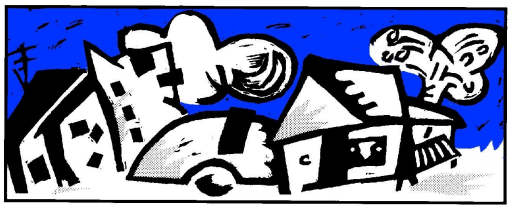

Tenants Queensland Inc

Submission to

Open Doors to Renting Reform

November 2018

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Part 1
Submission to the Open Doors to Renting Reform consultation

1. About Tenants Queensland

Established in 1986, Tenants Queensland (TQ) 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 more marginal tenures such as caravan parks and boarding houses.

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

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

2. Introduction

Given our daily interactions statewide with tens of thousands of renters annually who call us for tenancy advice and support, TQ is keenly aware of the deficiencies in legislation and critical need for change. We welcome the opportunity to draw on TQ's wealth of information to provide recommendations to Open Doors for future reform.

The nature and demographics of renting has changed over time, and it is now a long term and permanent tenure for many people. Larger number of families with children and older Queenslanders are renting than ever before, the majority of whom are in the private rental market.

Compared to other Australian jurisdictions, Queensland has the highest percentage of renting households (except for the NT where the market is smaller), greater than the national average, and has the third largest number of renters after NSW and Vic.

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 low and moderate-income households.

34.4% of Queensland households are renting according to the most recent ABS census which equates to 4.9M people. This includes 95,000 over 65 years of age, 100,000 single parents and 254,000 people aged between 15 and 24 years of age. Renters outnumber owner occupiers in some electorates.

The cry from renters for a better deal is occurring country-wide. With increasing numbers of long term renters it is appropriate that the protections and standards for rental housing are strengthened, commensurate with the central role this tenure plays in the housing market.

Tenancy law in Queensland (and Australia) remains comparatively weak with Australia as one of only three developed countries to allow tenants to be evicted without grounds (Hammar, 2012). Poor tenancy laws and protections 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 where renters experience 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).

Queensland tenancy laws stand in stark contrast to some European jurisdictions, where policy and regulatory approaches to rental housing supports strong social outcomes, including greater security of occupancy in the private rental market (Hulse et al, 2011).

Victoria has recently passed legislation to significantly increase tenure security for renters in that state, minimum standards and a range of other changes. NSW has similarly made changes which include minimum standards, though not quite as progressive regarding tenure issues.

It is time for Queensland to modernize its own tenancy laws so that rental housing is fit for purpose, provides a place where renters can make a home, and delivers a product that is safe, secure, affordable and appropriate.

3. Key issues

3.1. Termination of tenancies

The ways in which tenancies are ended can have a severe impact on tenants. Forced and unexpected moves bear economic, social and emotional costs with the greatest impact falling on those with the most limited resources. The financial cost of moving combines with the difficulties in finding safe, secure, affordable and appropriate housing for their household.

TQ recommends that at all times, tenancies should only be terminated against the renter'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.*

The notice period for termination of tenancies should be congruent with the urgency (or otherwise) of the related ground for termination.

3.1.1. Preventing Unfair Evictions – remove lessor's ability to terminate tenancies 'without grounds'

TQ recommends that the ability for lessors to provide without ground notices to leave (s291 of the Residential Tenancies and Rooming Accommodation Act 2008 [the Act]) be removed and be replaced by the following with ground notices:

- *The lessor requires the property for their own use, or for the use of a member of their immediate family, as a principle place of residence for a minimum of 12 months.*
- *Significant renovations/maintenance 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;*
- *Another purpose for which the premises cannot continue to be used as residential premises for a minimum of six months.*
- *Theses grounds should provide for three months' notice of termination.*

The most significant issue for the Queensland government's tenancy law review is the way in which tenancies can be ended by lessors. To prevent unfair evictions and unnecessary churn, 'without ground' notice to leave must be withdrawn. Requirements to end a tenancy should include the application of a prescribed ground contained in the law.

The without grounds eviction provisions are unjust and often lead to evictions being made in retaliation (for a renter standing up for their rights) or for reasons of discrimination because there is no obligation to give a valid reason.

The current ability to issue a 'without ground' notice to a tenant should be removed and provisions amended to ensure a lessor can only end a tenancy where there are specific legislated grounds that are set out in the notice to leave.

These grounds would not be effective during a fixed term agreement and three months' notice should be required, given the lack of urgency of the issues.

A member of the lessor's immediate family should be described as:

a) The owner's domestic partner, child or parent; or

b) A parent of the owner's domestic partner; or

c) Another person who ordinarily resides with the owner and is substantially dependent on the owner.

In circumstances of prescribed grounds being used dishonestly, penalties would apply to the lessor/agent. The tenant evicted under dishonest grounds would be able to apply for compensation for losses and reinstatement (where possible)[1].

[1] The following is an example of how penalties, compensation might be set out in the Act

Wrongful evictions

1) A lessor or person acting on behalf of a lessor who obtains possession of rented premises following service of a notice of termination or an order of the Tribunal under section XX must not use the premises except for the purpose for which the notice was given for the period stated in the notice.

Penalty: 100 penalty units.

2) Sub-section (1) does not apply if the former tenant is given the opportunity to reside in the premises following a change in use.

3) If premises are used for another purpose, the former tenant who vacated premises in accordance with a termination notice or following a termination order made under sXX may apply to the Tribunal for the

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

3.1.2. Social and Affordable Housing

TQ recommends that social and affordable housing providers be required to give their tenants grounds for all evictions.
TQ recommends that the administrative appeals process is extended to apply to community housing tenants.
TQ recommends that the termination clauses targeting social and affordable housing tenants, and inserted into RTRAA in 2013, be removed as they are onerous for vulnerable tenants as well as unnecessary.

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

Over the last decade pressure on social and affordable 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 and affordable housing sector.

Housing management practice in this new context has been reviewed. The outcomes of new practices are mixed. Some respectful and effective in sustaining tenancies whilst others are placing unfair burdens on social housing tenants that in some cases lead 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, supported accommodation and justice systems. TQ opposes these types of interventions.

Social housing grounds for evictions

Social and affordable housing providers should always be required to give a reason in law for terminating a tenancy, even if the reason is because of the ending of housing assistance. This gives the renter an opportunity to understand the reason and respond to the provider should they dispute the ground provided.

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) regarding public housing tenancies.

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following orders:
a) an order for compensation for wrongful eviction;
b) an order for reinstatement as tenant in possession of the premises.

4) The Tribunal must not make an order under (3)(b) unless it considers it appropriate to do so.

Despite many of the same social housing policies applying to them, community housing tenants do not have the protection of the administrative appeals process. This should be rectified as soon as possible through contractual arrangements, extension of HARU's application to community housing providers or whatever other means the Queensland government determines to be effective.

Other Social Housing Terminations

In 2013 the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act* was passed, extending certain 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.

However the other key effect of the passage of this legislation was to separate out the termination provisions for social housing tenants from those in the private rental market, and extend responsibilities for the former group of tenants beyond those of other renters. TQ believes that all those sections should be withdrawn, in particular s290A. The re-unification of the termination sections would reduce red tape, take away the unreasonable extension of responsibilities on 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 a 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 for social housing due to their high needs). The option of anti-social behaviour agreements should be removed from the legislation.

3.1.3. Evictions for rent arrears

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 before the warrant is enforced.

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 lessors are not permitted to carry out evictions if the tenant is participating in a debt assistance program (NATO, 2010).

Tenancy laws in New South Wales 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 - the tenant does not have to decide whether to pay the rent or keep the monies they have for an inevitable move and the lessor receives the rent and avoids vacancy and additional agency costs.

3.1.4. Rooming Accommodation

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.

For those in rooming accommodation the concerns regarding current eviction processes are even greater than general tenancies. The existing provisions, which allow for the housing provider to self-evict residents without due process or a tribunal order (s375), as well as immediately evict residents (s370), leave these renters in a particularly precarious housing situation.

The industry previously argued that such provisions are justified to protect other residents. TQ however, draws attention to the range of existing laws that adequately deal with incidents involving 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. To put this into effect, for allegations of serious breaches, a short exclusion time might exist in order for the matter to be heard in the tribunal. This occurs in Victoria.

3.1.5. Early termination without compensation to lessor

TQ recommends the extension of grounds for a tenant to end a fixed term tenancy agreement early, with notice, when:

a. The tenant has been offered and accepted accommodation in social or affordable housing;
b. The tenant has accepted a place in an aged care facility or requires care in such a facility;
c. 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;
d. The tenant is admitted to long term medical care (such as a mental health facility).
e. When the tenant has a 'relevant' domestic violence order and needs to leave the premises for their safety.

