

Response to the Housing Strategy Discussion Paper



Tenants Queensland Inc

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1. About TQ

Established in 1986, Tenants Queensland is a statewide community and legal service providing free tenant advisory services for residential tenants. TQ aims to protect and improve the rights of all people who rent their home in Queensland. This includes renters in private rental accommodation or social housing and renters in marginal tenures such as caravan parks and boarding houses.

TQ is the lead provider in the newly developed Queensland Statewide Tenant's Advice and Referral Service (QSTARS) program initiated by the Queensland Government in October 2015. QSTARS provides quality, free, independent tenant advisory services to tenants across Queensland. Through QSTARS and our Community Legal Centres Program work, TQ assists renters to understand and exercise their legislative rights and responsibilities, and ultimately to manage and sustain their tenancies.

The TQ Hub operates a statewide telephone advice service and provides training, information, support, community education materials and specialist advice in tenancy related legislation to support services throughout the state.

TQ has been at the forefront of tenancy law reform and policy development since its establishment. TQ conducts research into a range of tenancy issues and contributes to the development of legislation and policy in Queensland and nationally.

2. Introduction

TQ welcomes the opportunity to contribute to the development of a 10-year housing strategy for Queensland. As the "Working Together" discussion paper acknowledges, access to safe, affordable and appropriate housing is a fundamental human need and we congratulate the Government for committing to long-term strategies to delivering on this in partnership with the community sector. TQ's core interest and expertise is in the experience of renters both in the private market and social housing and our response to Working Together is focused accordingly.

Our response draws on over 30 years of extensive experience of our staff and board in advising and supporting tenants throughout the state and our involvement in significant tenancy policy and law reform processes. This includes contributing to the review of the *Residential Tenancies Act 1994* and development of the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRAA) and to the development of legislative protections for tenants from the unfair practices of tenancy databases.

Our response also draws on recent qualitative research using focus groups to explore the experience of renters in the current housing market. This research builds on information gained from running similar focus groups in 2007, and of other consumer-focused research. Over April and May 2016 TQ held four focus groups with 30 tenants and tenant advocates about the experience of renting. Across the four groups there was a mix of male and female participants, of renters of various ages, of social housing and private rental tenants. Two of the groups included social housing tenants renting either community or public housing, one group was exclusively private renters, and the final group, involved organisations who represent disadvantaged cohorts of renters and with whom TQ has a formal partnership supported by an MOU (our MOU partners).

3. Context

Who lives in the rental market?

There are 1.6 million households in Queensland. Of these, 35.6% are renters compared to the national average of 31% (ABS, 2015). Queensland has the highest percentage of renting households of any state or territory in the country except for the Northern Territory. This figure is set to increase, with population growth of 10.7% predicted to 2021 (ABS, 2011) and declining home ownership affordability. Across Queensland, 77.4% of renters rent from private landlords or real estate agents, though the proportion is significantly higher in some areas (notably in Brisbane).

Nearly everyone lives in the private rental market at some time; growing numbers of households remain in private rental long-term and permanently while others transition in and out. No longer a tenure of transition between the family home and one's own, the private rental market now houses a range of renter types (Seelig, 2007).

Aspiring home purchasers are often trapped in private rental, dealing with escalating rents as they attempt to save a deposit. Another group of private renters hope to get an offer of social housing because of affordability issues.

The traditional transitional tenant still remains, along with those renting by choice and those who find themselves unexpectedly back in the rental market. This latter group may have suffered a relationship break up or mortgage foreclosure.

The private rental market houses many children, young people and single older people, particularly women. While young people can work towards increasing their income after training or employment, older people on fixed incomes are often left to struggle in the private rental market with limited hope of getting into social housing based on affordability issues only.

Approximately 45 percent of renting households in Australia are also low income households (ABS Survey, 2007-08), and many of these households are at risk of 'housing stress'. The latest ABS data suggests that 47.6% of low-income households renting in Queensland pay more than 30% of their gross income on rent. This is the highest proportion in Australia and is significantly higher than the national average of 42.5% (ABS, 2013-14). As the affordability of private rental has decreased significantly over time, 'housing stress' is also experienced by approximately 62.6% of long-term renters in the private market (Stone et al, 2013).

Declining social housing stock and the introduction of the One Social Housing System (OSHS) in 2006, has resulted in social housing being targeted to low-income households whose affordability issues are compounded by other health and social issues. Restricted access to social housing along with continuing issues with housing affordability means the private rental market emerges as a critical component of the Queensland Government's policy response to housing stress for low and moderate income households.

Renting is a long-term reality for many Queenslanders

Renting is a long-term reality for many Queenslanders as home ownership becomes increasingly unaffordable. This places the private rental market at the centre of our housing system. Yet despite the increasing numbers and diversity of renters, the length of tenancies are relatively short and security of tenure for renters low. Tenancy law in Australia (and Queensland) remains comparatively weak. For example, Australia is one of only three developed countries to allow tenants to be evicted without grounds (Hammar, 2012).

Poor tenancy laws and protections can lead to forced moves that undermine housing stability and have negative flow-on effects for households and families. This is of particular concern in Queensland as renters here already experience much higher levels of mobility than other Australian jurisdictions. For example, 6.5% renters in Queensland are likely to have moved five or more times in the past five years compared to the national rate of 4.3% (ABS, 2015).

In addition to weak tenancy protections, Federal and State housing policy continues to focus heavily on home ownership and social housing. Despite increasing reliance on the private rental market to house some over a long term or for their life, housing outcomes derived from it are often driven by policy by default, with a distinct lack of focus and coordination between the Federal and State government interventions.

In each state and territory of Australia, tenancy law provisions are focussed on property rights rather than housing rights, aimed at protecting the lessor's asset above ensuring that the private rental market delivers appropriate housing outcomes. This is in contrast with approaches to private rental housing in some European jurisdictions, where more uniform policy and regulatory approaches to rental housing sub-sectors support strong social outcomes, including greater security of occupancy in the private rental market (Hulse et al, 2011).

In view of this we are pleased that the discussion paper provides an opportunity to improve the experience and affordability of renting through tenancy law review, the use of market incentives and regulation and through improved support programs and services. Improvements to tenancy law and an affordable private rental market is key to alleviating the pressure for social housing, preventing people ending up in marginal tenancies, and ensuring renting households are not subject to unnecessary and unreasonable churn which is costly to them, their families, the community and ultimately to government.

4. Theme 1: Sustainable Communities

4.1 *Putting people at the centre of the housing system*

Theme one of the discussion paper concerns building housing and communities that maximise economic and social well-being and are sustainable for future generations. The discussion in this theme area acknowledges that affordable and secure housing is critical to wellbeing and invites commentary on the current provision of services as well as how service delivery can be strengthened. Under theme one, the paper asks how can we put people at the centre of the housing system?

These are large questions with many possible answers. However TQ suggests that the improvements in tenancy law protections will help renters, who are at the centre of the housing system, by supporting their right to safe and secure housing. This, alongside increasing the supply of affordable and long-term rental options will foster greater choice and control for this large cohort of Queensland households.

4.2 *Improving the protections under Tenancy Legislation*

Importantly for TQ theme one of the discussion paper asks: *Do existing legislative frameworks provide the right level of protections for housing consumers, and how could they be improved to ensure fairer and more equitable access to housing?*

TQ acknowledges the work of the Queensland Government to date in improving protections for housing consumers. The legislation recently passed by Queensland Parliament on nationally consistent residential tenancy databases law is one example of an area where Queensland has demonstrated (on-going) national leadership in the interest of providing fair access to the private rental market.

