

Residential Tenancies and Rooming Accommodation Amendment Bill 2014

Report No. 53

**Transport, Housing and Local Government
Committee**

October 2014

Transport, Housing and Local Government Committee

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Abbreviations

ABCB	Australian Building Code Board
ADCQ	Anti-Discrimination Commission Queensland
The Bill	Residential Tenancies and Rooming Accommodation Amendment Bill 2014
The Committee	Transport, Housing and Local Government Committee
The Department/DHPW	Department of Housing and Public Works
FLP	Fundamental Legislative Principles
POAQ	Property Owner's Association of Queensland
QCAT	Queensland Civil and Administrative Tribunal
QPILCH	Queensland Public Interest Law Clearing House Incorporated
SAPA	Supported Accommodation Providers Association
RTA	Residential Tenancies Authority
RTRA Act or the Act	<i>Residential Tenancies and Rooming Accommodation Act 2008</i>
TQ	Tenants Queensland Inc.

Chair's Foreword

This report presents a summary of the Committee's examination of the Residential Tenancies and Rooming Accommodation Bill 2014.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear from members of the public and stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland.

On behalf of the Committee I thank those individuals and organisations who lodged written submissions on this Bill, and others who have informed the Committee's deliberations: the Committee's secretariat, officials from the Department of Housing and Public Works and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.



Mr Howard Hobbs MP
Chair

October 2014

Recommendation

Recommendation 1

2

The majority of the Committee recommends that the Residential Tenancies and Rooming Accommodation Bill 2014 **not** be passed.

1 Introduction

1.1 Role of the Committee

The Transport, Housing and Local Government Committee (the Committee) was established by resolution of the Queensland Legislative Assembly on 18 May 2012, consisting of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill
- the application of the fundamental legislative principles to the Bill.

1.2 Referral

The Residential Tenancies and Rooming Accommodation Amendment Bill 2014 (the Bill) is a Private Members' Bill introduced into the Legislative Assembly by the Member for Bundamba, Mrs Jo-Ann Miller MP and referred to the Committee on 3 April 2014.

As no reporting date was fixed by the Legislative Assembly or the Committee of the Legislative Assembly, in accordance with Standing Order 136(1), the Committee must report to Parliament on or before 3 October 2014.

1.3 Inquiry process

The Committee received eleven submissions (see Appendix A for a list of submitters) and received a written briefing from the Department of Housing and Public Works (the Department or DHPW) and another from the Residential Tenancies Authority (RTA).

The Committee wrote to Mrs Miller MP (dated 22 July 2014) inviting the Member to provide a public briefing to the Committee on the Private Members Bill on 27 August 2014. Mrs Miller MP did not accept the Committee's invitation.

The submissions and the Department's written brief are published on the Committee's website www.parliament.qld.gov.au/work-of-committees/committees/THLGC/inquiries/current-inquiries.

1.4 Policy objectives of the Bill

The objective of the Bill is to amend the *Residential Tenancies and Rooming Accommodation Act 2008* (the Act or RTRA Act) to make provision for statutory minimum standards for rental accommodation and rooming accommodation in Queensland. The proposed amendments would allow the Minister to prescribe minimum standards by regulation for private rental accommodation, both standard housing and rooming accommodation.

The Bill also proposes to insert a new chapter in the Act to make provision for the settlement of disputes arising between lessors and tenants arising from the prescribed minimum housing standards.¹

When introducing the Bill to the Parliament on 3 April 2014, the Member for Bundamba, Mrs Jo-Ann Miller MP, stated that:

...public housing for low-income Queenslanders is becoming increasingly difficult to access due to a decrease in available housing stock and tighter restrictions on eligibility

¹ Explanatory Notes:1

requirements. Low-cost private rental accommodation is increasingly filling the void this creates. ... Sometimes the quality of low-cost private rental accommodation is of an unsatisfactory standard. Access to stable, adequate shelter plays a major role in the health and wellbeing of families, and in particular children, by providing a safe environment and the security that allows participation in the social, educational, economic and community aspects of their lives.

Housing issues that impact on health can include such things as structural integrity, weatherproofing, lighting, ventilation, cleanliness and hygiene, security, sanitation facilities and cooking facilities. By imposing minimum housing standards for private rental accommodation, governments can fulfil their obligations to ensure that, even at the lowest end of the rental market where renters are most vulnerable, standards are enforceable to provide that basic minimum health and safety standards apply to places where Queensland families live.²

1.5 Committee comment and recommendation

Committee comment

Standing Order 132(1) requires the Committee to determine whether to recommend the Bill should be passed. The Committee has considered the form and policy intent of the Bill and while it sees merit in the policy objectives being pursued, for the reasons outlined in Section 2 of this report, the Committee considers that further investigation into the implications of statutory minimum standards for rental and rooming accommodation should occur before legislation of this nature can be considered by the Parliament.

The Committee understands that the Minister for Housing and Public Works is currently reviewing amendments to the *Residential Tenancies and Rooming Accommodation Act 2008* and the Committee considers that the issue of statutory minimum standards should be considered in the context of this review, so that all issues can be considered in a holistic manner and stakeholder consultation can be undertaken.

Accordingly, the majority of the Committee is recommending that the Bill should not be passed.

Recommendation 1

The majority of the Committee recommends that the Residential Tenancies and Rooming Accommodation Bill 2014 **not** be passed.