There are a number of circumstances where it is unreasonable for a tenant to continue to be bound by a fixed term agreement. TQ advocates that in specified circumstances tenants should be able to end their agreement with two weeks' notice and no further liability. That is, the lessor would be unable to seek compensation for the loss of rent beyond the notice period or other costs associated with the termination of the tenancy.

Domestic and Family Violence (DFV)

If a tenant has been issued with a 'relevant' domestic violence protection order and believes that for their safety they need to move from the premises, the Act should allow for the early termination of an agreement by the service of a notice.

A ‘relevant’ domestic violence order is one which has been issued within the previous six months’, and names the tenant(or someone in their care) as subject to the protection order.

If a copy or other evidence of the order is provided to the agent or lessor, they must be required to maintain confidentiality regarding the circumstances as well as the location of the exiting tenant.

3.1.6. Premises goes on the market

TQ recommends that tenants be able to end a fixed term agreement with the prescribed notice of two weeks’ if the premises are put on the market or entry is made to show prospective purchasers during a fixed term agreement.

Tenants often find the experience of having their home put on the market distressing, with their 'quiet enjoyment' constantly imposed upon by prospective buyers. If the sale involved a secondary agent there may be a very aggressive sales strategy because their sole interest is in the sale of the premises.

Whilst current laws allow for a tenant to end the agreement if the property is placed on the market within two months’ of the start of a new agreement, TQ believes that this right should extend throughout the contract (if the tenant was not informed prior to entering a fixed term agreement). This puts the tenant in a more balanced position to negotiate entries if they wish to remain in the property.

3.2. Starting Tenancies

3.2.1. Disclosure of material facts about tenancies

TQ recommends that lessors or agents should be required to disclose certain material facts to a tenant before entering into a residential tenancy agreement.

The failure to provide key facts about premises often leaves tenants in an unhealthy or undesirable tenancy. They may also be stuck in a fixed term agreement, and if not, do not have the resources to move. The requirement to disclose material facts 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 to the tenancy;
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.

3.2.2. Removing unreasonable restrictions in tenancy agreements

TQ recommends that tenancy agreements should not be able to unreasonably limit the number of people who can occupy premises.

Terms restricting the number of occupants who can reside at a property have caused problems for tenants and can affect rental affordability. Despite no specific provision within the tenancy law, the Residential Tenancies Authority (RTA) includes in their standard tenancy agreement (used by much of the Industry) a question about how many people may reside in the premises. This clause is sometimes used to restrict the number of people in the tenancy to a number less than the number of bedrooms, or affect the addition of a newborn 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.

3.2.3. Unfair, harsh and unconscionable terms in tenancy contract

TQ recommends that 'unfair contract term' and 'harsh and unconscionable'' clauses be inserted into the legislation allowing a party to make an application for determination by QCAT (residential tenancy) regarding whether a term is unfair, harsh or unconscionable.

A range of onerous clauses are at times inserted in the special terms of tenancy contracts by lessors and agents, leaving tenants unclear of their liability and responsibility. For example, requirements requiring tenants to purchase certain insurance coverage or indemnify the lessor against specified actions. Tenants may be left unclear if they should sign the agreement or if they do, if the clause is enforceable.

All consumers have specific protections under the Australian Consumer Law regarding unfair terms in contracts. TQ believes that protections against unfair contract terms, similar to those set out in the Australian Consumer Law, should be inserted to Queensland tenancy laws. As well, tenancy law should prevent terms which are harsh and unconscionable.

Inserting such clause/s into Queensland tenancy laws will provide an accessible remedy (via QCAT, residential tenancy) to remedy a range of unreasonable restrictions and requirement placed on tenants.

A precedent for the prevention of harsh and unconscionable tenancy contract terms is contained in section 28 of the *Victorian Residential Tenancies Act (1997)* which 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.*

3.2.4. Terms restricting pets

TQ recommends that the assumption in tenancy agreements should be that renters are able to keep pets as long as they are not in breach of any law or by-law.

TQ recommends that no additional bond should be required (or allowed) to keep a pet.

Terms prohibiting pets are frequently included in tenancy agreements and many tenants have difficulty in finding premises which will accept pets. The RTA's standard tenancy agreement has a question which asks if pets are allowed, though the Act itself is silent. It appears that many real estate agencies provide a default 'no' their response to the question.

Keeping pets should be a matter of personal choice and personal responsibility. Adults should not be required to seek permission to keep a pet whether a person rents or owns their home. A plethora of research outlines the health and social benefits of having pets and people who rent should not be excluded from this choice.

Tenants should be able to keep pets when there are no laws or by-laws prohibiting them from doing so. If the lessor has special circumstances for which they want to argue a pet exclusion, they should be required to argue this at QCAT (at periodic intervals) to prove special circumstances in order to receive a pet (or specific pet type) exclusion order.

In the event that a tenant damages the premises, whether caused by them, their pet, child or otherwise, the tenant is already responsible for that damage and required to make good at the end of the tenancy or compensate the lessor. For this reason, an additional bond should neither be required nor allowed in order for renters to keep pets. Tenants already have large amounts of money held in trust in case they default at the end of the agreement and there is no evidence that a pet bond will encourage lessors to allow pets.

Entry condition reports

TQ recommends extending the time for a tenant to return the entry condition report to one week.

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.

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

3.2.5. Fairer bond management

TQ recommends that bond top-ups be prohibited when rent increases.
TQ recommends that applications to QCAT to resolve bond disputes should always be made by the lessor or agent.
TQ recommends the introduction of bond certificates to allow a provisional transfer of bonds to a new property before a bond is release at the end of a tenancy.

There are a range of reforms to the Act's bond provisions which would improve access to housing and protection for housing consumers.

Bond top ups

TQ believes the current maximum bond of four weeks rent is appropriate and should be maintained, however we do not support current provisions that allows increases in the bond payable (following rent increases) over the life of 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 administrative work for the RTA which could be avoided if bond top ups were not allowed.

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 the tenant has been required to pay a higher rent. The continuation of a tenancy is itself an indication that the tenant has proven him or herself, and additional bond money should not therefore be necessary. Bond increases are not permitted in some other states.

Bond dispute applications

TQ advocates for a new process for the resolution of bond disputes, in particular the second stage where an application to QCAT is required. The current process results in a race between the lessor/agent and the tenant to lodge the Return of Rental Bond form once a notice to leave or intention to leave has expired. If the lessor or agent – who is better versed in the process than the consumer – puts the form in first, the tenant will find themselves having to make a QCAT application, sometimes without details or evidence from the lessor/agent of the claims against the bonds. Effectively the tenant is defending their innocence rather than responding to an evidenced claim.

Where a bond dispute results in an application to the QCAT for adjudication, it should always be the lessor/agent who is the applicant and the tenant the respondent.

Bond certificates

Bond disputes are the most common dispute handled by the RTA at around 53% for the 2017/18 year (an additional 16% if above the bond claims are included). For QCAT, disputes about bonds made up 10% of QCAT hearings in residential tenancy for the 2016/17 year.

It is not uncommon for issues to arise for tenants when trying to claim their bonds, which they often rely upon for securing and moving to a new tenancy. It is TQ's experience that tenants will often agree to pay, or sacrifice, some of the bond to the lessor/agent in order to gain quicker access to the rest of it to assist their move.

Agents and lessors may be slow to inform tenants whether they will release the bond to the tenant, may mislead tenants or withhold information about their right to commence their own claim to have the bond returned, or make ambit claims for the whole bond.

To avoid tenants having thousands of dollars of their money caught up in a current and previous bond, TQ suggests a new way of managing bonds when a bond contributor wishes to transfer a bond from one premises to another.

In NSW, new regulations to their tenancy law act are likely to allow the transfer of bonds between premises even when there is a dispute on foot.

TQ proposes that Queensland follow suit and allow the provisional transfer (or certificate) of the bond to a new property once the Notice to Leave or Notice of Intention to Leave has ended (and whether or not a dispute arises). If there is a dispute resolved in favour of the previous lessor, the bond is then used to pay the amount to the previous lessor with the tenant making up the difference over a prescribed period of time of two months'.

The current online bond lodgement/return process could support the change by extending its operations to include bond transfer and introducing a provisional certificate. The

provisional certificate is held until the first of either, the two week period to dispute the bond has passed, or the dispute is resolved.

The tenant would be required to pay any additional amount of bond required for the new premises (e.g. if the old bond was $1200 and the new $1400, the tenant would pay the additional $200 within the current requirements).

This lessor of the new property would have a provisional certificate for the bond for a period of time at the commencement of the new tenancy whilst the previous bond is finalised. However as there is limited risk of the new tenancy ending in the first few weeks there is limited risk for the bond to be held as a certificate for that period rather than cash.