The current review of legislative frameworks governing the diverse range of rental and ownership types in Queensland provides further opportunity to introduce reforms that will promote fairer and more equitable access to housing, particularly for marginal groups of renters, and bring Queensland into line with national and international best practice.

TQ notes that our input to this section has been limited by resources and time. Issues are outlined only briefly, however more in-depth policy work could be provided if resourced. This could incorporate case studies drawn from our work with tenants.

We also urge the Residential Tenancy Authority (RTA) who is undertaking this review to take the opportunity to canvas the full range of potential areas of reform, and to allow sufficient time for comprehensive consideration and consultation on these issues.

The priority law reform issues for TQ, which are also acknowledged by the discussion paper, are the removal of existing provisions for evictions ‘without grounds’ and the introduction of enforceable minimum standards that apply across all types of rental accommodation. In addition, there are a range of reforms to eviction and notice periods, rent increase, bond management, dispute resolution provisions and sundry other matters that would deliver fairer and more secure tenancies. TQ has briefly canvassed a range of these.

Introducing reasonable grounds for eviction and excluding with ground terminations

Households from all manner of socio-economic and familial circumstances face evictions, most commonly, for reasons that are not breaches of tenancy law. Avoidable evictions generate unnecessary churn costs for renting households, government and the community – economically and socially, with the greatest effect being on those on low incomes. (Tennant and Carr, 2012)

TQ believes that without ground evictions should be prevented under Queensland tenancy law. This would require the introduction of additional grounds. Currently, tenancy laws in Queensland do not comprehensively cover the grounds for evictions that would be considered legitimate in the housing market. For example, most people would agree that if a lessor wishes to move into their premises they should be able to do so (unless a fixed-term agreement is in place) but currently rely on a without grounds evictions notice.

Typically, tenants are on fixed term agreements of six to twelve months and must constantly rely on an offer of renewal from the agent. Without grounds evictions are problematic because they are not only used for what might be legitimate reasons for terminating the lease but often mask retaliatory or discriminatory reasons. Tenants frequently report concerns for their tenure when they attempt to pursue other rights such as having the property repaired.

In the recently held TQ forums, the private renter focus group agreed that they were reluctant to complain or push too hard where they are in dispute with an owner or agent during the tenancy (for example over maintenance requests or rent increases) due to a risk they will be seen as a “trouble maker” and could be evicted without grounds. One participant, when asked if she had tried to negotiate over a tenancy problem she’d shared with the group, responded:

“I’m nervous (about it), because she’ll only give me a six-month lease and it’s due again in June. Of course, I can’t rock the boat. It’s convenient for me to live there, it’s close to work, I’m making friends within the development.”

Lessors should only be allowed to give notices of termination on specified reasonable grounds.

Tenancies should only be terminated against tenant’s wishes where:

- There are grounds as prescribed by residential tenancies legislation;
- When appropriate notice is given; and,
- In the case of a dispute, a Tribunal or Court determines that in all the circumstances of the case it is appropriate to end the tenancy. It should not fall to the tenant to apply to the Tribunal to stop a termination from proceeding.

Most European countries including the UK already have prescribed grounds for eviction and many are introducing housing policies that focus on social inclusion and the prevention of homelessness.

To provide better protection from retaliatory evictions, TQ recommends that the legislation include clearly prescribed grounds for when a tenant can have their tenancies terminated against their wishes. TQ recommends the following grounds for evictions be introduced and without ground notices be removed as an option where:

- The lessor requires the property for their own use, or for the use of a member of their family, as a principle place of residence (using the same definition of *family* that applies at section 42(5) of the Tasmanian legislation).
- Significant repair or renovations are to be performed in respect of the premises, such that continued occupation of the premises cannot be accommodated for a period of four weeks or longer.
- The lessor specifies a purpose that is, in the circumstances of the case and in the opinion of the Tribunal, sufficient to justify termination. (The question for consideration should be whether the landlord’s purpose requires vacant possession, or could be given effect while a tenant remains in occupation).
- Breaches are serious or persistent.

In the alternative, if either after the inclusion of more clearly prescribed grounds or not, there is deemed a continued place for without grounds evictions, then:

- The issuing of Notices to Leave (NTL) without grounds should be prevented within the one month prior to of the end of the agreement (depending on how long the NTL without ground notice period is; for any notice period between two and three months’, the limitation should be one month prior to the end of the fixed term).
- The notice period for without ground terminations should be considerably increased to better balance the protection for tenants against retaliatory evictions. TQ supports a notice period of at least six months for without grounds evictions as per the ACT legislation. However, an increase to 120 days would also assist tenants to adequately address all needs for an unexpected and without ground request that they move.

Evictions for rent arrears

Eviction for rent arrears is another area where reforms both in Australia and abroad are aimed at saving tenancies and preventing homelessness. Many countries in Europe have adopted practices which delay evictions for rent arrears and link tenants to payment plans and assistance. For

example, in the Netherlands landlords are not permitted to carry out evictions if the tenant is participating in a debt assistance program (National Association of Tenant Organisations (NATO), 2010). Western Australia currently provides for a notice to leave to be served by a landlord immediately when rent is late, however the application to evict a tenant cannot be heard within 21 days of issuing the notice, and cannot be heard at all if the tenant rectifies the rent breach at any point up to one day before the hearing date (NATO, 2010).

Tenancy laws in New South Wales also prevent the enforcement of a Warrant of Possession for a premise if the tenant rectifies the entire amount of arrears prior to the bailiff taking possession of the premises. There is benefit to both the lessor and tenant in this provision.

TQ recommends that enforcement of a Warrant of Possession issued for rent arrears should be prevented where the tenant has since rectified the amount in full. To protect against concerns raised by the other owner and industry representatives the provision could state that the provisions does not apply to tenants who “vexatiously fail to pay rent owing on the due date”.

Break-lease and Excessive Hardship

TQs focus groups also identified Queensland’s current break-lease provisions as an area for reform with the potential to improve outcomes particularly for vulnerable and marginalised renters by providing greater clarity through legislation about the extent of the required compensation payment by tenants in these situations. Options are also needed for tenants to end leases without penalty/ compensation being required, particularly when the Tribunal approves a termination on grounds of excessive hardship.

TQ recommends that Government examine the NSW practice where a tenant can choose to pay rent until the property is re-rented or pay a fixed penalty (e.g. 4 weeks). Currently a renter has to decide whether to ‘break the lease’ and take the chance on how long it might take to re rent or, if they have grounds, to apply for an excessive hardship termination. This requires the tenant to have significant market intelligence. Providing an option of a fixed fee or letting the tenant leave it to the market demand provides reasonable options for both parties.

Further, TQ believes that if an excessive hardship termination is awarded, no compensation should be allowed (contrary to current legislative provisions). If reasonable, tribunals would still be able to delay the date of the termination, allowing the other party time to seek a new tenant. This would allow Excessive Hardship terminations to be used more clearly for significant situations where the circumstances of the tenant (or lessor) have changed since they signed, but give clear guidance that if such a termination is applicable compensation for the loss of the agreement will not be awarded.

TQ also advocates for reducing the Tribunal’s current target for hearing urgent applications from three weeks to two weeks.

Other Ending of Agreement Issues

Social Housing

Social housing plays a vital role as a safety net for those tenants who experience multiple disadvantages or who struggle with episodic mental health disorders.