² Member for Bundamba, Hansard Transcript, 3 April 2014:1098

2 Examination of the Residential Tenancies and Rooming Accommodation Bill 2014

2.1 Background

2.1.1 Current legislative requirements in relation to housing and building standards

The Residential Tenancies and Rooming Accommodation Act 2008

The Act establishes:

- the rights and responsibilities of tenants and lessors/agents
- what tenants and lessors/agents can and cannot do
- how to address issues that may arise during a tenancy
- what happens if either party breaks the law.³

It sets out obligations for landlords (or managing agents) and tenants in general tenancies and moveable dwellings tenancies, as well as residents in room-only style accommodation.

The RTA is the statutory authority which administers the Act.

Under the RTRA Act, the landlord (or managing agent) must:

- abide by all laws relating to health and safety of premises (for example, smoke alarm requirements, pool safety standards, relevant building codes, etc.)
- ensure the premises and inclusions are clean, fit to live in, and are in good repair at the start of the tenancy
- maintain the premises and inclusions in good repair throughout the tenancy
- supply and maintain all locks to ensure premises are reasonably secure
- inform the tenants of their, and/or their agent's, contact details, and the contact details for nominated repairers for emergency repairs
- ensure premises are water efficient to the required standard if the tenant is required to pay for water consumption (in individually metered premises)
- give tenants the required notice to enter the property or to make repairs or carry out maintenance.⁴

If the tenant believes the rental property does not meet the required standard, they can take a number of actions under the current legislation, including:

- issue the landlord/agent with a *Notice to remedy breach* (RTA Form11)
- if the *Notice to remedy breach* does not resolve the issue, the tenant can apply for dispute resolution through the RTA and potentially the Queensland Civil and Administrative Tribunal (QCAT) for an order about the repairs
- where emergency repairs are required and the landlord/agent does not take action in a reasonable time, the tenant can arrange emergency repairs up to the value of two weeks

³ Department of Housing and Public Works, Written Brief, 30 July 2014:1

⁴ see sections 166, 185, 192, 206, 210 and 216 of the Act, Department of Housing and Public Works, Written Brief, 30 July 2014:3

rent which the landlord is liable to pay or apply to QCAT for an order about emergency repairs, or an order about the payment of emergency repairs

- apply to QCAT to end the tenancy on the grounds of non-liveability
- apply to QCAT for an order for rent reduction or compensation.⁵

The Residential Services (Accreditation) Act 2002

The *Residential Services (Accreditation) Act 2002* provides for specific requirements for residents living in residential services, such as boarding houses and hostel accommodation. These services must be registered and premises accredited. The Residential Services Unit within the DHPW administers these requirements. These standards recognise the vulnerability of residents in more transient and more densely populated accommodation.⁶

Building standards

Minimum standards for building apply to all types of buildings, regardless of whether they are owner-occupied or rented premises. In Queensland, applicable minimum building standards are set out in the *Building Act 1975*, the *Building Regulations 2006*, the National Construction Code and the Queensland Development Code.

The Department advised that in general, these standards apply to new building work, including renovations and they vary depending on the building's use (classification) and the date of the original construction. "*Building standards are set at the minimum to meet community expectations in relation to the construction and maintaining of buildings.*"⁷

Under the *Building Act 1975*, the local council must inspect existing properties if there is a complaint about non-compliance of a building, or if a non-compliance issue comes to its attention. The council may issue an enforcement notice to the owner if the council considers the building is dangerous, in a dilapidated condition, unfit for use or occupation or is filthy, infected with disease or infested with vermin. The council may also issue an enforcement notice if a complaint is made about a building not complying with the applicable building standards. Council inspectors can order rectification or if necessary condemn the building as unfit to occupy.⁸

Other legislation that provides for minimum building standards include:

- the *Fire and Emergency Services Act 1990* – installation and maintenance of smoke alarms in all residential dwellings and requirements for fire safety in other classes of buildings
- the *Building Act 1975* – fencing of residential swimming pools and pool safety certificates for rental properties
- the *Electrical Safety Act 2002* – installation of electrical safety switches.⁹

2.1.2 Legislative requirements in other jurisdictions

The Department of Housing and Public Works advised the Committee that other Australian jurisdictions have similar laws to Queensland which regulate issues around the standard of a rental premises.

⁵ Department of Housing and Public Works, Written Brief, 30 July 2014:3

⁶ Department of Housing and Public Works, Written Brief, 30 July 2014:3-4

⁷ Department of Housing and Public Works, Written Brief, 30 July 2014:4

⁸ Department of Housing and Public Works, Written Brief, 30 July 2014:4

⁹ Department of Housing and Public Works, Written Brief, 30 July 2014:4

Most jurisdictions employ broad coverage of the lessor's obligations such as ensuring the rental property is in good condition or a reasonable state of repair, fit for the tenant/resident to live in, and has regard for general safety and security of the property.¹⁰

South Australia and New South Wales further specify that there is an obligation to maintain the residential premises in a reasonable state of repair even if the tenant had notice of the state of disrepair before occupying the residential premises.

Tasmania has included minimum standards in the State's tenancy legislation and these are due to take effect on 1 October 2014. The legislation establishes obligations about essential services such as bathrooms, toilets, cooking stoves, heating, window coverings, light bulbs and tap washers.

