



28 January 2016

Research Director
Utilities, Science and Innovation Committee
Parliament House
George Street
BRISBANE QLD 4000

By email only: USIC@parliament.qld.gov.au

Dear Research Director

Plumbing and Drainage and Other Legislation Amendment Bill 2016

Thank you for the opportunity to contribute to your report on the Plumbing and Drainage and Other Legislation Amendment Bill 2016 (**the PDOLA Bill**), and, relevantly, the amendments it makes to the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (**the Act**).

We consider the amendments to the Act proposed in the PDOLA Bill will go a significant way to improving the rights and housing options for many vulnerable and marginalised Queenslanders.

Background

The Queensland Public Interest Law Clearing House Incorporated (**QPILCH**) is a not-for-profit, community-based legal organisation, which coordinates the provision of pro bono legal services to disadvantaged Queenslanders.

The Homeless Persons' Legal Clinic (**HPLC**) was established in 2002 by QPILCH to provide free legal assistance and representation to people experiencing or at risk of homelessness.

The HPLC has 19 outreach legal clinics in partnership with community organisations in Brisbane, Cairns, Townsville and Toowoomba, where people access other essential services. The HPLC has addressed the multiple legal needs of over 6,000 marginalised people, and by partnering with 25 private law firms, provides over \$4 million worth of pro bono legal services each year.

Experience of the HPLC

In the HPLC's experience, the current provisions in the Act that regulate database operators are insufficient and inadequate to protect vulnerable and marginalised Queenslanders. We have seen repeatedly that listings on residential tenancy databases cause systemic hardship and exclusion from safe and stable housing.

A representative sample of the HPLC's recent tenancy casework shows:

- in around 24% of the sampled cases, clients asked the HPLC to find out whether they were listed on a tenancy database;
- about 71% of those clients were listed on the tenancy database operated by TICA;
- in about 75% of cases, tenants were listed for breaches related to rent arrears;

Queensland Public Interest Law Clearing House Incorporated

incorporating the Homeless Persons' Legal Clinic, Self-Representation Service, Refugee Civil Law Clinic, Administrative Law Clinic, QLS Pro Bono Service, Bar Pro Bono Service, Mental Health Law Practice, and the Magistrates Court Service.

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- in 19 cases in the past two years seen in Cairns, the recorded reason for listing was not a prescribed reason (variously 'No recorded reason', 'Cleaning', 'Absconding', 'Tribunal Order Possession');
- the median duration of the listing before people came to see the HPLC for help was just under two years; and
- in at least five cases seen in the past two years in Cairns, the clients had been listed since 2009.

The hardship caused by tenancy database listings has a disproportionate impact on women and children.

Ruby is an Aboriginal woman and single mother. She was listed on the TICA database in October 2011 after her violent partner damaged her rental property and she fell into rental arrears. Because of the listing, Ruby and her four children were not able to find stable housing.*

For a period of eight to nine months, Ruby was homeless and usually slept in a car. During this period, she was unable to properly care for her children and put them in the care of other relatives. When she secured a small studio unit from a private landlord where a tenancy database check was not required, she considered herself very lucky.

Ruby lived in the unit in cramped conditions for about one year with her four children and occasionally three additional children she cared for. At that point she attended the HPLC for assistance, with the listing being just over three years old. From the information the HPLC obtained from the real estate agent, the listing appeared to be unlawful because no breach notice for rent arrears had been issued, and notice of the listing was not properly provided. The HPLC assisted Ruby in a successful application to QCAT to have the listing removed.

Sheneace is an Aboriginal woman and single mother. In 2011, she left her rental home with her children, following severe and persistent violence by her former partner and entered a women's refuge. Her former partner remained in the property but stopped paying rent.*

Sheneace's name was not removed from the lease and she was listed on the TICA database in July 2011. In the years after the listing, Sheneace moved frequently between shelters and relatives' homes in both Cairns and a remote community. During this period, her children were often separated from her and each other, and had difficulty maintaining their schooling.

Despite a domestic violence protection order, with a 'no contact' provision in place, Sheneace's former partner continued to harass and intimidate her. Sheneace expected that he would continue to impose on her and her children until they could secure stable housing and she could regain control over her living arrangements. The listing was just under three years old when Sheneace sought assistance through the HPLC. The listing is now almost five years old.

* The names of HPLC clients in this letter have been changed to protect their privacy.

Danielle is a single mother who was listed on the TICA database about two years ago. Danielle and her twelve year old son are currently living with a former male partner, who regularly abuses her emotionally. Danielle has stayed with her abusive partner, rather than risking homelessness for herself and her child, because she considers the listing effectively excludes her from mainstream housing options.*

The PDOLA Bill and reducing homelessness in Queensland

We note Queensland was the first State to recognise the negative impact of listings on tenancy databases and take steps to regulate the reasons for listings in 2003. Queensland has since fallen behind other States in the further regulation of tenancy databases.¹ We welcome the overdue amendments to the Act set out in part 5 of the PDOLA Bill.