Over the last decade pressure on social housing has intensified. As in some other jurisdictions, the Queensland housing policy response has been to target social housing to accommodate those in greatest need. Eligibility criteria have been tightened and the profile of social housing tenants is changing. It has moved from that of a low income earner to a low income earner who experiences

other disadvantages that make accessing or maintaining housing in the private sector, particularly difficult. The flow-on effect of these policies has been an increase in the concentration of disadvantage in the social housing sector.

Housing management practice in this new context has been reviewed. The outcomes of new practices are mixed. Some practices are respectful and effective in sustaining tenancies whilst others are placing unfair burdens on social housing tenants that in some cases, leads to homelessness.

The use of residential tenancy termination procedures to deal with disputes about behaviour and the use of special behaviour agreements can lead to the eviction of families and households. The resultant evictions can create profound hardship, including homelessness, and cycling through the welfare (including supported accommodation) and justice systems. TQ opposes these types of interventions.

i. Social housing grounds for evictions

Social housing providers should always be required to give a reason for terminating a tenancy, even if that is because of the ending of housing assistance. This gives the renter an opportunity to understand the reason for the provider ending the agreement, and to respond to the provider should they wish. This would also ensure that government social housing policy frameworks are adhered to, and seeks a higher quality of management from social housing providers. Should tenancy laws continue to allow without ground notices to leave, these should be legislatively withdrawn from use for social housing providers.

ii. Social Housing Appeals and Review Unit

Currently an administrative appeals process is available to public housing tenants who regard particular decisions about their housing application or eligibility as non-compliant with policy. Binding decisions can be made by the Housing Appeals and Review Unit (HARU).

Despite many of the same social housing policies applying to community housing tenants, those tenants do not have the protection of the administrative appeals process. This is an anomaly which has emerged over time and should be rectified as soon as possible through contractual arrangements or whatever other means the Queensland government determines to be effective.

iii. Other Social Housing Terminations

In 2013 the Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act was passed. The key effects of this Act was to extend the sections applying to public housing to the community housing sector. TQ is not concerned with this, though as noted above, believes that appeals to HARU should also be made available to community housing tenants.

Other key effects were to separate out the termination provisions for social housing tenants from those in the private rental market and extend some responsibilities for the former group of tenants. TQ believes that all those sections should be withdrawn, in particular s290A. The unification of the termination sections would reduce red tape, take away the unreasonable extension of responsibilities to social housing tenants and importantly

reinstate the presumption of innocence which was removed under S290A.

Concerns with s290A include:

- The extension of responsibilities for social housing tenants to adjoining properties, including the actions of their guests on those properties.
- The ability of the housing provider to give a Notice to Leave for a 'serious breach' without first giving a Notice to Remedy Breach.
- The ability of the housing provider to give the Notice to Leave for a 'serious breach' if they have [subsection (3)] *'a reasonable belief that premises or property has been used for an illegal activity whether or not anyone has been convicted or found guilty of an offence in relation to the activity.'*

Concerns over s349A:

- This section attempts to take the discretionary powers of the Tribunal away. TQ recommends it be removed.

Concerns over s527D

- These types of provisions impose additional requirements on social housing tenants who are eligible due to their high needs. The option of anti-social behaviour agreements should be removed from the legislation.

iv. Early termination without compensation to lessor

There are a number of circumstances where it is unreasonable for a tenant to continue to be bound by a fixed term agreement and TQ advocates that in specified circumstances they should be able to end the agreement, with notice, without compensation to the lessor for the loss of the tenancy to the end of the fixed term.

Tenants in specified circumstance should be able to terminate a fixed term tenancy agreement by providing 14 days' notice and without compensation to lessors in specific circumstances. These are:

- a. that the tenant has been offered, and accepted, accommodation in social housing premises;
- b. that the tenant has accepted a place in an aged care facility or requires care in such a facility;
- c. that the lessor has notified the tenant of their intention to sell the residential premises and this was not disclosed prior to the agreement being signed; and
- d. when the tenant is admitted to long term medical care (such as a mental health facility).

Marginal Tenancies

TQs recent focus groups highlighted that the more vulnerable people are, the more likely it is that they will take up leases on properties or rental situations that are less than ideal. One example is where there is no written lease. Increased vulnerability and limited choices (perceived or real) can mean those affected are reluctant to complain and challenge a situation due to fear of eviction and the costs involved.

For those in rooming accommodation the issues surrounding without grounds evictions are greater given the existing provisions for immediate evictions without due process and for providers to self-

evict. While the industry has previously argued that such provisions are justified in order to protect other residents, TQ would draw attention to the range of existing laws that adequately deal with incidents between residents in rooming accommodation as they do with other kinds of domestic incidents. For this reason, TQ recommends that the provisions for immediate eviction and self-eviction are removed, and that all disputed evictions take place only when the Tribunal has heard the matter and issued a termination order.

A particular focus of the upcoming reviews of tenancy law should be on providing appropriate coverage for boarders and lodgers who are at present, effectively without any accessible rights.

The threshold of four rooms available for rent for coverage under the rooming accommodation provisions should be reduced to two.

Starting Tenancies

i. Disclosure of material facts about tenancies

Lessors or agents should be required to disclose certain material facts to a tenant before entering into a residential tenancy agreement. These should include:

- a. A requirement not to make false misleading or deceptive representations about the property or concealing material facts of reasonable relevance to the tenancy;
- b. If there is a mortgage over the property, whether the mortgagee has given consent;
- c. Any proposal to sell the premises;
- d. Whether the lessor resides in close proximity;
- e. Whether there are any major urban developments approved in the area;
- f. The extent of any repairs and maintenance works undertaken at the property during the previous 24 months, and;
- g. Any other factors that may have a significant bearing on a household's enjoyment of the property were they to take up occupation.

ii. Restrictions in tenancy agreements

Tenancy agreements should not be able to unreasonably limit the number of people who can ordinarily occupy premises (taking into account the amenity and available bedrooms).

Terms restricting the number of occupants who can normally reside at a property have caused problems. Despite no trigger within the Queensland tenancy law, the RTA includes a question on the standard tenancy agreement about how many people may reside. These clauses are sometimes used to restrict the number of people in the tenancy to a number less than the number of bedrooms, or effect the addition of a new born baby.

Norms about how many people reside in the property are cultural and have changed over time in the Australian community. TQ believes that Queensland tenancy laws should merely limit numbers to that which is beyond reasonable.

This would allow families and households to determine the most effective use of their homes. Where lessors and tenants disagree as to the reasonable limits of a property's capacity, the matter should be referred to the Tribunal for determination.

iii. Unfair contracts terms

An unfair contract terms clause should be inserted into the legislation allowing a third party to make an application about unfair contract terms and for determination by the Tribunal. This would assist to deal with arising issues with expediency for the courts and for tenants. Many of these clauses leave tenants unclear of their liability and responsibility. To prevent leases that include matters that would be considered 'unfair' under Australian consumer law and to provide a remedy under tenancy law, a term equivalent to s 28 of the Victorian Residential Tenancies Act (1997) should be included in the RTRAA. That section reads:

Harsh and unconscionable terms

(1) A tenant may apply to the Tribunal for an order declaring invalid or varying a term of the tenancy agreement.

(2) On an application under sub-section (1), the Tribunal may by order declare invalid or vary a term of the tenancy agreement if it is satisfied that the term is harsh or unconscionable or is such that a court exercising its equitable jurisdiction would grant relief.