At the end of the first or original tenancy, the current bond claim process applies.

The provisional certificate will state the current amount of the bond held which, once released, is then credited to the lessor's account to fulfil the provisional certificate.

If the tenant does not add the shortfall within the timeframe this would become a breach of the agreement in the same way current non-payment of bond does.

In support of this suggestion, the RTA's 2017/18 Annual Report shows that in 50% of cases they pay the full bond out to the bond contributor/s (the tenant). In over 70% of cases they pay 50% or more of the bond back to the bond contributor.

Private sector bond surety 'products

TQ recommends that bonds remain as a cash costs upfront, paid by contributors, rather than a private sector bond surety products. These products should remain unlawful.

Currently there are an emerging number of private sector bond surety products claiming to be an affordable housing product. These companies pose their products as an alternate to cash bonds paid by tenants. Generally the business proposal is that the company provides a guarantee to the lessor, and claims the amount from the tenants should there be a valid claim.

These companies claim to support tenants by requiring a smaller amount upfront when entering a tenancy. However, the upfront costs are often non-refundable fees and may be annual, and the tenant still pays any claimed bond amount. Typically, over time these products are more costly to tenants.

Both the ACT and NSW have recently rejected the legalization of these products. Tenants Queensland supports the decisions made in southern states.

TQ can provide more background on these products in future if required.

3.3. During a tenancy

3.3.1. Fairer rent and rent increase provisions

TQ recommends that rent increases be limited to once per year

TQ recommends that if a rent increase is greater than 20% above the CPI that the lessor is required to successfully argue why a larger increase is not excessive.

Without greater protection, some renters will continue to face opportunistic rent increases or those which are a de facto method of ending the agreement unreasonably (e.g. retaliatory or discriminatory reasons) and against the tenant's will.

At present, applications to challenge rent increases require the tenant to prove the increase is excessive, primarily relying on a market price test and the tenant's ability to gather market information. Issues around rent increases are a common concern for our clients but few make an application about excessive increases. Most are left weighing up concerns about the cost of moving (should they receive a without ground notice to leave in retaliation) compared to the cost of staying even if they consider the increase unreasonable.

TQ believes safeguards would be improved by introducing a definition of 'excessive rent increase' within the Act, that being, 20% greater than the Consumer Price Index, a definition currently in place in the Australian Capital Territory. If a proposed rent increase is above that amount, if challenged by the tenant the lessors would be required to prove circumstances that make it fair to excessively increase the rent.

The lack of notice of a rent increase when a subsequent lease is being offered on the property presents another difficulty for tenants (notice periods do not apply if you agree to contract to a new fixed term agreement). To mitigate, if an excessive rent increase is upheld under s71 Significant Change, the tenant must then be able to terminate the tenancy with notice but without liability.

3.3.2. Entry

TQ recommends that the minimum entry notice period is 48 hours.

TQ recommends that the four hour window for entry be removed or reduced to half an hour.

TQ recommends strengthening the intent of protections for open houses and auctions to be held onsite without the tenants' written consent.

Entry notice period

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

'Windows' for entry 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.

Open house entries

Problems with open house inspections continue despite the current provisions, and affect both 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 or auction on site, seem to be circumvented by agents who advertise a specified time and take a list of names over the phone.

It was recently reported that one open house had 14 groups of prospective tenants present. This practice is very intrusive on tenants when they are attempting to move out of the property. It also impedes the ability of prospective tenants to inspect the property in detail.

TQ supports additional restrictions to strengthen the intent of requiring the tenants' written consent to conduct an open house. 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 tenancy agreement if they only saw the premises with multiple groups of prospective tenants.

3.3.3. Definition of 'Reasonably Clean'

TQ recommends the removal and replacement of the tenant's responsibility to keep the premises reasonably clean (s188[2]). This should be replaced with a responsibility that the tenant keep the premises in a manner having regard to issues of health and safety and the condition of the premises at the start of the tenancy.

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 from harm.

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'.

3.3.4. Water Charging

TQ recommends that the status quo remain regarding the ability to charge tenants the consumptions costs for water. That is, a premises must be water efficient (as currently stated in the Act) for the period of the bill, separately metered and the agreement must state that tenant must pay for water before they can be charged the consumption costs. Where premises are not 'water efficient', a tenant must be supplied with a reasonable quantity of water. Reasonable should be determined by the responsibilities which the tenant has in the premises and size of the property. It is not related to how the water service provider charges for 'excess water'.

TQ recommends that when premises are 'water efficient' and there is an intent to charge a prospective tenant with the full consumption costs of water, the lessor be required to disclose to the tenant the last water bill (unless the lessor did not own the property at the time).

TQ recommends that water charges must be presented to the tenant for payment within one month of being given to the lessor by the water service provider.

Currently a tenant cannot be charged the full consumption costs of water unless the premises are water efficient and compliant with regulations to the Act. Under a previous tenancy reform 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. As the tenant has no control over the fixtures in the property, TQ does not support this change.

Where a tenancy is water efficient and the lessor has owned the premises for the previous water billing period, the lessor should be required to disclose the amount of the previous bill to a prospective tenant at the same time as providing a copy of the tenancy agreement.

Currently tenants are required to pay water bills within one month of receiving the bill however there is no time limit for bills to be presented to tenants. Some tenants report only receiving a water bill once they move out, which could be months or even years after moving in.

It is unfair to the end consumer if they do not receive price information in a timely manner so they can make choices (within the limit of their ability to do so). It is also more difficult for a tenant to be able to pay the bills if they have accrued over some time without their knowledge.

If a tenant is required to pay a water bill within one month, it is reasonable that the tenant is invoiced for the bill within one month from the water service provider giving the bill to the lessor. TQ therefore recommends that water bills be required to be presented for payment within one month of being given to the lessor by the water service provider.

3.3.5. Rent payment records

TQ recommends that rent payment records be issued to tenants every three months.

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 are not always immediately apparent because a disputed amount or payment date may not emerge as 'rent arrears' as defined under the Act.

Rent arrears issues may also arise due to the unlawful allocation of some or part of a rent payment to other bills such as water or electricity. A tenant may be unaware of discrepancies with their own records and over time, a dispute arises. When the issues giving rise to the agent identifying arrears goes back over a long period of time, complex rent payment records extending back may be required.

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 their accuracy. This issue was raised by a number of tenants in the then *Tenants Union of Queensland's Residential Tenancies Evictions Research Project in 2012*.

To mitigate these issues and ensure discrepancies are raised quickly before they become complex, TQ proposes that rent payment records should be issued to tenants every three months regardless of the rent payment method.

3.3.6. Conduct of Agents

TQ recommends that a code of conduct and pathways for dispute resolution for issues between tenants and property managers be re-instituted.

TQ recommends that failing to name the lessor on the tenancy agreement become an offence in the Act.

TQ recommends the RTA develop a standard application form which meets the needs of lessors but respect the privacy of tenants.

The repeal of the Property and Motor Dealers Act (PAMDA) as part of the previous Government's red tape reduction program in 2014 left significant gaps in tenancy protections in relation to the conduct of agents.[2]

TQ held tenants forums in 2016 for the development of our Housing Strategy consultation response. A number of participants thought agents often act in their own self-interest and contrary to the interests of both the owner and tenant. An example of this is when agents attempt to force tenants onto a third party rent payment platform. If the tenants is already struggling to pay the rent and are subject to additional fees for paying their rent and/or for the money not being available to the third party on time, that does not seem to be in the interests of the lessor.

Nearly all the participants were concerned that the agent was not passing on their requests or issues with the premises 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.

Further, significant numbers of tenants feel they are bullied by property managers. There are limited available responses for renters to these issues. 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 has the potential to improve standards of behaviour and create greater balance between the interests of tenants and agents.

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 may have a good rent payment record and have been compliant with the law but there was a falling out with the agency (e.g. the tenant may have refused to use a third party rent payment card or asserted their rights in some way). The PAMDA Code of Conduct required each agency to have an internal dispute resolution process and tenant advocates utilised these in regard to such 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 should 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

[2] This Act was replaced by the Property Occupations Act 2014

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. 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 complaints under the Federal Privacy Act are too slow for resolution during the application timeframe and not all agencies will be captured.

Occasionally, tenancy agreements do not, as required, contain the name of the lessor. If the managing agent ends their involvement with the property, tenants can be left with difficulties resolving outstanding disputes. Privacy laws are often cited as reasons why the agent can't give the name of the lessor to the tenant. TQ asserts that it should be an offence for the full name of the lessor not to be included in the tenancy agreement.

3.3.7. Tribunal Processes

TQ recommends that applications made under section 239 become urgent applications.