We note the following amendments to the Act in the PDOLA Bill, which we believe will reduce the link between database listings and homelessness:

Limits on the duration of new and existing listings (new sections 459D and 564)

We welcome new section 459, which requires database operators to remove personal information about a person after three years. This reform will bring Queensland into line with all other States and Territories (except the Northern Territory), where listings must generally be removed after three years.²

As shown in our casework, our experience is that people present to the HPLC in crisis within two or three years after a tenancy database listing.

Given the scarcity of social housing, limiting the duration of listings will hopefully allow people to re-enter stable and affordable housing in the private rental market more quickly and with more certainty.

We understand the protection in new section 459D will extend to 'existing listings', in accordance with new section 564. This is a very positive development for many HPLC clients. However, based on our reading of section 564(2), we understand that people with historic listings (over two years old) will have to wait an additional year after the commencement of the amendments for the listing to be removed.

We appreciate the intention of section 564(2) is to allow database operators an opportunity to comply with the new legislative requirements. However, in the absence of specific evidence, we do not consider it will be onerous for tenancy database operators to comply with the requirement to remove historic listings.

¹ The Residential Tenancies and Rooming Accommodation Bill 2011 proposed amendments to the tenancy database provisions similar to the amendments in the PDOLA Bill. However, that Bill lapsed in 2012.

² Section 459 of the PDOLA Bill reflects the language of the provisions in force in other jurisdictions: New South Wales: s 218 of the *Residential Tenancies Act 2010* (NSW); Victoria: s 439K of the *Residential Tenancies Act 1997* (Vic); Western Australia: s 82K of the *Residential Tenancies Act 1987* (WA); South Australia: s 99K of the *Residential Tenancies Act 1995* (SA); Tasmania: s 482E of the *Residential Tenancies Act 1997* (Tas); and Australian Capital Territory: s 97 of the *Residential Tenancies Act 1997* (ACT).

There is no persuasive reason why HPLC client Sheneace should wait one year longer for her listing to be removed, when the listing of HPLC client Danielle may be removed in several months.

We suggest a single rule should apply to all tenants with existing listings. As appropriate, the Parliament could consider delaying the commencement of the penalty in relation to keeping personal information, rather than delaying the obligation to remove existing listings that are over two years old.

Notice of usual use and listings (new sections 458A and 458B)

In our experience, tenants who are listed on tenancy databases often do not have the resources or the capacity (mental, financial or otherwise) to find out this information through their own means. Usually, it is not until someone approaches a legal service, like the HPLC, that they discover that they have been listed on a tenancy database.

Legislative provisions that require real estate agents and landlords to notify prospective tenants that they will search tenancy databases, and to provide information about any listing, are crucial to ensuring vulnerable people have fair and timely access to information that impact on their rights, so they can take action to remove ongoing barriers to housing.

Notice about proposed listings and opportunity to object (section 459)

Given the cycle of disadvantage often caused by listings, we welcome the introduction of notice requirements and an opportunity to object before the listing is made.

Allowing people an opportunity to consider and object to proposed listings means that people may seek help from community legal and other support services earlier, when they receive the notice.

Seeking assistance early may allow people to resolve issues, especially in relation to rent arrears. However, we acknowledge that, in practice, it may be difficult for landlords and real estate agents to locate tenants listed on a lease, especially if the tenant has left the property.

Ensure quality of information on tenancy databases (new sections 459A and 459B)

In our experience, the information listed on tenancy databases is often incomplete, inaccurate and not updated, especially in relation to the reason for the listing.

Sabina is a single mother who was living in her car with her young child when she first came to the HPLC. Sabina had been listed by her former real estate agent in 2012 for rental arrears (totalling \$317 in addition to her bond). The community agency supporting Sabina had assisted her to repay the amount owing and apply to QCAT to have the listing removed. Despite QCAT ordering the removal of the listing in 2013, the real estate agent did not notify TICA and Sabina remained listed until the HPLC's intervention in 2015.*

We welcome the introduction of obligations requiring landlords, real estate agents and database operators to amend listings in a timely manner. Where a listing has not expired, this will at least ensure the circumstances of the listing are accurately reflected on a person's listing.

Penalties for breaches of certain provisions under the Act

We welcome the inclusion of penalties for breaches of many of the new provisions, which can be enforced by the Residential Tenancy Authority (**RTA**).

The existence of penalties is an important mechanism to ensure tenants' rights are genuinely protected by encouraging landlords, real estate agents and database operators to comply with their obligations under the Act.

We encourage the RTA and the Parliament to monitor compliance with the proposed provisions and consider in future whether further amendments are required, including in relation to the dispute resolution processes before QCAT.

Contacting us

If you would like to discuss any of the above matters in further detail, please contact me on [REDACTED]

Yours faithfully



Cameron Lavery
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