(3) An order under this section has effect according to its terms.

iv. Terms restricting pets

Terms prohibiting pets are frequently included in tenancy agreements, and tenants frequently complain of the difficulty in finding a lessor who will "accept pets" – even before the terms of a tenancy agreement are being considered. Indeed the RTA include a question about whether a pet is allowed or not on the standard tenancy agreement, despite there being nothing within the Act to give rise to that.

For tenants, issues like keeping pets should be matters of both personal choice and personal responsibility – adults should not be required to seek permission to keep a pet. Tenants, like anyone, are perfectly capable of keeping pets sensibly and responsibly.

It may be rebuked that pets cause costly damage to properties. This is a matter of some conjecture, though it can't be denied that some pet owners are more responsible than others. It's clear though that a person's tenure can have no bearing on their ability to keep a pet responsibly. In the event that a tenant keeps a pet that does cause damage to a property, that tenant should be required to make good. Current Queensland tenancy law has provision for this by ensuring a tenant must not maliciously cause damage, must keep the premises clean, must not cause or permit a nuisance, and must return the property in more or less the same condition as they took it in at the beginning of the tenancy.

TQ recommends that there be a prohibition against 'no pets' terms in residential tenancy agreements.

Introducing enforceable minimum standards

The standard of premises, repairs and maintenance are the second most common issues raised with TQ in all our advice and casework and our recent focus groups were no exception. Issues around repairs interrelate and can add to the sense of insecurity within a tenancy. Quick turnaround times to return entry condition reports limit a tenant's ability to identify all the faults with a property that could be in dispute at a later date in the tenancy. These reports are also completed at a time when

the tenant is trying to establish a positive relationship with the agent and may be loath to raise difficult issues.

In TQ's recent focus groups with private renters, one participant reported that they have lived without a working oven for 12 months, another had lived with hail damage that caused large cracks and holes in a bathroom skylight for two years until she moved out, and another of needing to break her lease after she could not get her landlord to fix an urgent sewage issue:

"I broke the lease but I couldn't live there because the internal sewerage overflowed and he wouldn't do anything about it. So I was there two weeks. Anyway, he took me to QCAT, but I won, thank God and it was a real ordeal though."

The ability to offer short term agreements and evict without grounds mean most tenants are conscious, if not fearful, of the possibility for a retaliatory eviction if they seek repairs to a property. This leads many tenants, particularly marginal renters and those in lower cost rental properties to live in premises that are in a substandard condition.

A key focus in legislating minimum standards for rental properties should be the introduction of a third party which is able to pursue repairs. In South Australia standards for rental properties are set out in legislation with a process for assessment of property standards and the ability to impose rent control on substandard properties. Inspections are carried out by an authority and rectification letters are sent when necessary. A similar scheme has been operated successfully by the Gold Coast City Council for a number of years with funding sourced through the additional rates that are levied on rental properties within that council area. TQ notes that at present more than 20 of the largest local governments in Queensland currently levy additional rates on owners of rental properties without providing any additional service to these properties (such as the inspection program provided by the Gold Coast City Council).

The pressing need for legislative reform is underscored by the 2012 Coronial report into the death of infant Deifenbach in Yeppoon involving a damaged deck. The issues with the deck had been raised by the Deifenbachs as well as the previous tenants. TQ supports the Coroner's recommendations including:

- I. The introduction of mandatory building and pest inspections before a property is rented and at subsequent regular intervals.
- II. The introduction of 3 yearly licensed inspections for all properties with a verandah, deck or balcony.
- III. The introduction of a maintenance and repair register to record requests by a tenant or agent during a tenancy and the lessor's instructions in respect of each item.
- IV. The adoption of a clear and uniform system for recording complaints made by a tenant to a real estate or lessor and timeframes for a lessor to respond.
- V. The provision of access to the above proposed registers and reports for tenants and prospective tenants on request.

Introducing a regime of regular, independent inspections by a qualified third party is an issue where the real estate industry and tenant advocates often agree, citing their lack of specialist building knowledge when conducting routine inspections of properties. Such a regime would be aimed at ensuring the property is safe and 'fit to live in' as required currently under tenancy law.

Interestingly, similar calls came out of spontaneous discussion in TQs recent focus groups. It was suggested that a log of previous maintenance, repairs and repair requests, including any repairs that

previous tenants had paid for, should be provided to new tenants at the time of the entry inspection. This would provide much needed transparency and information for tenants that could assist them to make better choices and strengthen their negotiating position with agents.

This also goes to the heart of some reasons for the churn in the private rental market. A tenant who insists on repairs may not have their tenancy renewed and once evicted, the issues are inherited by a subsequent tenant who has no way to know what issues have previously been raised.

Fairer rent and rent increase provisions

At present, excessive rent increase applications primarily rely on a market price test and put the onus on the tenant to prove the increase is excessive, requiring them to gather market information. It is unsurprising then, that tenant applications about excessive rent increases are infrequent - particularly in light of the ever-present fear of being evicted without grounds. However, issues around rent increases were a common concern raised in TQs focus groups, impacting on the affordability of private rental properties. Many participants believed the onus to justify rent increases should fall on the property owner (rather than the tenant, as it does now) and better protections in place to ensure increases are reasonable.

TQ agrees that Queensland's current safeguards would be improved by introducing a definition of 'excessive rent increase' under the Act. TQ supports a definition of 'excessive rent increase' as being 20% greater than the Consumer Price Index and notes this definition has been used in the Australian Capital Territory. With a clear definition in place, lessors could then be required to seek approval from the Tribunal to make an excessive rent increase. If an excessive rent increase is upheld, the tenant must then be able to terminate the tenancy without liability.

The lack of notice of a rent increase when a subsequent lease is being offered on the property was identified as a further difficulty (notice periods do not apply if you agree to contract to a new fixed term agreement).

TQ recommends that at least one month notice of a rent increase under a renewed fixed term agreement should be provided.

Fairer bond management

I. Bond top ups

There are a range of reforms to bond provisions that would improve access to housing and protection for housing consumers. Firstly, TQ believes the current maximum bond of 4 weeks rent is appropriate and should be maintained, however we do not support current provisions that allows increases in the bond payable over the life of subsequent tenancies.

We note that during the financial year 2013-14, 22.5% of bond lodgements were 'top ups' due to rent increases (RTA, 2015). This creates a lot of administrative work for the RTA.

Given that the bond is the tenant's money, held in trust, the lessor should not be able to increase the amount of bond held simply because a subsequent agreement is entered into at a higher rent. The fact of being offered a new agreement is itself an indication that the tenant has proven himself or herself, and additional bond money should not therefore be necessary. Bond increases are not permitted in other states.

II. Bond claims

It is not uncommon for issues to arise for tenants when trying to claim their bonds, which are often relied on for securing a new tenancy. Agents and lessors can be slow to inform tenants whether they will release the bond to the tenant and can mislead tenants or withhold information about their right to commence their own claim to have the bond returned.

Recently the RTA made changes to bond return procedures which allow electronic lodgement of disputed bond return forms. Previously disputed forms had to be mailed or handed in. Those disadvantaged by this change will be tenants without access to technology.

For these reasons, TQ supports measures that would make dispute resolution more readily accessible and increase the penalty units for lessors who are found not to comply with bond management provisions.

