for public housing being exempt development is that:*
  - *a development permit is not required for the development; and*

[73] BCC Sub 5:1-2
[74] DHPW written brief, 11 Feb 2016:10-11
[75] DHPW written brief, 11 Feb 2016:12; Explanatory Notes:10
[76] Public briefing transcript, 17 Feb 2016:2
[77] Public briefing transcript, 17 Feb 2016:4-5
[78] DHPW, answer to QTON at Public briefing (17 Feb 2016), 22 Feb 2016:1-2

  - *the development does not need to comply with planning instruments other than a State planning regulatory provision: section 235 of the Sustainable Planning Act 2009.*
- *As a development permit is not required:*
  - *it is not necessary for the State to submit a development application or comply with requirements about public notification of that application that might otherwise be required; and*
  - *a person cannot make a submission about any development application or appeal the decision on the development application.*
- *The development must still comply with State planning regulatory provisions.*[79]

Committee comment

The Committee notes the Department of Housing and Public Works' advice that public sector housing stock complies with all applicable laws, including the Building Code of Australia and local government planning schemes.

While the Committee supports the deeming provision proposed in the Bill, it is concerned that the not for profit sector, including community housing, will not benefit from the same exemptions under the *Sustainable Planning Act 2009* that apply to the Department of Housing and Public Works when it is undertaking public housing building works.

The Committee is concerned that the additional requirements imposed on the not for profit sector are likely to significantly extend the development application process and may impact on the viability of this sector undertaking community housing building projects.

2.3.2 Transfer of public housing stock (cost to Council)

BCC raised a concern that the transfer of a public housing property to an individual or other entity may lead to significant externalised costs to Council and it does not support any large scale sale of public housing stock.[80]

The Department advised that it does not expect these property transfers to lead to significant externalised costs to Council explaining that most properties transferred from the Department to a third party are expected to be detached houses which will continue to be used as detached houses. It is expected that any multi-unit complexes that are transferred would likely be at the end of their useful life and would be destined for redevelopment and the new owner of the property would be obliged to comply with all laws for development.[81]

The Department advised that it does not propose to undertake large scale sale of public housing; rather, its approach is to selectively dispose of properties when a property is no longer suitable for the delivery of social housing services or to sell a property to residing public housing tenants who are ready to transition to home ownership.[82]

[79] DHPW, answer to QTON at Public briefing (17 Feb 2016), 22 Feb 2016:3-4
[80] BCC Sub 5:1-2
[81] DHPW written brief, 11 Feb 2016:11-12
[82] DHPW written brief, 11 Feb 2016:12; Public briefing transcript:3

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' (FLPs) 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
- the institution of Parliament.

The Committee has examined the application of FLPs to the Bill. The Committee brings the following issues to the attention of the House.

3.1.1 Clause 7 - Rights and liberties of individuals

Clause 7 of the Bill proposes to insert a new section 19 into the PDA which will allow the chief executive to apply to the Police Commissioner for a criminal history report on a candidate for appointment as a member, deputy member or temporary member to the newly established STC.

Three caveats on this power act as safeguards against potential abuse of the power. Firstly, although a person cannot become a member, deputy member or temporary member of the Council unless they give consent under this section[83], the applicant's written consent is required before the chief executive is empowered to apply for the applicant's criminal history. Thus, if a potential applicant was strongly opposed to their criminal history being obtained, they could simply refuse to provide consent to the criminal history check and withdraw their application for a position on the Council. Further, the chief executive must destroy any information received under this section as soon as practicable after it is no longer needed for deciding whether an applicant is a suitable person for appointment to the Council.

The final safeguard provided in respect of an applicant's criminal history is contained in new section 21 which makes it an offence punishable by a maximum penalty of 100 penalty units for a person to, without authorisation under sub-section 21(2), directly or indirectly disclose information received under section 19. Disclosure is permitted under sub-section 21(2) where it is necessary to perform a function under the Act, where the disclosure is authorised under an Act or otherwise required or permitted by law, or where the applicant to whom the information relates consents to the disclosure.

Clause 7 also proposes to insert new section 20 which requires a member, deputy member or temporary member to immediately give the chief executive written notice of any change in that member's criminal history. The notice must include details of the offence and any sentence, as prescribed under sub-section 20(2). The failure to notify a change to a criminal history attracts a maximum penalty of 100 penalty units unless the member has a reasonable excuse.