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 section240) under an application under this section.

With rental affordability low in significant areas of the market, many people sharehouse 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. Additionally, the law allows for all the tenants on an agreement to transfer, subject to the lessor's agreement, the interests to new tenants. That means the existing tenancy agreement remains whilst the parties change.

To transfer an agreement, all parties to the agreement – incoming and out-going co/tenants and the lessor/agent must agree to the transfer of interests before it can be effected. The *law requires that agents and lessors act reasonably in making their decisions.*

However tenants are often told that transfers are not allowable, only new agreements, or money (sometimes large amounts) is sought from them before any action will be taken. When tenants fail to gain agreement from the agent or lessor to the transfer, an application can be made to the QCAT to request an order to transfer of interests.

This is a non-urgent QCAT application, which requires a prior and ultimately unsuccessful application to the RTA's Dispute Resolution service. The timeline for setting down a hearing is slower for non-urgent matters as opposed to urgent ones.

The longer these issue take to resolve, the more likely it is that some or all of the tenants will suffer financially as a result. The prospective new tenant/s might find a new place to live over the course of the time taken to resolve the disputes, or a remaining tenant might find themselves struggling to pay the rent if their co-tenant has already exited. The slow turnaround of remedies to unreasonable responses by lessors and agents often renders the process ineffective. TQ asserts that applications under the current section 239 - Order of tribunal about transfer or subletting - should be deemed urgent applications.

3.3.8. RTA Compliance and Complaints

TQ recommends the RTA's compliance powers include the ability to investigate representative complaints.

TQ recommends consideration that dispute resolution by the RTA be transferred to QCAT to speed up the resolution of disputes.

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 be empowered to receive representative complaints whereby the individual parties do not have to be made known, but are named as a class of complainants.

The Commonwealth Privacy Act 1988 allows for these types of complaints. TQ made four representative complaints about a tenancy database company prior to protection being introduced in Queensland tenancy law, a process which was shown to be effective.

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

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.

3.4. Coverage

TQ recommends that legislative protections for rooming accommodation residents is provided when there are two or more rooms available for rent and the housing provider lives on the premises.

A particular focus of the upcoming reviews of tenancy law should be on providing appropriate coverage for boarders and lodgers who are at present without any accessible rights (other than coverage of their bonds).

The threshold of four rooms available for rent (when the provider lives on site) for coverage under the rooming accommodation provisions should be reduced to two. Alternatively, the ACT application of 'occupancy agreements' which apply to those otherwise not covered should be considered.

Part 2

Minimum Standards in Rental Properties

Part 2
Minimum Housing Standards in Rental Properties

1. Recommendations – for the proposed enforcement and content of Minimum Housing Standards in Queensland

TQ recommends that the minimum standards in rental properties regime encompass the following principles:

1. *Clear - standards that are clearly articulated;*
2. *Enforceable – the establishment/appointment of a body which is empowered to inspect and investigate as well as receive complaints; includes powers to deal with non-compliance, issue penalties and protect the interest of sitting tenants;*
3. *Accessible – complaints may be made by third parties, not just current tenants. A biennial or triennial letter to inform residents of minimum standards requirements (modeled on the Gold Coast City Council process);*
4. *Transparent –a public register of notifiable issues / registrable complaints held by the regulator, as well as periodic building inspection and repairs log kept by the lessor/agent and made available to tenants and prospective tenants.*

TQ recommends that the South Australian housing standards (Part 3 of the Housing Improvement Regulations 2013) be considered as the minimum standards for Queensland rental housing. Additionally the Queensland standards should include:

- *basic privacy (that is, coverings for windows which face interface to the outside,*
- *Clear standards for ventilation*
- *Requirement for deadlocks on egress doors and windows, safety restrictors on windows over prescribed heights;*
- *cooling for temperature to maintained below prescribed levels*

TQ endorsed the QCOSS submission on energy efficiency requirements.

Enforcement and Compliance

Regulator enforcement is vital to protect the interests of vulnerable and disadvantaged tenants. The regulating body should be empowered to inspect properties and to undertake own motion investigations. Periodic mailouts from the regulator to residents or from the RTA should keep people informed of the requirements and complaints processes. A current, previous or prospective renter of the property, should be able to apply to the regulating body for an investigation regarding whether the dwelling meets the standards.

Lessors with properties under a regulated order should be required to disclose the orders to tenants and prospective tenants. An appeal process would provide options for lessors who disagree with regulator orders.

The regulator should have powers to provide a binding report with directions that specified action be taken within prescribed timeframes. A rent capping regime, like that of South Australian, and a public register of substandard properties, should be established.

A tenant should have both the option to end an agreement early if there is an order put in place or be protected against a retaliatory eviction if they wish to stay. The lessor should be prevented from ending a lease within six months of the property being inspected unless they make a successful application with substantiated grounds to the Tribunal.

Offences should be created if a lessor fails to comply with a notice or order from the regulator or if they offer a substandard property for rent.

Transparency and empowering housing consumers

After investigating the death of baby Diefenbach in a rental property in Yeppoon, the Queensland Coroner made a number of recommendations in an attempt to introduce greater transparency and accountability about repairs and maintenance, and link those issues between separate tenancies. TQ supports this idea as an opportunity to raise the awareness and ability to take action of rental housing consumers.

Inspections and lessor repair logs

The Queensland coroner made a range of recommendations. Key recommendations, summarized here by TQ, are supported by us:

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 (and other inspections done) for tenants and prospective tenants on request.

The introduction of periodic independent inspections will gain support in parts of the industry, where concerns have previously been raised about the lack of specialist building knowledge when conducting routine inspections.

A log or register of repairs and maintenance requests would provide information to assist tenants them make better choices and strengthen their negotiating position.

The standards

TQ requires an additional opportunity and time to develop a final position on the standards themselves. If requested to do so, TQ would be happy to apply further resources to this work. However, we are generally supportive of the South Australian Prescribed Minimum Housing Standards (Part 3 Housing Improvement Regulations 2017) and believe these should be considered for introduction in Queensland tenancy law regulations. They can be found at:

https://www.legislation.sa.gov.au/LZ/C/R/HOUSING%20IMPROVEMENT%20REGULATIONS%202017/CURRENT/2017.17.AUTH.PDF

2. Introduction

The standard of premises, repairs and maintenance is the second most common issue raised with Tenants Queensland (TQ) through our tenant advisory services. Mandatory minimum standards for rented properties are vital for ensuring that renters have access to a level of housing quality that is consistent with community expectations.

Renter households are more likely to be living in properties that are of a poorer standard than owner-occupier households.[3] The ability to evict without grounds means most tenants are

[3] Emma Baker, Laurence H. Lester, Rebecca Bentley & Andrew Beer (2016) Poor housing quality: Prevalence and health effects, Journal of Prevention & Intervention in the Community, p229.p224.

conscious, if not fearful, of the possibility of a retaliatory eviction if they push too hard in seeking repairs. This leads many tenants, particularly marginal renters and those in lower cost properties to live in premises that are in a substandard condition. Additionally, often tenants inherit repair issues which were known of but not remedied during previous tenancies, a situation which is preventable.

Poor housing conditions have a measurable and significant impact on mental, physical and general health.[4] Those living in substandard housing are most likely to be socioeconomically disadvantaged and have long-standing illness. In addition, vulnerable groups who are among those most likely to live in poor housing also tend to spend large amounts of time in their homes exposed to potentially hazardous environments.[5]

The lack of minimum health, safety and energy efficiency standards for rented housing has the unfortunate consequence of creating additional burden for disadvantaged households who are already struggling financially.

The Queensland government's initiative to implement effective regulation of minimum standards in rental properties will improve living conditions of vulnerable groups and will work to reduce the cycle of social and health inequalities.

3. Current status

Presently, minimum housing standards are only in force in South Australia and Tasmania. Each jurisdiction in Australia imposes broad obligations upon private lessors with respect to the condition and repair of the rental property. Table 1 at Schedule 1 sets out an overview of the relevant provisions in each State and Territory.

Tenancy laws are presently being reviewed in several jurisdictions in Australia:

(a) Queensland is currently undertaking a general review of the *Residential Tenancies and Rooming Accommodation Act 2008* with laws potentially commencing in the second half of 2019. This Queensland government is committed to developing regulations and (prospectively) enforcement procedures outlining the minimum standards required in rental properties.