To militate against the imbalances in the process for tenants who are seeking the return of their own monies TQ recommends an embargo on the lodgement of Form 4 Bond Return forms by lessors and agents for a period of 14 days) following the end date of the notice to leave/intention to leave . This would give tenants an opportunity to discuss any matters in dispute with the lessor or agent, to get advice about how to get their bond back and lodge their own form.

Participants in TQs forums described experiences that involved difficulty in securing the return of bonds. Some felt the process was unclear and complex for tenants to negotiate, and there was a common experience of 'ambit' claims being made by agents to retain bonds even when it was unclear whether rectification work was required. There was a view that there was little accountability for the amounts charged for standard repairs, maintenance or cleaning, and that the rates are inflated by service providers when the agent engages them at the end of a tenancy. Some tenants reported 'giving up' and relinquishing part of the bond in order to get the rest back. The alternate may be a lengthy and drawn out (sometimes four months) dispute over the entire amount.

Participants from one focus group called for the introduction of a maintenance 'sinking fund' or bond for owners. They saw this as comparable to the sinking fund for maintenance held by body corporates, and believed the Residential Tenancy Association (RTA) could manage this bond in a similar way to tenants' bonds. It was suggested that these funds would be used for timely maintenance and repairs, as determined by a third party, and that the bond would need to be topped back up within two weeks.

The interest generated on these monies could contribute to the free services which lessors and agent currently receive from tenant bond interest.

See also our section on *Securing Tenant Advice Services* in the final section of this submission.

Premises goes on the market

Tenants often find the experience of having their home put on the market distressing, with their 'quiet enjoyment' constantly imposed upon by prospective buyers. For one participant in TQs focus groups, the costs and instability generated by a series of rental properties being sold played a major factor in his decision to seek social housing.

To alleviate these issues, if a lessor puts the premises on the market, a tenant should be able to end an agreement with a prescribed notice period (2 weeks) rather than endure the intrusions on their quiet enjoyment, whether they are on a fixed term tenancy agreement or otherwise. This would

even up the power imbalance in these situations, which is most stark when a secondary agent with no interest in the rental of the property is attempting to sell the premises.

Entry

I. Entry condition reports

TQ supports changes in practise to allow tenants time to properly assess the condition of prospective homes, for example extending the time provided to complete entry condition reports to one week.

II. Entry notice periods

Entry notice periods for repairs and maintenance as well as entries to show prospective purchasers and tenants should be increased to 48 hours. With a notice period of 24 hours, a hand delivered notice to a person's letterbox will allow exactly 24 hours for service from the time it was hand delivered. Many tenants are unaware that the notice has been served, or end up with very short notice by the time they check their mailbox.

III. Windows for entry to premises when only the agent or owner enter

TQ strongly opposes the four hour window for entry when the premises are entered by the owner or agent without a third party. It is extremely unreasonable to think that an agent cannot arrange a specific time, especially if they are meeting with the owner onsite. The window for entry should be removed or reduced to half an hour.

IV. Open house entries

There are still problems with open house inspections, both for the tenants who still occupy as well as those who are viewing a property with intent to rent it. Current legal requirements to have the written consent of the tenant for an open house seem to be circumvented by agents who advertise a specified time and take a list of names over the phone.

This practice is very intrusive on tenants, particularly when they are working to move out of the property. However, there are two issues with this – the intrusion on the sitting tenant and the ability of the incoming tenant to inspect the property well. It was recently reported that at one open house 14 groups of prospective tenants were present.

TQ supports additional restrictions to strengthen the intent of the inability to conduct an open house without the tenant's written consent. We recommend a limit on the number of people allowed to inspect a property at one time, without written consent.

Additionally, should there be sitting tenants, TQ recommends that an additional inspection of the premises are provided to the incoming tenant before they can be committed to the property if they only saw the premises with multiple groups of prospective tenants.

Definition of 'Reasonably Clean'

Under the Act, tenants have a responsibility to keep the premises 'reasonably clean'. This term is highly subjective and leads to disputes about its interpretation between tenants and lessors. For example, TQ has taken calls from tenants following a general inspection where complaints raised by the agents included toys left on the floor, washing up not done and dust in the window tracks.

These disputes can escalate and undermine the relationship between lessor and tenant. It is unlikely that the legislative provisions were intended to provide the lessor with the ability to comment on a tenant's lifestyle choices but rather to provide a mechanism to protect the lessor's asset.

The legislation should be amended to remove reference to the tenant's responsibility to keep the premises reasonably clean, instead providing that the tenant must have regard for matters of health and safety in the manner they keep the premises and having regard to their condition at the start of the tenancy'.

Water Charging

Under a previous process it was mooted by the RTA that full consumption costs for water be charged to tenants whether or not the premises is water efficient. TQ does not support this change.

Rent payment records

In order to mitigate the risk of rent arrears disputes tenants should be periodically provided with rent payment records regardless of their method of rent payment.

Discrepancies in rent payment records sometimes do not immediately become apparent as they are less than a week's rent and are not 'rent arrears'. Rent arrears issues may also arise due to the allocation of some or part of a rent payment to other bills such as water or electricity. A tenant will not always know this and over time, a dispute arises. To resolve them, complex rent payment records extending back long periods may be required.

The periodic issuing of rent payment records would assist tenants to pick up issues quickly and resolve them before they become complex and difficult. TQ suggest three monthly records.

Additionally, Tribunals rely heavily on the rent records of real estate agents and lessors, assuming them to be correct. Closer monitoring of those records by tenants will assist in maintaining the accuracy of those records. Tenants often raised this issue in the Tenants Union of Queensland's Residential Tenancies Evictions Research Project in 2012.

Conduct of Agents

The repeal of the Property and Motor Dealers Act (PAMDA) as part of the previous Government's red tape reduction program in 2014 left some significant gaps in tenancy protections in relation to the conduct of agents.¹

Tenants frequently deal with property managers and so it is not surprising that some tenants have a perception that the agent should strike a balance between the interests of the property owner and tenant, not necessarily realising that the agent represents the lessor and acts in their interests.

Participants in the recent TQ forums thought agents often act in their own self-interest and this could be contrary to the interests of both the owner and tenant. Nearly all the participants were concerned that the agent was not passing on their requests or issues to the lessor.

Most participants felt it would be valuable to have the ability, or right, to be able to contact an owner directly in certain circumstances. TQ notes that these matters are also raised frequently in our advisory services and believes it would be valuable to reintroduce a code of conduct or service standards for agents with a direct pathway to dispute resolution when there is non-compliance. This

¹ This Act was replaced by the Property Occupations Act 2014

would improve standards of behaviour and create greater balance between the interests of tenants and lessors.

A relatively common issue with little or no solution since the loss of the PAMDA Code of Conduct is the provision of a poor verbal reference (often) from a tenant's current agent. The tenant often has no poor payment or breach of agreement history however there was often a falling out between the parties. The PAMDA Code of Conduct required each agency to have an internal dispute resolution process and tenant advocates utilised these in regard to these disputes. This no longer exists.

If reintroduced, tenants could use the agent's dispute resolution process as a first step. Should the dispute remain unresolved, tenants should have direct access to a Tribunal to resolve the outstanding matters.

A code of conduct could require duties of honesty and integrity to consumers (i.e. tenants) as well as customers (i.e. lessors) and address matters such as response times and transparent communication with owners.

TQ also supports regulation and limitations on the information which can be requested from prospective tenants when applying for housing from agents and lessors. Some application forms are overly intrusive, asking questions such as whether the applicants smoke, whether they have ever lost any bond, are a current or previous bankrupt, and for the names of personal and rental referees. Prospective tenants have to respond to the questions whether or not the applications offend privacy laws otherwise they will usually not get the tenancy. Turnaround times for privacy complaints are too slow for resolution during the application timeframe.