Safeguards are also in place to protect information disclosed under section 20. Firstly, the chief executive must destroy any information received under section 20 as soon as practicable after it is no longer needed. Secondly, the section 21 protections outlined above also apply in respect of section 20 disclosures, meaning that information about changes to a criminal history is also confidential and cannot be directly or indirectly disclosed unless the disclosure is necessary to perform a function under the Act, authorised under an Act, required or permitted by law, or the member to whom the information relates has consented to the disclosure.

Permitting the criminal history of applicants for the Council or members of the Council to be obtained by the chief executive, and requiring members to notify any changes to their criminal history to the chief executive, raises issues regarding that person's right to privacy with respect to their personal information.

[83] see the operation of section 11(2) of the *Plumbing and Drainage Act 2002*

Committee comment

The Committee notes the safeguards that will be put into place by proposed sections 19-21 with respect to information obtained about an applicant's criminal history or changes to a member's criminal history, are as follows:

- the criminal history of an applicant can only be obtained with their consent
- there are strict limits on further disclosure of that information
- the information must be destroyed when it is no longer required for the purpose for which it was obtained.

The Committee also notes that if an applicant does not wish their criminal history disclosed to the chief executive then they can simply not give consent for it to be obtained and withdraw their application for membership of the Service Trades Council.

The Committee considers that, with the above safeguards, there appears to be sufficient protections for the privacy of an applicant or member of the Service Trades Council.

3.1.2 Clause 34 - Rights and liberties

Clause 34 proposes to insert new sections 562-564 into the RTRA Act. Those sections provide that new sections 459A-D apply to an existing listing on a tenancy database, as well as to personal information included in a tenancy database after the commencement, in respect of such matters as the obligation to ensure the accuracy/quality of database listings is maintained and that copies of personal information contained in both existing and new listings should be provided to tenants that request them.

Section 4(3)(g) of the *Legislative Standards Act 1992* (LSA) provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.

In respect of the above sections 562-564, the Explanatory Notes state:

> *This amendment has a prospective operation, while it may be considered to impose obligations retrospectively by applying the new provisions to listings made on tenancy databases before commencement. It is considered that this is justified on the grounds that database operators have been provided with a 12 month period after commencement in which to update listings which are two or more years old, and is not a breach of fundamental legislative principles.*[84]

As acknowledged in the Explanatory Notes it could be argued that there is some aspect of retrospectivity with these provisions because they impose obligations on database owners/operators to maintain the accuracy of records and provide copies of records relating to listings that were made on the database prior to commencement.

If a database is considered to be a single entity at a particular point in time however, it should not make any real difference when an entry was made on the database if an inaccuracy is detected after commencement, because the obligation to maintain an accurate database should, prospectively, after commencement, apply to the database in its entirety, and the obligation should be to correct any inaccuracy identified on the database in the future, regardless of when the original entry was made or when the inaccuracy is detected.

Similarly, with respect to providing information from the database to a requesting tenant, on payment of a fee, it should make little real difference when that information was put onto the database and there should be no greater effort required by the database operator to extract the relevant information whether the information was put on there before or after commencement.

[84] Explanatory Notes:25

3.1.3 Clause 21 - Immunity from proceedings

Clause 21 proposes to amend section 114 of the QBCC Act by inserting subsection (1A) which provides that – *a relevant entity does not incur any civil liability for an honest act or omission in the performance or purported performance of functions under the Plumbing and Drainage Act 2002.* A "relevant entity" is defined in new subsection 114(5) as meaning either the State, the Commissioner, a relevant officer of the Commission, or a member, deputy member or temporary member of the Service Trades Council.