At the Committee's request, the Department compiled a table comparing existing standard of premises provisions in tenancy law for Australian Jurisdictions. This table can be found on the Committee's [website](#).

2.2 Proposed amendments to the RTRA Act

The objective of the Bill is to amend the *Residential Tenancies and Rooming Accommodation Act 2008* to make provision for statutory minimum standards for rental accommodation and rooming accommodation in Queensland. The proposed amendments would allow the Minister to prescribe minimum standards for private rental accommodation, both standard housing and rooming accommodation, by regulation, in relation to matters including, for example, the following:

- sanitation, drainage, cleanliness and repair of premises
- ventilation and sanitation
- protection from damp and its effects
- construction, condition, structures, safety and situation of premises
- the dimensions, cubical extent and height 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
- energy efficiency
- amendment of timeframes for claimants and respondents to address complex claims
- provision of additional information in adjudication responses.¹¹

The Bill also proposes to insert a new chapter in the Act to make provision for the settlement of disputes arising between lessors and tenants arising from the prescribed minimum housing standards. This includes the RTA establishing a separate account where tenants can pay rent for premises which are subject to dispute, and for the RTA to disburse rent payments including compensation to tenants.¹²

¹⁰ Department of Housing and Public Works, Written Brief, 30 July 2014:5

¹¹ Explanatory Notes:1

¹² Department of Housing and Public Works, Written Brief, 30 July 2014:2

2.3 Issues raised in submissions

There were eleven submissions received on the Bill (see Appendix A for a list of submitters). Submitters included real estate agents, tenants, tenancy representative groups, peak bodies, a government agency and a legal organisation.

Most submissions focussed solely on the proposed introduction of statutory minimum standards with a small number considering the additional provisions in the Bill such as the RTA establishing separate accounts to manage rent payments and the RTA inspecting properties. Seven submissions did not support the Bill, one supported the Bill as drafted, two supported the Bill with additional requirements and one supported the prescription of minimum standards of accommodation in principle.

The key issues raised in submissions, along with the Department's and the RTA's analysis and comments, are outlined below under separate sub-headings.

2.3.1 Minimum housing standards

The Anti-Discrimination Commission Queensland (ADCQ) did not specifically indicate support for the Bill but did advise the Committee that it supported the prescription of minimum standards of accommodation that are consistent with the right of everyone to an adequate standard of living, and to the protection of the more vulnerable members of our society.¹³

Tenants Queensland Inc. (TQ) strongly supported the introduction of minimum standards for rental properties on the basis that they would deliver a codification of current requirements affecting health and safety and provide greater expression of the current tenancy law requirements about the same (such as 'ensure the premises are fit for the tenants to live in'). TQ submitted:

..the standard of premises, repairs and maintenance is the second most common issues raised with the TQ in all our advice and casework....Many tenants live in premises which are in a state of disrepair or substandard condition. The condition of some rental properties poses a real risk to tenants and their families.¹⁴

TQ submitted that despite relevant provisions in tenancy law requiring that the premises are 'clean', 'fit for the tenant to live in', 'in good repair', and that 'the lessor is not in breach of a law dealing with issues about the health and safety of persons using or entering the premises', many tenants are unable to enforce these rights and the introduction of minimum standards would reduce the problems currently incurred. TQ indicated that problems with enforcement include:

- renters not knowing what is meant by the current provisions
- tenants running out of time due to ending of tenancy agreements or a six month time limit to take action on breaches
- inherited repairs with no mechanism for continuation of action once a tenant leaves the premises
- concern about retaliatory eviction at the end of the agreement
- unenforceability of QCAT orders, apart from action in the supreme Court.¹⁵

¹³ Anti-Discrimination Commission Queensland, Submission 4:2

¹⁴ TQ, Submission 11:3

¹⁵ TQ, Submission 11:4-6

The RTA advised the Committee that the RTA offers a free dispute resolution service to help tenants negotiate outcomes with their landlord/agent, and that the RTRA Act allows tenants to arrange for emergency repairs and apply to QCAT for an order about emergency or routine repairs and reimbursement of costs, reduced rent or compensation if appropriate. Further, that significant issues can be referred to local councils which enforce existing building standards and health and safety requirements.¹⁶

2.3.2 Duplication of existing legislative requirements

A number of submissions argued that current legislative requirements provide adequate protection and the proposed minimum standards would mainly duplicate these existing provisions.¹⁷

The Supported Accommodation Providers Association (SAPA) was strongly opposed to the Bill on the grounds that:

The proposal to set minimum standards for private rental accommodation is ill considered and inappropriate as a range of other legislation captures many of the standards proposed in the bill. These include the Building Act, plumbing standards, RTRA Act and the many regulations of Councils across the state that impact on rental properties.

....this bill is simply an unnecessary additional level of regulation that will only create greater issues for homelessness in the state....