(b) South Australia is currently reviewing its minimum housing standards. The Housing Safety Authority published an Issues Paper in October 2017;

(c) The Victorian Government announced in June 2015 that it would be undertaking a review of the *Residential Tenancies Act* 2007. The Fairer, Safer Housing Options Paper outlining possible reforms to the Act were released in early 2017. Late in 2018, the Victorian government legislated to prescribe minimum standards in subordinate legislation, which is yet to be developed; and,

(d) In October 2015, the New South Wales government released a discussion paper reviewing the *Residential Tenancies Act 2010*. The consultation period closed in early 2016 and amended legislation was to be prepared in 2017 based on the recommendations of the review.

(e) A review of ACT RTA commenced in 2014 with public consultation and two discussion papers.

[4] Emma Baker, Laurence H. Lester, Rebecca Bentley & Andrew Beer (2016) Poor housing quality: Prevalence and health effects, Journal of Prevention & Intervention in the Community, p229.
[5] World Health Organisation, *Environmental burden of disease associated with inadequate housing*, 2011

(f) NSW recently legislated changes to their tenancy laws that are yet to commence. They extend and more clearly define what is required to make a property fit for habitation, articulating a number of minimum standards.

3.1. The introduction of minimum housing standards in Queensland

The *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (***RTRAA***) was amended in late 2017 to allow for the publication of regulations prescribing minimum housing standards. These standards are to apply in addition to existing legislative standards, for example the standards imposed under applicable Building Codes. While examples of the types of minimum housing standards that may be prescribed are set out in the RTRAA, the method(s) of enforcing and monitoring compliance with minimum housing standards will be established under the regulations.

Although minimum housing standards are not yet prescribed, some local councils have introduced laws regarding standards in rental accommodation. Pursuant to the Gold Coast City Council *Local Law No. 16 (Licensing) 2008* and *Subordinate Local Law No. 16.1 (Rental Accommodation) 2008*, a license is required for the operation of private rental accommodation (which includes the private rent of a dwelling house). The operation of rental accommodation must comply with the prescribed criteria in section 9 of the subordinate law, including:

(g) The premises must be in good working order, a good state of repair and in a clean and sanitary condition (including being free from pests);

(h) The grounds of the premises must be in a safe and tidy condition;

(i) Any building or structure that forms part of the rental accommodation must comply with relevant building legislation and planning schemes;

(j) Private bedrooms containing no more beds than the maximum number of occupants for that bedroom;

(k) Connection to the local government's water supply system and sewerage system, where possible; and

(l) The provision of shared laundry facilities, or electrical and drainage facilities to accommodate a washing and either a clothes line or clothes dryer.

Additional conditions may be imposed upon a license, such as the requirement to provide adequate potable water, electricity, and bathroom and toilet facilities.

The Council may inspect a premise prior to deciding whether to grant a license. Once a license is granted, the operator of the rental accommodation may be required to maintain specific management programs, for example a ventilation system maintenance program or a cleaning and sanitation management program.

Compliance with the license requirements is monitored by routine inspections performed by the Council's Environment Health Officers on three-year cycle. Complaints about non-compliant premises may also be made to the Council. Failure to comply with the license requirement may result in enforcement action including a work order, fine and suspension or cancellation of an existing approval.

We understand that funding for the enforcement of the licensing program is sourced by the Council through the additional rates that are levied on rental properties within the Gold Coast.[6] At present, more than 20 of the largest local governments in Queensland levy additional rates on owners of

6 See ", p 4.

rental properties without providing any additional service to these properties (such as the inspection program provided by the Gold Coast City Council).

4. Comparison of Australian and International Minimum Housing Standards

Minimum housing standards are in force in many jurisdictions comparable to Australia, including Ireland, United States, Canada and New Zealand.

The jurisdictions considered in Table 2 at Schedule 2 show that there is little variation, at a high level, in the types of minimum housing standards enforced. Standards relating to the supply of utilities (water and electricity or gas), lighting, ventilation, sanitation, the provision of bathroom and kitchen facilities, fire safety (usually imposed by relevant fire and safety codes) and the structural condition of the premises establish the minimum content of the minimum standards across almost all of the jurisdictions considered.

The presence of additional standards, such as the provision of laundry and sleeping facilities, locks and other security measures, heating and privacy mechanisms, vary across the jurisdictions. The right for a tenant to have a measure of privacy (for example, private bathrooms and toilets) and the provision of laundry facilities were the two standards imposed in the least number of jurisdictions considered.

New Zealand, Ireland and Massachusetts represent a high watermark of minimum housing standards in terms of the number and breadth of issues the standards cover. In Canada and the United States of America, statewide minimum housing standards were often supplemented by local standards prescribed by municipal authorities, meaning that some regions offered greater protection to tenants than other regions within the same state or territory.

An explanation of each standard referred to in Table 2 is set out below.

4.1. Types of minimum standards

(m) **Locks and security:** New Zealand requires that the lessor provide and maintain sufficient locks and other devices necessary to ensure that the premises are reasonably secure (Residential Tenancies Act 1986, s 46). Other jurisdictions are more prescriptive. Massachusetts requires that an owner provide, install and maintain locks for the premises, including each door in the premises, and ensure that every openable exterior window is capable of being secured (State Sanitary Code Chapter II, 105 CMR 410.480). Similarly, in the Republic of Ireland, safety restrictors must be installed on windows through which a person may fall above a certain height (Housing (Standards for Rented Houses) Regulations 2017, s 4(3)). The importance of lockable windows has been recognised in the aftermath of numerous instances of children falling from windows which were either inadequately secured or that contained no locking mechanism.[7]

Tasmania, Massachusetts and Oregon permit victims of domestic violence to have the locks to the premises changed and, in the case of Tasmania, without the consent of the owner.8

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[7] See: the Dublin City Coroner's Court inquest into the death of Younas Hassissi in 2007; https://www.independent.ie/incoming/grieving-parents-of-toddler-who-fell-from-window-call-for-childproofing-regulations-29813469.html; the NSW Department's "Kids Don't Fly" campaign in 2012.

[8] *Residential Tenancy Act 1997* (Tas), s 57(2B), Massachusetts General Law, pt. II, ch. 186, s 26, Oregon Revised Statutes, 90.459;

(n) **Privacy**: Few standards were identified that imposed an obligation upon a lessor in respect of a tenant's privacy (outside of a tenant's right to quiet enjoyment or private use of the premises). Several jurisdictions expressly state that bathroom and toilet facilities are to be in a private room (Republic of Ireland, Massachusetts, Tennessee, Vermont). In Tennessee, the walls of a rental premises must be capable of affording visual privacy to the tenants (Rules of Tennessee Department Of Health, Bureau Of Health Services Administration, Division Of General Environmental Health, ch. 1200-1-2-.05(1)).

(o) **Heating**: A requirement to provide heating facilities is imposed in most jurisdictions. In cold jurisdictions where heating (or the lack of it) can seriously affect a tenant's health, such as Massachusetts, Alberta, Vermont and Ontario, there are standards prescribing minimum temperatures that must be maintained in the premises or part of them.9

(p) **Supply of water**: Each jurisdiction reviewed requires that there be a supply of potable water to the premises. Most standards also specify that kitchen and bathroom sinks and showers be capable of providing hot and cold water. Massachusetts goes further by prescribing that the water must be supplied with sufficient pressure to meet the ordinary needs of the occupant and that hot water must be heated to specified temperature range.10

(q) **Sanitation**: as the term is used in this paper, captures standards about pests, refuse facilities, sewerage and general cleanliness. The content of minimum standards addressing these issues understandably varies considerably across jurisdictions.

In respect to the management of pests, some jurisdictions impose pest-specific requirements. For example, rules promulgated by the Tennessee Department of Health specific measures to be taken to provide protection from mosquitos and rodents (ch. 1200-1-2-.05(2)-(3)). In Alberta, an owner must notify a tenant prior to a pesticide being applied in the rental premises (Minimum Housing and Health Standards, s 16).

(r) Several jurisdictions also impose an obligation upon an owner to provide suitable refuse facilities.11

(s) Bathroom**, toilet and kitchen facilities:** With the exception of Oregon, each jurisdiction reviewed requires that a lessor provide bathroom, toilet and kitchen facilities. In Massachusetts and Vermont, floor surfaces in bathrooms and kitchens must have non-absorbent and waterproof covering.12 South Australia and Vermont also prescribe that rental premises have space to store and prepare foods.13

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9 State Sanitary Code, ch. II, 410.200-201; Minimum Housing and Health Standards (Alberta), s 8.

10 See *State Sanitary Code*, ch. II, 410.180-190.

11 See Alberta, Minimum Housing and Health Standards, s 15; Republic of Ireland, *Housing (Standards for Rented Houses) Regulations 2017*, s 11; Ontario, *Maintenance Standards - Ontario Regulation 17/06*, s 45; Vermont Rental Housing Health Code, s 5.5.