Amended subsection (2) states that, *a civil liability that would, apart from subsection (1) or (1A), attach to an entity other than the commission attaches instead to the commission.*

There is a potential FLP issue as legislation should not confer immunity from proceeding or prosecution without adequate justification.[85] The Office of the Queensland Parliamentary Counsel (OQPC) Notebook states "a person who commits a wrong when acting without authority should not be granted immunity. Generally a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees. The preferred provision provides immunity for action done honestly and without negligence … and if liability is removed it is usually shifted to the State.[86]

The former Scrutiny of Legislation Committee (SLC) stated that one of the fundamental principles of law is that everyone is equal before the law, and each person should therefore be fully liable for their acts or omissions. Notwithstanding that position, the SLC also recognised that conferral of immunity may be appropriate in certain situations.[87]

The conferral of immunity in Clause 21 is limited in that it only provides protection from civil liability for acts done or omissions made, honestly, in the performance or purported performance of a function under the Act. In the event that subsection (1A) confers such an immunity, subsection (2) provides that civil liability attaches to the Commission, thus ensuring an aggrieved person may still make a civil claim by making the Commission a party to their suit.

Pursuant to subsection 114(4), section 114 *does not affect the liability of a person other than the commission to disciplinary action under the conditions of the person's employment*, meaning persons who (honestly) make a mistake in the performance or purported performance of their statutory function under the Act may still be liable to disciplinary action arising from the particular terms and conditions under which they are employed if there is some culpability for negligence attributable to their actions.

<u>Committee comment</u>

Given the fact that an aggrieved person may still have the option of making a civil claim against the Commission, and the possibility of employment-related disciplinary action being taken if some measure of punitive sanction is warranted by the circumstances, the Committee considers that the civil immunity granted in respect of acts done or omissions made honestly, whilst performing statutory functions, is appropriate.

[85] *Legislative Standards Act 1992*, section 4(3)(h)
[86] OQPC, Fundamental Legislative Principles: *The OQPC Notebook*:64
[87] OQPC, Fundamental Legislative Principles: *The OQPC Notebook*:64; Alert Digest 1998/1:5

3.1.4 Clear and precise

Clause 35 amends the dictionary in Schedule 2 of the RTRA Act, including by changing the definitions of *lessor* and *tenant* to be, *'for chapter 9 –section 457'*.

Committee comment

The Committee notes that Section 457 of the *Residential Tenancies and Rooming Accommodation Act 2008* does not (either currently or after amendment by this Bill) contain a definition of either of the terms *lessor* or *tenant* and the Committee therefore suggests that this drafting error be corrected.

3.2 Table of proposed new and amended offence provisions

Clause	Offence	Proposed maximum penalty
7	Replaced s20(1) If there is a change in the criminal history of a person who is a member, deputy member or temporary member, the person must immediately give written notice of the change to the chief executive, unless the person has a reasonable excuse.	100 penalty units
	Replaced s21(1) A person must not, directly or indirectly, disclose any information received under section 19 or 20 to anyone else unless the disclosure is permitted under subsection (2).	100 penalty units
28	New s458A(2) The lessor or agent must, when the application is made, give the applicant written notice of the following— (a) the name of all the tenancy databases the lessor or agent usually uses; (b) that the reason the lessor or agent uses the relevant databases is for checking a person's tenancy history; (c) for each relevant database, how a person may contact the database operator and obtain information from the operator.	20 penalty units
	New s458B(2) The lessor or agent must, within 7 days after using the tenancy database, give the applicant written notice of the following— (a) the name of the database; (b) that personal information about the applicant is in the database; (c) details of the listing entity for the personal information; (d) how and in what circumstances— (i) the applicant can have the personal information removed or amended under this chapter; and (ii) the applicant can obtain a copy of the personal information.	20 penalty units

29	Amended s459(2) Without limiting subsection (1), the person must not list personal information about the other person on a tenancy database unless— (a) the person has without charging a fee, given the other person a copy of the personal information or taken other reasonable steps to disclose the personal information to the person; and (b) the person has given the other person at least 14 days to review the personal information and make submissions objecting to its entry into the database or about its accuracy, completeness or clarity; and (c) the person has considered any submissions made.	20 penalty units
	Amended s459(5) A person must not list personal information about another person if the person is aware that the personal information is inaccurate, incomplete, ambiguous or out of date.	20 penalty units
30	New s459A(2) The lessor or agent must, within the relevant notice period, give the database operator written notice— (a) for information that is inaccurate, incomplete or ambiguous— (i) that the information is inaccurate, incomplete or ambiguous; and (ii) of how the information must be amended so that it is no longer inaccurate, incomplete or ambiguous; and (b) for information that is out of date—that the information is out of date and must be removed; and (c) in either case—that the database operator must comply with section 459B.	20 penalty units
	New s459A(4) If the lessor or agent gives a notice under this section, the lessor or agent must keep a copy of the notice for 1 year after it is given to the database operator.	20 penalty units
	New s459B(2) If the notice states that the information is inaccurate, incomplete or ambiguous but not out of date, the database operator must, within 14 days from the day the notice is given, amend the information in the way stated in the notice.	40 penalty units
	New s459B(3) If the notice states that the information is out of date, the database operator must, within 14 days from the day the notice is given, remove the information from the tenancy database.	40 penalty units