Another area of concern is the considerable increase in 'red tape' that this bill would create. As it duplicates many existing laws it would create more pressure on an already overburdened QCAT to cover issues that are already protected in the RTRA Act.¹⁸

The Property Owners' Association of Queensland (POAQ) submitted that the proposed amendments duplicate existing requirements as all properties at the time of construction would have been required to be built to minimum housing standards and that the standards relate to maintenance which is already covered under the RTRA Act.¹⁹

The RealEstate Excellence Academy submitted:

Landlords (lessors) already have clear statutory obligations in relation to ensuring properties are safe and fit to live in through section 185. If landlords fail in their obligations, tenants should utilise their many rights to ensure the landlord meets their legislative obligation.²⁰

RealWay Property Consultants agreed, submitting that lessors already have clearly defined legislative requirements regarding the condition and upkeep of the property in section 185 of the RTRA Act. "This section of the act also applies to the tenant and they have access to the RTA information on a course of action needed if the lessor does not comply with section 185".²¹

The Queensland Public Interest Law Clearing House Inc (QPILCH) submitted that the Act currently offers protection to tenants experiencing issues with the standards of rental property, including the right to apply to QCAT for orders about repairs, for a rental decrease and compensation.²²

¹⁶ RTA, Written Brief, 31 July 2014:2

¹⁷ See submissions 1, 2, 5, 8, 9

¹⁸ SAPA, Submission 8:1-2

¹⁹ POAQ, Submission 5:1

²⁰ RealEstate Excellence Academy, Submission 1:1

²¹ RealWay Property Consultants, Submission 2:1

²² QPILCH, Submission 7:2

Rental Express raised similar concerns and added:

..local government laws and regulations also comprehensively deal with such issues as drainage, sanitation, construction and condition, cubic size and height of rooms, and a range of other dwelling specific criteria (depending on the local government area). Further adding to these already existing provisions will only serve to add layers of cost, complexity and confusion.²³

The Department advised that the proposed provisions in the Bill do duplicate existing requirements for minimum building standards which are set for all housing in existing legislation, such as the *Building Act 1975* and *Building Regulation 2006*, the *Local Government Act 2009*, *electrical Safety Act 2002*, *Fire and emergency Services Act 1990* and the *Building Fire Safety Regulation 2008*.

The RTRA Act has an obligation for lessors to provide and maintain premises that are fit to live in and in good repair, and for lessors to comply with laws around health and safety for premises. Specific requirements for these obligations are established through building codes and regulated through local governments which have a network of inspectors and private certifiers who may be used in certain cases such as initial compliances.²⁴

The Department further advised that implementing non-standardised building requirements, such as those proposed in the Bill, could have significant economic implications for property owners and the building sector generally. Further, if not identical to existing standards, it could cause confusion as to which standards would apply, especially if amenity standards are involved.²⁵

Previous reports on housing affordability have identified inefficiencies and costs that may be imposed on property owners and the building sector for regulatory measures that are outside the building law framework.²⁶

2.3.3 Potential to adversely impact housing availability and affordability

A number of submissions argued that the proposed minimum standards may adversely impact on the availability and affordability of the private rental market.²⁷ QPILCH submitted that whilst the introduction of statutory minimum housing standards is a worthwhile goal, the Committee should consider *“the impact the RTRAA Bill may have on housing affordability and availability, particularly for vulnerable people in the community who already struggle to obtain and sustain housing in the private rental market.”²⁸*

SAPA agreed submitting:

If a range of affordable accommodation were suddenly deemed ‘below standard’ then all the residents of those properties would have to find other places to live in an already crowded rental environment..... If the ‘below standard’ properties were fully renovated and improved it is unlikely that they would come back on the market at the same rent, they would no doubt have a steep increase in rent charged to cover the additional investment required by owners.²⁹

²³ Rental Express, Submission 9:1

²⁴ Department of Housing and Public Works, Written Brief, 30 July 2014:6

²⁵ Department of Housing and Public Works, Written Brief, 30 July 2014:7

²⁶ Department of Housing and Public Works, Written Brief, 30 July 2014:7

²⁷ See submissions 1, 2, 7, 8, 9, 10

²⁸ QPILCH, Submission 7:1

²⁹ SAPA, Submission 8:1

The property management sector was of the same view. RealWay Property Consultants submitted:

As a property manager and landlord I understand the importance of having a safe rental property, however the cost of maintaining and complying with “minimum housing standards” could be considerable to some owners. I feel major changes to the standards could have a huge follow on effect to the rental industry by driving more renters away from the market as the cost of rental accommodation increases to cover the cost of maintenance and building reports.³⁰

The Realestate Excellence Academy made a similar argument stating:

It is with great alarm to see so many matters proposed to have minimum housing standards. Whilst the focus and importance of having safe rental properties is paramount, the cost for compliance to the sector is mind boggling to say the least should a standard be proposed for each item listed in proposed section 191A. The impact on the private rental market would be catastrophic to say the least to all parties involved, including tenants which may see rents rise in order to recoup the possible costs to investors.³¹

The Department advised the Committee that “depending on standards introduced, there could be an investor backlash with potential reduction in investment leading to a reduction in the number of rental properties, higher rents and greater numbers of maintenance disputes.”³²

The RTA advised that careful consideration is needed about the unintended consequences on the low cost housing market and the potential to impact supply and increase homelessness.

Previous reports on housing affordability have identified inefficiencies and costs that may be imposed on property owners and the building sector from regulatory measures that are outside of the building law framework. For example, in 2008 the Australian Building Code Board (ABCB) release the “Impacts on Housing Affordability” paper that includes case studies where local government imposed building regulatory measures have resulted in cost increases of up to 14 per cent.³³

2.3.4 Special residency tenancy rent account

Proposed new section 191I requires the RTA to keep a special residential tenancy rent account and proposed section 191H allows a tenant to apply to the tribunal for an order to authorise the tenant to pay rent into the account if the tenant has given a notice to the lessor under section 191B(2) or the RTA has given a report to the lessor under section 191C.