12 State Sanitary Code, ch. II, 410.504; Vermont Rental Housing Health Code, s 5.3

13 *Housing Improvement Regulations 2017*, s 10(a)(v)-(vi); Vermont Rental Housing Health Code, 5.1.

(t) In Oregon, the lessor is responsible for maintaining any appliances provided, including stoves.

(u) Weatherproof: Ireland is the only jurisdiction considered that does not have an express requirement that rental premises be maintained in a weatherproof condition. However, it is likely that if rental premises were not weatherproof, the defect would put the lessor in breach of another standard (for example, the need for premises to be in a proper state of structural repair, which includes gutters, down pipes and fittings).

(v) Laundry: Few jurisdictions require that laundry facilities be provided in rental premises. South Australia's Housing Improvement Regulations 2017 prescribe that residential premises must be provided with a laundry wash trough or basin, space and designated water supply outlets within immediate proximity of that space for a washing machine, and a wastewater discharge pipe for a washing machine (s 10(a)(i)-(ii)).

(w) Laundry facilities are specifically mentioned in the Residential Tenancies and Rooming Accommodation Act 2008 (Qld) as one of the matters for which minimum standards may be prescribed.

(x) Lighting, gas and electricity: Minimum standards regarding gas and / or electricity usually require that rental premises are supplied with gas and / or electricity and that any related installations be maintained in good repair and safe working order. The precise content of the standard is generally supplemented by applicable safety codes or Acts. For example, in South Australia, section 12 of the Housing Improvement Regulations 2017 sets out the number of electrical power points a particular room must have and specifies that the installation, alteration, repair or maintenance of any such electrical installation is governed by the Electricity Act 1996.

(y) Standards regarding the provision of lighting vary. A requirement that each habitable room (bedrooms, living rooms etc.), kitchen, bathroom, hallway and stairway have artificial lighting or the capacity to be "adequately lit" is common.[14] Massachusetts' lighting standards are very prescriptive and specify the minimum amount of natural light that must be available to each room by reference to the ratio between the floor area of the room and the size of the window (State Sanitary Code, ch. II, 410.250).

(z) Ventilation: Each jurisdiction reviewed contained standards requiring the adequate ventilation of habitable and non-habitable rooms (at the least, bathrooms, toilets and kitchens). Some jurisdictions go further by specifying the size of the natural ventilation opening[15] or the minimum number of air changes per house for mechanical ventilation.[16]

(aa) Overcrowding: With the exception of South Australia and Tasmania, all the jurisdictions considered have standards aimed at preventing overcrowding in rental premises. These standards attempt to prevent overcrowding in a number of ways, including by imposing

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14 See *Housing Improvement Regulations 1947* (NZ), s 13; *Housing (Standards for Rented Houses) Regulations 2017* (Ireland), s 9; *Housing Improvement Regulations 2017* (SA), s 13(d).

15 Alberta, Minimum Housing and Health Standards, s 4.

16 Massachusetts, State Sanitary Code, ch. II, 410.280.

occupancy limits for particular rooms or the premises as a whole, minimum room dimensions by reference to the number of occupants and minimum facility requirements with respect to bathrooms and toilets.

(bb) South Australia is presently reviewing the content of its minimum housing standards. As part of the review process, the Housing Safety Authority published an Issues Paper in October 2017 that acknowledged that while there are presently minimum amenity requirements in relation to toilet, bathroom, kitchen and laundry facilities, these requirements do not prevent overcrowding.

(cc) Fire safety: The provision of smoke alarms by the lessor is common to all jurisdictions considered.17 Additional requirements relating to the provision of emergency exits and fire safety equipment are often imposed under other Acts or codes. The content of these additional requirements has not been considered in any detail.

(dd) Structural condition: All jurisdictions impose a broad obligation upon the lessor to the effect that the lessor must ensure that the premises is maintained in a "proper state of structural repair"18 or in a "sound condition so as to be capable of safely sustaining their own weight and any load or force that may normally be imposed".19

4.2. Administering authority

Most minimum housing standards schemes reviewed rely upon a complaints-based system that requires tenants to know their rights and be capable of advocating for the enforcement of them, usually at first instance to the lessor and then, if necessary, to an external body.

In South Australia, the Housing Safety Authority (which sits within the Department of Human Services) is the primary body responsible for enforcing minimum housing standards. Complaints may also be made to the Tenancies Branch of the Consumer and Business Services in the Attorney-General's Department.

Similarly, in Tasmania, complaints may be made to the Consumer, Building and Occupational Services team within the Department of Justice and Attorney-General. The *Residential Tenancies Act 1997* also allows for the appointment of a person to act as the Residential Tenancy Commissioner. Under the Act, the Commissioner has the power to grant exemptions to the minimum standards in respect to a particular premise or class of premises where the tenant would not be unduly disadvantaged by the exemption (*Residential Tenancies Act 1997* (Tas), s 36P).

There are obvious limitations upon a complaints-based system that does not impose any positive duty upon the administering authority to monitor compliance with minimum housing standards. Vulnerable and disadvantaged tenants are likely to be disproportionately affected by a system that relies upon a tenant's capacity to know and advocate for their rights. Further, tenants may fear retaliatory action from their lessors in the event a complaint is made to the administering authority.

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17 South Australia: *Housing Improvement Regulations 2017* (SA), s 13(k) and *Development Regulations 2008*, s 76B; Tasmania, *Residential Tenancy Act 2007*, pt. 3A; New Zealand, *Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016*; Ireland, *Housing (Standards for Rented Houses) Regulations 2017*, s 10; Alberta, Minimum Housing and Health Standards, s 12; Ontario, Fire Code Regulation 213/07; Massachusetts, State Sanitary Code, ch. II, 410.482; Oregon, O.S.R. ch. 90 Residential Lessor and Tenant Act, 90.316-90.317; Vermont Fire and Building Safety Code; Tennessee Code Annotated 68-102-151.

18 Ireland, *Housing (Standards for Rented Houses) Regulations 2017*, s 4; Tasmania, *Residential Tenancy Act 2007*, s 36I(b).

19 Ontario, *Maintenance Standards O. Reg. 517/06*, s 5.

Internationally, local authorities appear to be the bodies most commonly responsible for enforcing minimum housing standards. In some jurisdictions, the administering authority is also responsible for monitoring compliance with minimum standards and may inspect properties suspected of being non-compliant on its own initiative. Depending upon whether the jurisdiction frames minimum housing standards as being primarily a health issue (cf. Alberta) or a tenancy law issue (cf. Republic of Ireland), the local authority may be a local council or a local health authority. As discussed at section [3.1] above, a local council scheme relating to rental housing standards is already in force in Queensland.

4.3. Enforcement mechanisms

In most jurisdictions considered, tenants are encouraged at first instance to resolve alleged breaches of the minimum standards directly with lessors. Where a complaint about a property is made to the administering authority, or if the administering authority is empowered to investigate a property of its own initiative, the first step is usually an inspection of the property by an authorised officer of the administering authority (for example, a health and safety officer). Upon inspecting the property, the administering authority may issue certain notices or make orders. Common enforcement mechanisms and penalties include:

(ee) improvement or repair notices;[20]

(ff) demolition orders;

(gg) fines;

(hh) the imposition of rent control;[21]

(ii) permitting the tenant to remedy certain breach and to be reimbursed for the costs of doing so;

(jj) permitting the tenant to terminate the rental agreement if the breach is not remedied within a specified period;

(kk) protecting the tenant from eviction by the lessor;

(ll) a prohibition on letting or re-letting a property that does not meet the applicable standards.

Details of notices or orders issued to owners of non-compliant properties may also be made available on a public register (for example, the Substandard Property Register in South Australia).

Less common mechanisms include:

(a) obtaining an injunction against the lessor (Oregon and Vermont);

(b) the temporary redirection of rent payments to a third party and the potential forfeiture of that rent if the noncompliance is ongoing (Tennessee); and

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20 Dublin City Council inspected 880 private rental premises during January 2017 to September 2017 and identified 761 (86%) that failed to meet the minimum standards. However, compliance was ultimately achieved for 750 premises (with improvement notices being issued to 709 premises): http://www.dublincity.ie/dublin-city-councils-response-primetime-investigates-programme

21 The efficacy of rent control in forcing compliance with minimum standards was questioned by Housing SA in its regulatory impact statement for the Housing Improvement Bill 2014. Housing SA observed that the imposition of rent control, while providing financial relief to tenants, is only a "soft lever" to encourage improvement of property conditions, with some owners preferring to accept a lower level of rent rather than incur the expense of upgrading the property.

(c) the ability for a former tenant to apply to the Lessor and Tenants Board for certain orders within one year of the breach of the minimum standards (Ontario).