Tribunal Processes

With rental affordability low in many parts of the market, many people sharehouse in order to reduce their housing costs. In cases where sharehouse residents are co-tenants, it can be difficult for them to gain agreement to changes of the responsible people i.e. to transfer their interest in the tenancy to another person.

In such cases, all parties to the agreement – all co-tenants and the lessor or agent must agree to the transfer of interests before it can be affected. The law also requires that agents and lessors act reasonably in making that determination.

When agreement cannot be reached with the agent or lessor, an application can be made to the tenancy tribunal to request an order regarding the transfer of interests.

However, the application is non-urgent under law and requires that an application is made, processed and ultimately unsuccessful with the RTA's DR services. The timeline for setting down a hearing is also slower for non-urgent matters as opposed to urgent ones. Given that often one co-tenant may have already left, and a prospective new co-tenant will often be in a situation where they need housing relatively fast, the slow turnaround of remedies to unreasonable responses to transfer a tenant's interest is often ineffective.

TQ recommends that applications made under section 239 become urgent applications. Additionally TQ recommends that the tribunal is empowered to determine whether the costs of the tenant's request to transfer or sub-let are reasonable or not (as per section 240) under an application under this section.

Additionally, tenants should have an automatic right to representation in the Tribunal when the

lessor is represented by an agent.

RTA Compliance and Complaints

Most tenants are too concerned about the impact of their current and future tenancies to make complaints to the RTA regarding unlawful behaviour. To mitigate this the RTA should take representative complaints whereby the individual parties do not have to be made known. Rather they are a class of complainants.

Complaints about privacy are subject to these types of complaints and have previously been effective. TQ made four representative complaints about a tenancy database company prior to protection being introduced in Queensland tenancy law.

A representative complaint would provide an avenue for the RTA to be more proactive in investigating potential unlawful behaviour.

RTA Dispute Resolution

Consideration should be given to removing the dispute resolution functions from the RTA and allowing the Tribunal to conduct conciliation prior to a hearing. This would reduce the timeframe for non-urgent disputes (including bond disputes) and remove the conflict for the RTA in conducting dispute resolution and investigating compliance.

4.3 *Making neighbourhoods better places to live*

The discussion paper asks how the government can make neighbourhoods better places to live, and contemplates improving planning systems, and working across private and public sectors with a view to maximising the contribution of housing to other social and economic outcomes in communities.

TQ suggests there is much scope to improve our collective understanding of what it is about housing and neighbourhoods that makes a difference in people's lives; specifically what matters and for whom. A person centred approach would start with a nuanced understanding of this, questioning the assumptions which underscore the current housing system, and from this develop the vision, goals, mechanisms and strategies needed. In particular approaches to social and affordable housing development including housing location, tenant mix, size, density and design could be informed by such knowledge. TQ suggests that investment in appropriate research in this area, beyond the scope of the existing National Social Housing Survey, could usefully inform future housing policy and strategy.

The discussions during our recent focus groups provided a glimpse of the range and complexity of issues that might emerge from such research. The issues associated with living in locations with concentrations of tenants with very high and complex needs emerged across both social housing focus groups, and was one of the most pressing concerns. Coping with neighbours experiencing episodes of mental illness was a dominant topic of discussion during which there was both understanding for the situation of those affected as well as concern that their lives should not be affected by antisocial or disruptive behaviour. Some participants expressed concern about the physical security of the places they were living in, and those who had security measures such as cameras or gates were appreciative of them.

"There are certain areas that are quite a lot more dangerous than other ones...I think [complexes] that are known to have trouble – constantly getting police reports, ambulances and everything sent to them – they need to have security (Public Housing Tenant, Forum 2)

Safety and security was also one of the highest rated 'amenities' of importance to tenants participating in the National Social Housing Survey in 2014 (AIHW, 2015).

Neighbourhood complaints (within complexes) are the most common complaints being dealt with by the Department of Housing and Public Works. TQ believes there would be benefit in in-depth research on the nature of those complaints and potential remedies.

Participants in our focus groups also frequently described positive experiences of their neighbourhoods. This was often informed by the location of their housing and the associated amenity including access to public transport, green spaces, shopping, medical facilities and other services. While these were often inner city developments with greater levels of social diversity, there were also concerns raised about dwelling size and density and associated infrastructure issues such as traffic and parking congestion.

Noise issues are also increasingly problematic with the rapid expansion of unit buildings in particular around the Brisbane city rim. Extending noise limitation regulations to include and limit noise from cleaners, garbage trucks, businesses within certain hours would assist with neighbourhood harmony.

Opportunities for community engagement and interaction in neighbourhoods were also viewed positively, though it was acknowledged that some tenants prefer to keep to themselves.

"In our building you sort of look out for one another. You've got that bit of companionship or if [my neighbour] wants something or I go away we're there for one another. I had a medical emergency a few months ago...[my neighbour] came around, took me to the hospital" (Community Housing Tenant, Forum 2)

Participants expressed support for tenant participation programs and some were disappointed by the removal of funding that had in the past support local tenant managed groups.

4.4 Improving service delivery and service integration.

While emphasising current efforts, the discussion paper acknowledges that there are areas where better policy coordination and service integration is needed, such as in responding to the housing needs of young people, older people, Aboriginal and Torres Strait Islander people, people experiencing domestic and family violence and people with disabilities.

TQ's recent focus groups did touch on the specific challenges of some of these identified groups. The MOU partners focus group in particular highlighted some of the areas where policy coordination could be effective in removing barriers for their clients in finding rental housing in the private market. These barriers include affordability, discrimination (for example against clients with no employment, against single people, people with a disability and people from culturally and linguistically diverse backgrounds) and being listed on residential tenancy databases.

It was interesting to TQ that many of the issues for these highly vulnerable groups could be resolved by the broad improvements to tenancy protections that we have proposed. Participants agreed that removing retaliatory evictions and encouraging greater security of tenure would benefit vulnerable renters.

In other cases, there is a need for specific responses tailored to the needs of the particular group.

For example there are added challenges for CALD people in obtaining suitable rental housing, in particular due to larger household sizes and language barriers. While CALD families may be happy to have several family members in a bedroom, this is contrary to Australian cultural expectations and a trend towards smaller and smaller social and private housing properties.

Language barriers for CALD clients could be improved by greater use of the Translating and Interpreting Services (TIS) by private agents. Although all agents can access TIS freely, the uptake is not as widespread as it should be. A recent pilot program involving the promotion of TIS to agents showed some success in increasing its use, however this has dropped off since the pilot has been completed. Ongoing promotion and support for agents (i.e. showing them how to use TIS) is likely to be required. There is a potential role for the Real Estate Institute of Queensland (REIQ) and the Commonwealth Government to advertise the service and its benefits more widely.

It was also noted that this group could experience difficulty accessing broader support services. For example many Multicultural Development Association (MDA) clients arrive in Australia without enough ID points to access a bond loan. TQ recommends that confirmed arrivals through the United Nations High Commissioner for Refugees should be able to access a bond loan while their ID is being settled. TQ suggests that the bond loan application form could be amended to remedy this issue.

Older people and people with a disability also have specific challenges finding rental housing that meets their accessibility needs, particularly in the private rental market. It was noted that the modification needs often change over time, and that only limited funding is available from the Commonwealth Government for modifications.