The POAQ submitted that this new account would result in more red tape for the RTA.³⁴

Rental Express raised a number of issues with the proposed tenancy rent account including responsibility for monitoring and accounting for rental payments, issuing of relevant forms, effect of withholding funds on property owner’s tax and financial records and payment of agents. For example:

...most investment property owners count heavily on the weekly/fortnightly rent in order to meet their financial obligations providing rental accommodation to the private rental market....

³⁰ RealWay Property Consultants, Submission 2:1

³¹ Realestate Excellence Academy, Submission 1:1

³² Department of Housing and Public Works, Written Brief, 30 July 2014:6

³³ RTA, Written Brief, 31 July 2014:5

³⁴ POAQ, Submission 5:2

*How does withholding funds from the property owner enable the property owner to make upgrades to the premises to comply with an order, when it is generally financial capacity that prevents the work being done in the first instance?*³⁵

2.3.5 Stakeholders suggested amendments to the Bill

Additional minimum standards

One submitter proposed a number of additional standards be included – artificial lighting for all rooms, provision of hot water supply, storage and sanitary facilities and protection from the elements (being able to close all windows).³⁶

Introducing an offence provision

TQ submitted that the Bill be amended to include an offence provision so premises cannot be rented out if they do not meet minimum standards.³⁷

The RTA advised the Committee that including offence provisions, which would be the responsibility for the RTA to prosecute, would not be a timely or effective response as prosecutions would take up to six months if natural justice is to be afforded to lessors.³⁸

Third party process

TQ also proposed that the introduction of codified responsibilities within tenancy law must be accompanied with a third party process to intervene when these are not met.

*... there are barriers to tenants themselves raising problems and pursuing their rectification. A third party must have a role in investigation and enforcement for any provisions to be effective. The process should not be entirely dependent upon a sitting tenant taking action for repairs to be done.*³⁹

The RTA advised the Committee that this issue appears to relate to issues about repairs and maintenance during the tenancy, rather than a property not being of a suitable standard to rent.

*..the RTRA Act provides a number of options for tenants to pursue, including issuing breach notices, dispute resolution and tribunal orders around repairs, rent reduction, compensation and ending tenancies, and includes protections against retaliatory evictions. These options are in addition to other provisions under the existing building standards and requirements administered at the local government level which already offers a third party investigation role.*⁴⁰

2.3.6 Implementation issues

Proposed **section 191B** states that “a tenant may give written notice to a lessor stating that the residential premises do not comply with a prescribed minimum housing standard”. The POAQ raised a concern in its submission about whether tenants have the qualifications required to make an assessment about whether the premises complies with the prescribed minimum housing standards.⁴¹

³⁵ Rental Express, Submission 9:1-2

³⁶ Ms Herschell, Submission 3:2

³⁷ TQ, Submission 11:7

³⁸ RTA, Written Brief, 31 July 2014:4

³⁹ TQ, Submission 11:6-7

⁴⁰ RTA, Written Brief, 31 July 2014:3

⁴¹ POAQ, Submission 5:1

The Bill proposes a new **section 191C** which empowers the RTA to investigate whether a lessor has failed to ensure that residential premises comply with a prescribed minimum housing standard and that if the Authority is satisfied that the residence does not comply, the RTA must give a written report to the tenant and lessor and inform the tenant that they may make application to the tribunal under a proposed new section 191E. The POAQ raised a concern about whether privacy laws would inhibit the ability of the RTA to provide a copy of the report to tenants. The POAQ also raised this concern in relation to proposed new sections 191D.⁴²

Rental Express voiced a concern about the impact on review and dispute resolution processes:

*The QCAT system and RTA Dispute resolution are already clogged with Tenancy matters and delays dealing with these issues are considerably lengthy. Adding further layers of regulation that will have a number of aspects that become purely a matter of interpretation and arguments between two parties will mean a further resource drain.*⁴³

The Department informed the Committee that:

The processes and timelines proposed in some parts for the draft bill may be difficult to achieve in some regional and remote areas, and during peak periods of tenancy changes, as the RTA would be required to inspect and provide a written report on the standard of the premises to the tenant and lessor within 28 days.

This would require the RTA to establish a state-wide inspection service and new systems to administer and disburse rent payments by tenants as a result of orders made under the proposed scheme, and the implementation costs for the RTA would be significantly higher.

*The government would also need to consider the potential exposure to liability and risk if there was some litigious event in a property that had been inspected and positively certified.*⁴⁴

Further, the Department pointed out that ongoing building compliance is the responsibility of local governments and they are obliged to investigate a complaint about a rental property not being maintained to the applicable building standards.

*RTA officers do not have the building expertise required to inspect the matters proposed to be prescribed under a regulation, and the regulation will need to have sufficient detail for the matter to be assessed by inspecting officers.*⁴⁵

SovereignPropertyPartners agreed that the requirements on the RTA would be impractical:

*...they will probably need an extra 5,000 RTA "Minimum Housing Standards' Officers (whom I imagine will need an Engineering degree and a building Inspectors License to do this job) to police the proposed changes..."*⁴⁶

Specifically in relation to implementation costs for Government, the Department advised the Committee that there are substantial financial implications for the RTA.