	New s459C(1) A lessor or lessor's agent who lists personal information about a person must, if asked in writing by the person, give the person a copy of the personal information listed within 14 days after the request is made and any fee for giving the information has been paid.	20 penalty units
	New s459C(2) A database operator must, if asked in writing by a person whose personal information is in the database operator's tenancy database, give the person a copy of the information within 14 days after the request is made and any fee for giving the information has been paid.	20 penalty units
	New s459D A database operator must not keep personal information about a person in the tenancy database for longer than 3 years.	40 penalty units

3.3 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It 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.

Committee comment

Explanatory Notes were tabled with the introduction of the Bill. The Committee notes that the Explanatory Notes are fairly detailed and contain the information required by Part 4 of the LSA and have a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix A – List of Submissions

Sub #	Submitter
001	Private
002	Harcourts (Ashmore)
003	Property Owners' Association of Queensland (POAQ)
004	Local Government Association of Queensland (LGAQ)
005	Brisbane City Council (BCC)
006	Air-conditioning and Mechanical Contractors Association of Queensland
007	EnhanceCare Inc
008	Master Plumbers Association of Queensland (MPAQ)
009	Queensland Public Interest Law Clearing House Incorporated (QPILCH)
010	Plumbers Union Queensland
011	Residential Tenancies Authority (RTA)

Appendix B – List of witnesses at public briefing and hearing

Witnesses at public briefing held in Brisbane, 17 February 2016

Department of Housing and Public Works

Mr Jonathan Leitch, Executive Director, Strategy and Policy, Housing Services

Mr Hiro Kawamata, Executive Director, Capital and Assets, Housing Services

Mr Logan Timms, Executive Director, Building Industry and Policy

Queensland Building and Construction Commission

Ms Kellie Lowe, Acting Commissioner

Residential Tenancies Authority

Mr David Breen, Executive Manager

Witnesses at public hearing held in Brisbane, 17 February 2016

Master Plumbers' Assoc. of Qld

Mr Ernie Kretschmer, Technical Services Manager

Services Trades Qld representing the **Plumbers Union Qld**

Mr Glen Chatterton

Property Owners Association of Queensland

Mr Bruce McBryde, President

Queensland Public Interest Law Clearing House Incorporated (QPILCH)

Mr Cameron Lavery, Homeless Persons' Legal Clinic Coordinator

Mr Stephen Grace, Homeless Persons' Legal Clinic Lawyer

EnhanceCare Inc.

Mr Scott Green, Tenant Advice Worker

Ms Lorraine Seymour, Tenant Advice Worker

Statement of Reservation

Mr Shane King MP
State Member for Kallangur
Chair – Transportation and Utilities Committee
PO Box 629
KALLANGUR QLD 4503

Monday 29 February, 2016

Dear Mr King,

I refer to the Committee's inquiry into the *Plumbing and Other Legislation Amendment Bill 2015*. The Opposition Members on the Committee acknowledge and support the industry's desire to have high level representation within Government. However the Opposition Members of the Committee consider the creation of the position of Assistant Commissioner within the Queensland Building and Construction Commission (QBCC) to be a significant cost risk to the industry.

Plumbers and the plumbing industry have had representation within the Queensland Government since 1950. It is considered that as previous iterations met the needs of the industry without the creation of an Assistant Commissioner and the accompanying permanent administrative costs, an industry representative in an elected, volunteer position would better meet the functions of the proposed Assistant Commissioner.

This industry filled role could receive administrative support from within the existing budget of the QBCC. This would negate the likelihood of cost blowouts and provide an avenue for industry to select from within its peers for representation.

Kind Regards,

Matt McEachan MP
Deputy Chair - Transportation and Utilities Committee

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Your strong local voice for Redlands