4.3.1. Appeal rights

Lessors usually have a right to seek that a notice or order issued by the administering authority be reviewed. The review may be an internal review by the administering authority or an external review by a low-level court or Tribunal.

5. United Kingdom – An Alternative Model

5.1. Housing Health and Safety Rating System

In the United Kingdom, there is no longer any obligation upon private lessors to ensure that rental premises are fit for human habitation. Previously, the *Housing Act 1985* (UK) prescribed that in determining whether premises are unfit for human habitation, regard was to be had to their condition in respect to repair, stability, freedom from damp, internal arrangement, natural lighting, ventilation, water supply, drainage and sanitary conveniences, facilities for preparation and cooking of food and for the disposal of waste water. A premise would be deemed to be unfit if one of the above matters was so far defective that the premises are not reasonably suitable for occupation in that condition. This was known as the "Housing Fitness Standard".[22]

The "Housing Fitness Standard" was replaced by the Housing Health and Safety Rating System (***HHSRS***), which was introduced pursuant to the *Housing Act 2004* and came into effect on 6 April 2006. The HHSRS is a complex risk assessment system that identifies and attributes a rating to property hazards in order to determine the required remedial action.

A “hazard” means any risk of harm to the health or safety of an actual or potential occupier of the premises which arises from a deficiency in the premises (*Housing Act 2004* (UK), s 2(1)). For the purposes of the HHSRS, "health" includes mental health (*Housing Act 2004* (UK), s 2(5)).

The HHSRS operates by reference to the existence of Category 1 (serious) or Category 2 (other) hazards on residential premises. There are 29 categories of housing hazards, each of which is given a weighting or "hazard score" to determine whether it should be classed as a Category 1 or Category 2 hazard. The hazard score is arrived at by evaluating:

(d) the likelihood, over the next twelve months, of an occurrence that could result in harm to a member of the vulnerable group (vulnerability is assessed by reference to age groups for whom the risk arising from the hazard is greater than for any other age group in the population); and

(e) the range of potential outcomes from such an occurrence.

Social housing is subject to the non-statutory Decent Home Standard, which requires that a "decent home":

(a) be free from Category 1 hazards;

(b) be in a reasonable state of repair;

(c) have reasonably modern facilities and services; and

(d) provide a reasonable degree of thermal comfort.[23]

5.2. Enforcement of the HHSRS

Local housing authorities are responsible for keeping the housing conditions in their area under review (*Housing Act 2004* (UK), s 3(1)). To that end, a local housing authority can inspect a residential premises in their area (either upon their own initiative or upon receipt of a complaint from a tenant, a justice of the peace or parish council within the district) to determine whether a Category 1 or

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22 These standards are replicated in section 10 of the *Lessor and Tenant Act 1985* (UK) which implies terms as to fitness for human habitation into certain rental contracts. In practice, these standards are otiose as they only apply to rental contracts where the rent payable does not exceed the annual limits specified in the Act. For example, the standards would be implied into a rental contract entered into before 31 July 1923 for a property in London provided the maximum rent payable does not exceed £40 per annum.

23 Department for Community and Local Government, "A Decent Home: Definition and guidance for implementation: June 2006 – Update" (June 2006, London), p 11.

Category 2 hazard exists. If they consider that a Category 1 hazard exists, appropriate enforcement action must be taken. Specific types of enforcement action are only available in respect of a particular category of hazard.

Types of enforcement action include improvement notices, prohibition orders, hazard awareness notices, emergency remedial action, emergency prohibition orders, demolition orders and slum clearance declarations.

5.3. Criticisms of the HHSRS

The HHSRS has been criticised for being unduly complex and subject to varying interpretations by local authorities, resulting in inconsistent application and enforcement.[24] A lack of resourcing for local authorities has also been cited as an explanation for the disparity between the number of complaints received by councils and the number of prosecutions of lessors.[25]

In July 2017, the Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill 2017-19 was introduced into Parliament. The Bill is, in effect, an attempt to reintroduce minimum housing standards by extending the fitness for habitation standard in the *Lessor and Tenant Act 1985* (UK) (see footnote [17] above) to almost all lessors. While attempts in 2015 and 2016 to introduce similar legislation were unsuccessful, the British Government has confirmed its support for the Bill.[26]

5.4. Energy efficiency standard

The *Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015* (UK) were approved by Parliament in March 2015 and apply to all privately rented domestic and non-domestic properties let or re-let after 1 April 2018.[27] The Regulations prohibit lessors in England and Wales from letting or re-letting substandard properties that do not achieve the minimum energy efficiency standard (s 23). The benefits of the Regulations are said to include lower energy bills, improved health outcomes, a reduction in property maintenance costs and lower overall energy demand.

The applicable minimum energy efficiency standard is Band E on the Energy Performance Certificate (***EPC***) rating system, which ranges from Band A (being the most energy efficient rating) to Band G (being the least energy efficient). Using data drawn from the 2014 English Housing Survey, the British Government estimates that less than 6% of properties in the private rental sector have an EPC rating lower than EPC Band E.[28] Lessors of these properties are responsible for ensuring that their properties achieve a minimum energy efficiency standard of EPC Band E, or as close to it as possible.

Compliance with the standard is enforced by local authorities. Local authorities may issue a compliance notice seeking information on a lessor where they believe the lessor is in breach of Part 3 of the Regulations (s 37). A lessor in breach of the minimum standard may be issued with a penalty notice and be liable to pay a maximum fine of £5,000 and / or be subject to a publication penalty (where the penalty imposed upon a lessor is published on public register) (s 38). The issuance of a

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24 Wendy Wilson, House of Commons Library, Briefing Paper Number CBP08185, Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill 2017-19, 14 January 2018, pp 3, 16 and the sources referred to therein.

25 Wendy Wilson, House of Commons Library, Briefing Paper Number CBP08185, Homes (Fitness for Human Habitation and Liability for Housing Standards) Bill 2017-19, 14 January 2018, p 28 and the sources referred to therein.

26 Ministry of Housing, Communities & Local Government, "Government supports new measures to improve the safety of tenants" (Press Release, 14 January 2018).

27 Where there has been no change in tenancy, the Regulations will apply to all domestic rented properties after 1 April 2020 and all non-domestic properties after 1 April 2023.

28 Department for Business, Energy and Industrial Strategy, "Domestic Private Rented Sector Minimum Level of Energy Efficiency: Consultation to amend *The Energy Efficient (Private Rented Property) (England and Wales) Regulations 2015* in relation to domestic properties to remove the "no cost to the lessor" principle" (December 2017), p 8.

penalty notice may be reviewed by the local authority (s 42) and, if the local authority confirms the penalty notice, appealed to the First-tier Tribunal (s 43).

In December 2017, the British Government published a consultation paper that, amongst other issues, proposed removing the existing "no cost to the lessor" principle and introducing a "lessor funding contribution" component, while also introducing a cap of £2,500 per property on the amount a lessor would need to invest in an individual property.[29] Under the "no cost to the lessor" principle, lessors are required to take steps to improve the energy efficiency of their properties provided that those improvements could be made at no cost to the lessor by drawing upon available third party funding (such as the Green Deal "Pay As You Save" mechanism). The consultation period has now closed and a consultation response from the Government is forthcoming.

[29] Department for Business, Energy and Industrial Strategy, "Domestic Private Rented Sector Minimum Level of Energy Efficiency: Consultation to amend *The Energy Efficient (Private Rented Property) (England and Wales) Regulations 2015* in relation to domestic properties to remove the "no cost to the lessor" principle" (December 2017).

6. Policy Considerations

6.1. "Consumer choice" as a means of regulating property standards

Existing provisions relating to property conditions are considered by some to provide sufficient protection to tenants, who may exercise their discretion as consumers not to rent substandard properties (indirectly forcing lessors to lower the rent or improve the condition of the property). TQ is not of this view.

A lack of affordable housing in Queensland and increased numbers of renters means that, in practice, renters are often constrained by financial considerations and may not have the luxury of "shopping around" for rental properties that are in a suitable condition. Research by the Property Council of Australia and QCOSS shows that Queensland has the highest levels of housing stress in Australia with 47.6% of low income households spending more than 30% of their weekly household income on housing.[30]

As low-income households are disproportionately represented in the Queensland rental market, vulnerable and disadvantaged persons are more likely to be forced to rent poor quality properties. A lack of clear standards and accessible means by which those standards may be enforced disadvantages tenants who are often incapable of advocating for their rights (whether due to a lack of capacity or for fear of retaliatory action from the lessor).

TQ considers that regulator enforcement is vital to protect the interests of all renters but especially those who are the most vulnerable and disadvantaged.