The Bill would require RTA staff to investigate whether premises comply with a prescribed minimum housing standard. The RTA has approximately 180 staff all based in Brisbane, of which eight provide an investigations role into the administrative requirements of the Act and none of whom are qualified to provide building inspections. There are about 513,000

⁴² POAQ, Submission 5:1

⁴³ Rental Express, Submission 9:2

⁴⁴ Department of Housing and Public Works, Written Brief, 30 July 2014:6

⁴⁵ Department of Housing and Public Works, Written Brief, 30 July 2014:7

⁴⁶ SovereignPropertyPartners, Submission 10:2

rental properties in Queensland. There is also considerable movement of properties between owner-occupier and rental status which would require many inspections across the State for properties being rented out for the first time. Potential delays in inspections would add to costs and be an additional regulatory impost.

Providing a state-wide building inspection service, particularly prior to commencement of a tenancy, would require a significant increase in numbers of staff, intensive training to produce suitable qualified staff, establishing a number of regional offices and substantial travel costs to service the whole of Queensland. Alternatively, the use of contractors across the State would mean significant administration costs and payments.⁴⁷

2.4 Consultation on the Bill

The Explanatory Notes state that consultation has taken place with the Tenant's Union of Queensland.⁴⁸ Consultation was not undertaken with tenancy groups, property owners, local governments, environmental groups, health experts, community organisations and other stakeholders however, the Explanatory Notes provide that further consultation would be undertaken to ascertain what standards should be included, and what would be an appropriate timeframe for phasing in the changes.⁴⁹

Submitters were generally concerned that consultation with tenants, lessors and property managers should occur prior to any minimum housing standards being included in the legislation.⁵⁰ For example, Rental Express submitted:

The proposed changes are heavily influenced by consultation only with the Tenants Union and lack adequate consultation with other stakeholders. Further to this, amendments to the Act that will be subject to regulations that have not yet been drafted really could mean anything for property owners in Queensland. With so much at stake here, and potentially catastrophic financial repercussions attached to compliance, what we believe is lacking is active and balanced debate and transparency around the real world implication for property owners.⁵¹

The Department advised the Committee that:

The implementation of a standard that proposes to duplicate building regulations and compliance matters outside of the building legislative framework may result in increased red tape and costs for the housing sector generally. Additional consultation on this proposal is recommended and should include building sector stakeholders such as the Housing Industry Association, Queensland Master Builders Association and the Local Government Association of Queensland.⁵²

2.5 Review of the RTRA Act

The Department advised that the RTA is in the process of undertaking a review of the *Residential Tenancies and Rooming Accommodation Act 2008* and as part of this review released a discussion paper for public consultation between 1 November 2012 and 2 January 2013. Meetings were also held with relevant stakeholders and peak organisations. Feedback was sought on proposed options,

⁴⁷ Department of Housing and Public Works, Written Brief, 30 July 2014:8

⁴⁸ Now known as Tenants Queensland

⁴⁹ Explanatory Notes:3

⁵⁰ See submissions 1, 2, 5, 7, 8, 9,

⁵¹ Rental Express, Submission 9:1

⁵² Department of Housing and Public Works, Written Brief, 30 July 2014:8

including whether the RTRA Act should be amended to require initial or periodic inspections of rental properties or to require the lessor/agent to provide copies of property inspection reports, for example pest inspections and building certifications, to the tenant or prospective tenant on request. The Department advised:

Generally, the proposed options were not supported and it was noted that the main issue was around getting repairs done in a small number of cases where landlords failed to act. As a result, the RTA has proposed that the Act be amended to “introduce an offence for a lessor not to comply with a Tribunal order for repairs and/or maintenance and 40 penalty units are attached. This would be a continuing offence.... The Minister for Housing and Public Works, the Honourable Tim Mander MP, is considering the recommendations to amend the RTRA Act.”⁵³

In relation to the RTA review, QPILCH submitted:

..the government is currently undertaking a review of the Act, part of which considers whether the existing protections afforded by the Act represent a balanced approach to the competing interests of agents, lessors and tenants. In our response to the discussion paper for the review, QPILCH submitted that the most valuable improvement in the wellbeing of tenants in rooming accommodation would come from an increase in security of tenure. The introduction of the RTRAA Bill’s standards will be of minimal value if rooming accommodation providers continue to be able to rely on the Act’s immediate eviction provisions without having recourse to QCAT.⁵⁴

SAPA commented that it is “confident that the current review of the RTRA Act will cater for all concerns raised by parties through the existing consultation process. SAPA would welcome involvement in any further consultation in relation to the current review of the RTRAA.”⁵⁵

2.6 Committee comment

Committee comment

The Committee has noted that while there is general acknowledgement of the need for safe rental housing, there is little support for minimum housing standards being mandated in the *Residential Tenancies and Rooming Accommodation Act 2008*. The majority of submitters were of the view that the proposed minimum housing standards would unnecessarily duplicate existing building and health and safety standards and could lead to increased costs and red tape, adversely impacting on the availability and affordability of housing.

The Committee has been advised that the Minister is currently undertaking a review of the *Residential Tenancies and Rooming Accommodation Act 2008* and the Committee is of the view that the Minister should assess the need for minimum housing standards to be mandated in the Act, in the context of the current broader review of the legislation.