Modifying housing in the private rental market is particularly difficult for tenants with a disability. Limited length and security of tenure presents a major barrier to individuals investing in modifications. Further, property owners often will not give permission for changes to be made due to a (probably incorrect) perception it reduces the value of the property. While s 208(3) of the RTRAA requires that lessors do not act unreasonably in failing to agree to the attaching of a fixture, or the making of a structural change, to the premises, TQ would support legislative amendments that more clearly require landlords to agree to requests for modifications that are not unreasonable. We further support the adoption of universal access design standards for new and existing rental properties to alleviate this barrier in the future.

Issues for people experiencing Domestic and Family Violence also emerged during TQs recent focus group. One common issue noted was being at risk of eviction or being listed on a tenancy data base due to property damage or disturbance issues related to the violence. TQ strongly supports the government's recent change allowing a victim of DV to apply for an order not to be listed on a tenancy database.

5. Theme 2: Affordability

This theme area concerns improving access to housing in both the rental and home ownership markets. It focuses not just on the upfront cost but the ongoing cost and amenity of housing influenced by design, size, and location.

5.1 *Creating an affordable rental market*

The paper states the Queensland Government is interested in encouraging an increase in the supply of rental dwellings and canvases options for creating an affordable rental sector that is not at the expense of increasing the supply of social housing for tenants with high and complex needs. One option canvased is the use of inclusionary zoning at a local government level, combined with incentives that improve the dwelling yield of a development site or the overall viability of a project.

It is noted that in many cases the completed dwellings or financial contributions are channelled to selected community housing providers to provide property and tenancy management.

The low affordability of the rental market, particularly the private rental market, was a dominant theme through our recent focus group discussions. For the social housing tenants, affordability was the primary driver for seeking assistance through public or community housing providers; for the private rental tenants it impacted on initial dwelling choice and became a concern at the end of each fixed term lease period. For advocates for special needs clients it limited the options available to clients.

Related to affordability, competition for rental housing and low supply was another common theme. While there was frequent reference to the recent growth in Brisbane's supply of inner city apartments, there was no sense that this would relieve the pressure of demand at the lower end of the market.

In the discussions there was general support for a reinstatement of the National Rental Affordability Scheme (NRAS) and for the creation of more social housing stock. Imposing obligations on developers alongside incentives was also supported, noting that there was concern about such incentives leading to reduced dwelling size and neighbourhood amenity.

TQ suggests one approach to increasing affordable housing stock would be to encourage local councils to review their zoning in order prevent residential properties being converted to commercial rental stock. Efforts could initially be focussed on areas where there is significant numbers of available design built commercial premises.

Bond loans, Rental grants, Homestay and Rent Connect services.

Across the two social housing groups and the MOU partners group there was much discussion of existing housing services and housing support programs. Most often these were viewed positively for their role in helping people who might otherwise be at risk of homelessness to access the private market. However, there was also some concern that people who would benefit from social housing were sometimes pushed toward the Rent Connect officers at the Housing Service Centres rather than the housing register. This issue is in context of high demand for social housing stock and the needs based assessment but can result in people with affordability issues struggling in the private rental market. Issues with these programs included the limited capacity or reach of programs, and there were also differing views about the effectiveness of the programs that seemed to relate to the performance of individuals or specific offices.

Housing design and Energy Efficiency

The discussion paper notes that the Queensland Government provides policies, regulations and standards that govern building design and sustainable housing and that urban design and planning can deliver housing which is more comfortable and affordable for people to live in. The paper invites commentary on what could be done in this area.

As energy costs have spiralled upwards over the previous eight years many households have sought to reduce energy consumption to manage living costs. However there are considerable and well-documented barriers to renters doing the same.

The greatest energy savings can be made through improvements to the thermal performance of the home, for example through insulation, and through installing efficient fixed systems such as air conditioning units and hot water systems. However these are investment decisions over which tenants do not have control.

While direct evidence about the energy efficiency of rental housing is limited (and premises may transition in and out of the rental market), there are some indicators that the energy efficiency of rental housing is lower than owner occupied housing. As noted by the Australian Council of Social Service low income tenants are twice as likely as owner occupiers to be living in uninsulated homes (ACOSS, 2014). Further, 70% of the most disadvantaged households live in dwellings that are more than 20 years old while over 50% live in dwellings that are over 30 years old (ABS, Environmental Issues: Energy Use and Conservation Survey cited in CEFC, 2016). A limited survey of community housing providers in 2011 also found that half of all community housing dwellings surveyed did not have any insulation and nearly one third had inefficient electric hot water systems (Urmee et al, 2012).

The oft cited reason for the lower energy efficiency of rental dwellings is a “split incentive” where lessors are reluctant to invest in capital measures that have no immediate benefit to them while tenants do not have sufficient security of tenure to make investment in energy efficiency payback quickly enough.

Further, as noted by the Queensland Productivity Commission Report into Electricity Costs, lessors tend to withhold permission for improvements to properties that would benefit tenants, even where free or subsidised. For example data from the NSW Home Power Savings program showed that only 10.2% of private landlords gave permission for the installation of free efficient showerheads and draught strips. (Cited in QPC, 2016; ACOSS, 2013)

The development of minimum standards for rental housing could include some small but significant energy efficiency measures that could make a significant difference in costs to renters. Currently prospective renters compete for properties with nothing other than rudimentary energy information such as whether there is electric, gas or solar hot water, stove and power. A further option would be to introduce a rating system for rental premises and/ or require mandatory information relating to the energy efficiency of a premise to be provided to prospective tenants. For example, it would be useful for prospective tenants to know whether a home they are considering renting is insulated, the efficiency and/or age of gas or electric hot-water systems, and whether such systems are connected to a controlled load tariff. It may also be beneficial for tenants to be aware prior to signing a lease about rental arrangements involving on supply of energy by a body corporate, bulk supplied gas or hot water.

It is perhaps easiest to take action to address energy efficiency issues in the social housing sector where the government has more direct control over housing standards. While we are aware that there has been some level of retro fitting across state managed social housing, we expect that there

remains significant opportunity to improve the quality of social housing stock, both public and community managed. Investment in higher standards of energy efficiency in new dwellings would also support improved affordability for renters. TQ recommends that the Department of Housing set targets and publically report on a plan to retrofit all existing social housing property over time. Further TQ recommends that the energy efficiency standards for new social housing be increased from 6 to 7 Nationwide House Energy Rating Scheme (NatHERS) rating. According to the Clean Energy Finance Corporation (CEFC), the difference could mean as much as a 25% improvement in the thermal efficiency of new builds. (CEFC, 2016)

A further problem for some renters is a lack of choice and control in their energy supply options. The RTRAA allows lessors to decide on which supplier of services such as gas, electricity and water to use under s 165. A tenant can therefore be forced to enter into a third party contract about the supply of electricity, gas or water and be given no alternative supplier. Commonly, the contract is with the body corporate although sometimes a body corporate has an agreement with the service supplier to bill directly to the occupier (tenant).

On-suppliers are considered “exempt sellers” under the National Electricity Retail Law and are regulated under the Australian Energy Regulators Exempt Selling Guideline. Customers supplied under these arrangements are not afforded the same level of consumer protections as other residential customers, particularly in relation to access to concessions and dispute resolution through the Queensland Energy and Water Ombudsman. While these issues may appear outside the immediate control of the Department of Housing, tenancy law arrangements intersect with regulation in the energy space. For example, we are aware that the AER has had to create a specific category of exempt sellers as Queensland is the only state that allows on-supply of energy where a premise is unmetered. Tenancy legislation also determines the fees and charges that can be levied, and tenancy rights where the landlord keeps the electricity bill in their name.