While submitters made some valid points about ongoing repair and maintenance issues, there appears to be avenues for addressing these issues through existing legislation and standards which can be enforced by local councils and other agencies.

The Committee notes that the Minister for Housing and Public Works is currently considering a proposal to introduce an offence if a lessor does not to comply with a Tribunal order for repairs and/or maintenance and is of the view that this would provide tenants with an efficient and effective method of dealing with lessors who do not act on an order.

⁵³ Department of Housing and Public Works, Written Brief, 30 July 2014:9

⁵⁴ QPILCH, Submission 7:2

⁵⁵ SAPA, Submission 8:2

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* 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
- the institution of parliament.

3.1 Rights and liberties of individuals

3.1.1 Clause 4

Proposed new section 17A(1) would allow prescribed minimum housing standards to be prescribed by a regulation.

The proposed provision could be considered to be a ‘Henry VIII clause’ which is a clause of an Act of Parliament which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action.⁵⁶ The Explanatory Notes state that the proposed amendment is justified because the provisions in the Act will set out the parameters for the types of matters that can be prescribed by regulation. The regulations would then specify the exact details of the standards that would apply. The Explanatory Notes also state that allowing the specific matters to be determined by regulation provides greater flexibility and would allow the Government to respond more effectively to issues that may arise, particularly for vulnerable tenants. Further, the regulations would be of a detailed and possibly technical nature, and arguable more appropriately dealt with by regulation.⁵⁷

Committee comment

The Committee notes the limited scope of the regulation making power, and subsequent disallowance powers contained within section 17A(1) of the Bill and of the view that this power would be justified in these circumstances.

3.1.2 Clause 10

Proposed new section 557 confers the power to make transitional regulations to allow for the transition from the operation of the Act as it currently operates to the Act as amended by the Bill, including any regulations made thereunder.⁵⁸

Committee comment

The Committee notes that any transitional regulations made under the section, as well as the section itself, would expire after one year and considers this power would be justified in these circumstances.

⁵⁶ Scrutiny of Legislation Committee 1997, *The use of “Henry VIII clauses” in Queensland Legislation*, para 5.7

⁵⁷ Explanatory Notes:2

⁵⁸ Explanatory Notes:3

3.2 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* 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

The Committee is of the view that the Explanatory Notes tabled with the Bill are fairly detailed and contain the information required by Part 4 and 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
1	Real Estate Excellence Academy
2	RealWay Property Partners
3	Ms Amy Henschell
4	Anti-Discrimination Commission Queensland
5	Property Owners Association of Queensland
6	Mrs Helen Underwood
7	Queensland Public Interest Law Clearing House Incorporated
8	Supported Accommodation Providers Association
9	Rental Express
10	Sovereign Property Partners
11	Tenants Queensland Inc.

Dissenting Report

Dissenting Report

The standard of residential and rooming accommodation premises is an issue which impacts most significantly on the most vulnerable in our community. It is undisputed that ensuring the provision of healthy and safe places for Queensland families to live must be a priority for Government.

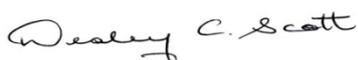
There is no doubt that access to stable, adequate shelter plays a major role in the health and wellbeing of families, and in particular children, by providing a safe environment, and the security that allows participation in the social, educational, economic, and community aspects of their lives.

The purpose of the legislation is not to impose standards that will make housing at the lower end of the market unaffordable; it is merely to ensure that the most basic standards that would ensure a healthy, safe place to live can be assured.

The Committee has recommended that the Bill not be passed. It has made no other recommendations in relation to the proposal. The Committee was advised by the Department of Housing and Public Works that the Residential Tenancies Authority is in the process of undertaking a review of the *Residential Tenancies and Rooming Accommodation Act 2008*. A discussion paper was released for public consultation between 1 November 2012 and 2 January 2013.

To date, nearly two years after submissions were invited, there has been no announcement by the Minister of the outcomes of that review, and no legislation brought before the House for its consideration. Nor has the Committee recommended that the policy objective of this Bill be included in the Minister's consideration of the review of the Act.

It is important that the most vulnerable in our community be protected. With no alternative proposals being recommended by the Committee, the Opposition is firmly of the view that this legislation should proceed and be passed by the House.



Mrs Desley Scott MP

Member for Woodridge

Deputy Chairperson –

Transport, Housing and Local Government Committee

2 October 2014

Recommendations

Recommendation 1

The Opposition members of the Committee recommend that the *Residential Tenancies and Rooming Accommodation Amendment Bill 2014* be passed.

Examination of the Residential Tenancies and Rooming Accommodation Bill 2014

Background

Current legislative requirements in relation to housing and building standards

The Residential Tenancies and Rooming Accommodation Act 2008

There is no doubt that there are already some protections available under current legislation that provide a tenant with actions they can take if they believe their rental accommodation fails to meet certain standards. As the submission from Rental Express states: *'They can issue a Notice to Remedy breach, and if the issues are not rectified, they can move out.'*

There are, of course additional steps between these two, however, the end outcome is, more than likely, that the tenant be required to find alternative accommodation. As the Explanatory Notes state, the ideal situation is that housing is not only healthy and safe, but it is also stable. Stable housing is imperative for families, to enable children to have uninterrupted schooling, and for the social cohesion that comes from being part of a local community and participating in the activities and social life of that community.

Stable housing is also important for health outcomes. For individuals with chronic illness in particular, access to stable housing provides a foundation to improve their health outcomes. Some of the benefits include:

- Consistency in the delivery of health care and support services.
- An ability to focus on meeting their health needs better than those who do not have stable housing.
- Capacity for healthcare providers to follow up with patients more easily when they know where patients live and how to contact them.

The proposed amendments contained in the *Residential Tenancies and Rooming Accommodation Amendment Bill 2014* will make it easier for tenants to enforce compliance with the basic minimum standards that will improve such fundamental aspects as education and health outcomes.

Building standards

Building standards apply to buildings in Queensland. As the Department advised, in general, these standards apply to new building work, including renovations and they vary depending on the building's use (classification) and the date of the original construction. *"Building standards are set at the minimum to meet community expectations in relation to the construction and maintaining of buildings."*

The only requirement for inspection under the relevant legislation is for inspection to be undertaken upon complaint, or where a non-compliance issue comes to the local council's attention. These standards are at a very minimum, and basically set at a level which, if breached, premises would be considered unfit for human habitation. This Bill will ensure that such standards are not the only ones in force.

The Bill will also provide that the authority may, without application by a tenant, investigate whether a lessor has failed to ensure that residential premises comply with a prescribed minimum housing standard.

Other Jurisdictions

In Tasmania, minimum standards set in their tenancy legislation took effect on 1 October 2014 and include detailed laws covering obligations about essential services such as bathrooms, toilets, cooking stoves, heating, window coverings, light bulbs and tap washers. Whilst these are very basic standards, they are an improvement on the standards that existed previously. This Bill has a similar aim, but will allow the Minister to make regulations about issues which are relevant to Queensland.

Similar legislation which sought to impose minimum rental standards was rejected by the Victorian Government in August this year, despite describing it as 'noble'.

Dispute Resolution Processes

Of concern are the current dispute resolution processes available to tenants who have complaints about the condition of their rental premises. There is currently provision to institute proceedings in QCAT. However, the only way to enforce a ruling of QCAT is through action in the Supreme Court.

Other issues raised by TQ in relation to enforcement by tenants were:

- renters not knowing what is meant by the current provisions
- tenants running out of time due to ending of tenancy agreements or a six month time limit to take action on breaches
- inherited repairs with no mechanism for continuation of action once a tenant leaves the premises
- concern about retaliatory eviction at the end of the agreement.

This Bill proposes an alternative dispute resolution process to enforce the minimum housing standards.

The current standards required under the existing legislation are of a general nature, and relate to premises being 'clean', 'fit for the tenant to live in', 'in good repair', and that 'the lessor is not in breach of a law dealing with issues about the health and safety of persons using or entering the premises'.

The introduction of minimum standards would make it very clear what was required by a landlord. The likelihood of a dispute arising as to whether certain conditions breached the requirement

relating to 'the health and safety of persons using or entering the premises' would lessen if those requirements were prescribed.

According to the Department's written brief, in Victoria tenants can request a Consumer Affairs Victoria inspector to visit the rental property to check on repairs. Tenants then have 60 days to apply to the Victorian Civil and Administrative Tribunal (VCAT) for a repair order if the repairs still have not been completed.

In Victoria, tenants can also apply to pay their rent into the VCAT Rent Special Account while the matter is being resolved.

This is similar to the provisions in the Bill which require the RTA to establish a separate account where tenants can pay rent for premises which are subject to dispute, and allow for the RTA to disburse rent payments, including compensation, to tenants where the dispute processes find in their favour.

A dispute process that allows for compensation to be payable to tenants for breaches by landlords is a far more effective method of ensuring compliance with obligations. It is a similar concept to tenants paying rental bonds which can be accessed by landlords to compensate them for breaches of tenancy obligations by tenants. However, the rent would only be paid into the account where there is a dispute on foot.

Misunderstanding of the legislation by submitters

It was disappointing to see that there was a degree of misunderstanding of the nature of the legislation. As the RealEstate Excellence Academy said in its submission:

'It is with great alarm to see so many matters proposed to have minimum housing standards.'

However, the Bill is very clear in that the matters set out are matters that the Minister **may** make regulations about, and are not, as the submission suggests '**matters proposed to have minimum housing standards**'.

RealWay Property Consultants submitted:

'I feel major changes to the standards could have a huge follow on effect to the rental industry by driving more renters away from the market as the cost of rental accommodation increases to cover the cost of maintenance and building reports.'

There is no requirement for lessors to provide building reports in the Bill. The cost of maintenance is already a requirement for lessors. The standards are proposed to be minimum standards that the vast majority of lessors would already comply with. The amendments are to protect those tenants where the lessor does not maintain the premises at a basic level.

Conclusion

The Committee has stated that a number of submissions argued that current legislative requirements provide adequate protection and the proposed minimum standards would mainly duplicate these existing provisions.

This is inconsistent with an argument, also raised by many of the same submitters, that the possible consequences of the amendments are that *'the cost for compliance to the sector is mind boggling to say the least'* and *'The impact on the private rental market would be catastrophic to say the least to all parties involved, including tenants which may see rents rise in order to recoup the possible costs to investors'*.

These amendments will ensure the quality of the rental accommodation available to those most vulnerable in our state, ensuring that housing standards of a minimum standard are in place so that they have somewhere safe, healthy and stable to live; a 'noble' gesture indeed.