Currently the RTRAA does not prevent the potential for on-suppliers to apply unregulated fees or charges on top of the quantity, service or facility cost as set out in s165(3)(b).

TQ suggests that where energy is supplied to the tenant as part of the contract, the terms and methods of calculation must be included in a disclosure of the tenancy agreement terms prior to being able to bind a tenant to the tenancy.

TQ also suggests the RTRAA be more explicit about the coverage of solar energy generators with the utility provisions of the RTRAA. TQ has had a number of calls about feed in tariffs from the installation of solar energy panels. Whilst these queries can be worked out under the current provisions of the RTRAA, they cause confusion particularly where the lessor keeps the bill in their name to retain the benefit of feed in tariffs. TQ believe there is currently uncertainty in the relevant legislation about whether the tenant is entitled to obtain the benefit of the rebate.

We would acknowledge that the energy market and technology is rapidly changing, and this will result in different issues in relation to costs for renters in the future. For example, new rules about cost reflective pricing and new network tariffs in Queensland mean that in the future load shifting and load management will be more imperative to managing costs than energy consumption. Therefore a new set of problems is likely to emerge for the renter cohort. For example, renters may have less ability to access advancing metering, demand tariffs and other new technologies. TQ recommends that a future housing strategy include plans to work jointly with the Department of Energy and Water Services to understand and respond to these issues for the benefit of renters.

TQ also notes that it is participating in a joint research project with QCOSS and QShelter to better understand the tenancy related energy issues for renters in Queensland. The project partners will engage with the Queensland government on issues emerging from this research and on possible solutions as the project progresses.

5.2 Access to Homeownership and Renewing the Social Housing Portfolio.

Improving access to homeownership and renewing the social housing portfolio are the other two areas outlined in theme 2 of the discussion paper.

In regard to renewing the social housing portfolio the paper notes that transferring title on targeted social housing dwelling portfolios is one possibility that may give selected community housing providers a suitable asset and revenue base to redevelop sites while increasing housing yield and improving amenity for tenants.

The paper asks for views on the role of community housing providers in the future; the best mix of community and public housing; and ways of growing supply to respond to local and state-wide needs.

TQ has done limited research in the area of stock transfers and does not have a fixed view as to the merits of this approach. We believe that the overall impact on tenants and their housing outcomes should drive considerations of the issue, rather assumptions that community housing providers are better housing managers. The pros and cons of stock transfers should be fully weighed up. We are aware of the potential value of providing community housing providers with title to stock that would allow them to leverage funds to invest in additional affordable housing. At the same time, it should also be acknowledged that community housing tenants paying income based rent pay more than 25% of their income as rent assistance is not included in the calculation, but rather added on top of the rent calculation. This not only makes community housing providers more viable but also reduces the funds available more generally for housing assistance. As noted earlier in this submission, TQ support the extension of administrative appeals through the Housing Appeals and Review Unit to community housing tenants to ensure they have the same rights as public housing tenants.

6. Theme 3: A Responsive Housing System

TQ strongly supports the focus outlined in theme three on the need to create a single accessible and integrated homelessness and housing assistance system, for housing assistance to be provided in collaboration with other human services at the local level, and for policies that support collaboration and integration towards shared outcomes. This should, however, not be at the expense of client confidentiality and privacy. Real choices should be retained for clients in the system who do not want to have all their details shared across networks and programs.

Timely interventions and support for people who are at risk of homelessness due to housing stress or personal circumstances can help prevent homelessness. Support for sustaining tenancies is essential to any effort to reduce the level of homelessness, and TQ draws attention to improvements that could be made in the following two areas.

Preventing Evictions from Social Housing

Some tenants may be vulnerable to risk of eviction and homelessness because of circumstances in their life that are largely out of their control, such as mental illness. Risk of eviction for damage to property or neighbourhood disturbance is also present for those who are not directly responsible, for example when a client has a child or family member with challenging behaviour as a result of a disability or mental illness, or where there is a violent partner. As already noted, tenancy law has a key role to play in improving housing stability and preventing evictions. However social housing providers may be able to do more. As participants in one of TQ's recent focus groups commented, "*where do you go when you are evicted from social housing*"? The likelihood is that evicted tenants will end up homeless.

There is some evidence that the previous Government's Anti-Social Behaviour Management Policy and the strikes-based process for issuing breaches for violations of tenancy agreements led to unnecessary evictions of clients for minor offences or fines. This policy had adverse outcomes in the case of people with mental health issues, though ironically their mental health condition is likely to be what made them eligible for social housing in the first place (Queensland Mental Health Commission, 2014). While this policy is no longer in place, we would encourage the Department to analyse and review the reasons for evictions from social housing and associated practises with a view to reducing the number of evictions occurring.

Further:

- The options under tenancy law to require a social housing tenant to enter an anti-social housing agreement should be withdrawn;
- S290A of the RTRAA should be withdrawn as it undermines the principal of being innocent until proven guilty by allowing eviction with a 'reasonable belief';
- All sections passed under the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2013* which separated social housing termination provisions from private rental provisions should be removed. This would save red tape.

TQ recommends that protocols be developed with the non-government sector to ensure earlier referral of at risk tenants to social service providers, and not at the point of eviction, as a means to prevent unnecessary evictions. Similarly, there may be opportunities to work with private estate agents to refer tenants to support, perhaps working through the REIQ. More effective policy on transfers including swaps for social housing tenants might also assist with neighbourhood disputes and sustaining tenancies.

Supporting tenant advice services

All tenants should have access to independent and free services that are funded from the enormous interest generated by their bonds. The previous Government abandoned this policy and made a number of attempts to divert this interest to other government activities. With a majority of our clients being lower income renters trying to make their way in the private rental market, withdrawing support for tenancy advocacy services only served to make the private market less transparent and arguably increased the pressure on the public housing sector.

TQ acknowledges and congratulates the current government for the development of the Queensland Statewide Tenancy Advice and Referral Service (QSTARS), a vital service assisting tenants to maintain safer tenancies and greater security.

However, TQ recommends that the government work toward QSTARS being funded from tenant bond interest, as was the previous program of advice.

With \$35M of bond interest provided by the Residential Tenancies Board to the Queensland government for social housing in the 2013/14 years (couple with declining interest rates), bond interest fell from \$46M in the 2012/3 year to \$24M in the 2014/15 year. This resulted in an operating deficit by the RTA of \$10M. TQ acknowledges that it will take some time for the RTA to regain its surpluses in order to fund tenant advice services.

Despite that, TQ believes it is a vital reform as it acknowledges the benefits provided to the entire industry and government by renters foregoing an individual benefit from their bond interest whilst also gaining universal access to independent advice services. In fact, when the Rental Bond Act (1989) was passed it was envisaged that, over time, interest would be provided to renters as surpluses accumulated. This currently occurs in New South Wales. It was also recommended for implementation in Queensland by the government Residential Tenancies Law Review Committee in a report in 1991. However the RTA board subsequently withdrew the proposal to return interest to tenants during a later review of the RTRAA in the late nineties.

Further, TQ believes the requirement for funding of independent tenant advisory services should be enshrined in the legislation (RTRAA) with a restrictive clause allowing the government of the day not to fund in extraordinary circumstances.

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