6.2. The impact of minimum standards upon housing affordability and availability

One of the most frequent objections to the introduction of minimum housing standards is that the implementation of those standards will have a negative impact upon housing affordability and availability, particularly at the lower end of the housing market.

VCOSS suggests that fears that lessors will pass on the cost of improving their properties to tenants, resulting in inflated rental prices, have not been realized in overseas jurisdictions.[31] Further, a survey by the Property Council of Australia about the introduction of design standards for apartments in New South Wales (e.g. standards relating to light and ventilation) showed that 82% of respondents agreed that the standards had led to improved design with a relatively minor impact upon affordability.[32]

The Regulatory Impact Statement for the Housing Improvement Bill 2014 (SA) (which resulted in the passing of the *Housing Improvement Act 2016*) notes that while minimum standards result in a cost to property owners and potentially to government (depending upon how minimum standards are enforced), the building industry business realizes a corresponding benefit due to increased spending on repairs.[33]

To the extent that costs associated with achieving the minimum standards (particular the retrofit of energy saving fittings and fixtures) may disincentivise lessors from investing or continuing to invest in the property market, those costs may mitigated through funding mechanisms including:

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30 QCOSS, "Inquiry into proposed Housing Legislation (Building Better Futures) Amendment Bill 2017" (Submissions No. 080 to the Public Works and Utilities Committee), p 1

31 VCOSS, "A Future Focussed Housing Standard" (2009), p 13 fn. 23.

32 K Clare and L Clare, "Improving the quality of housing", *Architecture Australia* (May 2014, Issue 3), fn 2: https://architectureau.com/articles/improving-the-quality-of-housing/ (Accessed 29 April 2018).

33 Department for Communities and Social Inclusion (SA), Regulatory Impact Statement: Housing Improvement Bill 2014, p 16.

(e) Rebates. For example, Sustainability Victoria previously had a rebate scheme that incentivised lessor to install insulation where tenants were directly responsible for energy bills;[34]

(f) Third party funding. As discussed at section 3.4 above, the UK energy efficiency standard presently only requires a lessor to achieve a EPC Band E rating to the extent the necessary upgrades can be funded through third party funding; and

(g) On-bill financing schemes. These schemes are most common in the energy and utilities sector, where a utilities company provides capital for a specific purpose (such as energy efficiency upgrades) and repayment is made by way of a surcharge added to the person's regular utilities bills. The Darebin City Council has introduced a very successful Solar Saver Program which provides on bill financing to Darebin residents for the upfront costs of a solar system. The loan is repaid over 10 years and is interest free.[35]

However, research suggests that short term or initial outlays are unlikely to affect a lessor's decision to invest in the rental market. According to research by the Australian Bureau of Statistics in 1997, the most common motive for investing in residential rental properties was the desire for a secure, long-term investment. Other significant motives included negative gearing, rental income and the potential future use of the property as a home.[36] These and a number of other pieces of research, conducted over several years, investigating the impact of tenancy law reforms on residential investment were recently reviewed by TQ (see attached). Despite industry arguments to the contrary, our findings support those stated in this paragraph.

Ultimately, costs to the government, industry bodies and / or lessors in implementing minimum standards must be weighed against the risks and health and safety benefits to tenants, increased clarity in tenant and lessor obligations with respect to property conditions, potential increase in the capital value of the property, and environmental benefits (as a result of the introduction of energy efficiency standards).[37]

7. Conclusion

TQ strongly supports the regulation of minimum standards in Queensland rental properties. Part two of our submission provides background and insight into standards in other Australian and International jurisdictions. TQ advocates for an the administering body to have a strong enforcement role.

If requested by the review team, TQ is willing to further develop and finalise recommendations on the standards which should be regulated.

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34 VCOSS, "A Future Focussed Housing Standard" (2009), p 6.

35 See http://www.darebin.vic.gov.au/Darebin-Living/Caring-for-the-environment/EnergyClimate (Accessed 29 April 2018).

36 Australian Bureau of Statistics, "Household investors in residential rental properties" (Media Release, 6 June 1998).

37 See the Report prepared for the Ministry of Business, Innovation and Employment (NZ) by G Blick and Davies titled "Cost benefit analysis for a minimum standard for rental housing" (November 2014) which attempts to calculate the net benefit to society of adopting minimum standards.

Schedule 1 – Table 1: Comparison of housing standards in Australia

	JURISDICTION							
	Queensland	**New South Wales**	**Victoria**	**Tasmania**	**South Australia**	**Western Australia**	**Australian Capital Territory**	**Northern Territory**
PRIMARY TENANCY LEGISLATION	*Residential Tenancies and Rooming Accommodation Act 2008* (***RTRAA***) *Residential Tenancies and Rooming Accommodation Regulation 2009*	*Residential Tenancies Act 2010* (***RTA (NSW)***) *Residential Tenancies Regulation 2010*	*Residential Tenancies Act 1997* (***RTA (Vic)***) *Residential Tenancies Regulations 2008*	*Residential Tenancy Act 1997* (***RTA (Tas)***)	*Residential Tenancies Act 1995* (***RTA (SA)***) *Housing Improvement Act 2016* *Housing Improvement Regulations 2017* (***HIR***)	*Residential Tenancies Act 1987* (***RTA (WA)***) *Residential Tenancies Regulations 1989*	*Residential Tenancies Act 1997* (***RTA (ACT)***) *Residential Tenancies Regulation 1998*	*Residential Tenancies Act 1999* (***RTA (NT)***) *Residential Tenancies Regulations 2009*
ADMINISTERING AUTHORITY	Residential Tenancies Authority	NSW Fair Trading	Consumer Affairs Victoria	Consumer, Building and Occupational Services	Consumer and Business Services Department of Communities and Social Inclusion Housing Safety Authority	Department of Commerce – Consumer Protection Division	Office of Regulatory Services	Consumer Affairs Commissioner of Tenancies
MINIMUMS STANDARDS	Yes – forthcoming	Some forthcoming in yet to be introduced tenancy law changes	A head of power forthcoming, standards to be developed and set out in regulation	Yes – refer to Table 2	Yes – refer to Table 2	No	No[38]	No

JURISDICTION

	Queensland	**New South Wales**	**Victoria**	**Tasmania**	**South Australia**	**Western Australia**	**Australian Capital Territory**	**Northern Territory**
PROPERTY CONDITIONS Lessor obligations	Lessor must ensure that, at the start of the tenancy, the premises are clean, fit for the tenant to live in, in good repair, and that the lessor is not in breach of applicable health and safety laws, including prescribed minimum housing standards (s 185(2), RTRAA). With the exception of keeping the premises clean, the lessor's obligations continue throughout the course of the tenancy (s 185(3), RTRAA).	A lessor must: • provide the residential premises in a reasonable state of cleanliness and fit for habitation by the tenant; • not interfere with the supply of services to the premises; and • comply with applicable health and safety obligations; and • ensure that all light fittings on the premises have working light globes when the tenancy commences (s 52, Sch. 1 cl. 18.2, RTA (NSW)). Lessor must provide and maintain premises in a reasonable state of repair having regard to age of, rent of and prospective life of the property. This obligation applies even	A lessor must ensure that a property is in a reasonably clean condition on day of occupation (s 65, RTA (Vic)). A lessor must ensure that the rented premises are maintained in good repair (s 68(1), RTA (Vic)).	An owner of residential premises is to maintain the premises as nearly as possible in the condition, apart from reasonable wear and tear, that existed on the day on which the residential tenancy agreement was entered into (s 32(1), RTA (Tas)). A lessor cannot enter into a lease agreement unless the requirements of Part 3B of the RTA (Tas) (setting out minimum housing standards) are met.	The lessor will ensure that the premises and ancillary property are in a reasonable state of cleanliness when the tenant goes into occupation of the premises (s 67, RTA (RTA (SA)). The lessor will: • ensure that the premises is in a reasonable state of repair at the beginning of the tenancy; • keep the premises in a reasonable state of repair having regard to their age, character and prospective life; • comply with statutory requirements affecting the premises. The obligation to repair applies even though the tenant had notice of the state of disrepair before entering into	The lessor must: • deliver up to the tenant vacant possession of the premises in a reasonable state of cleanliness and a reasonable state of repair having regard to its age and character; • maintain the premises in a reasonable state of repair having regard to its age and character and conduct repairs within a reasonable period after the need for repair arises; • comply with all requirements in respect of buildings, health and safety under any other written law (s 42, RTA (WA)).	A residential tenancy agreement must contain terms to the effect of the standard residential tenancy terms in Schedule of the RTA (ACT). At the start of the tenancy, the lessor must ensure that premises are: • fit for habitation; • reasonably clean; • in a reasonable state of repair; and • reasonably secure (Sch. 1 s 54, RTA (ACT)). The lessor must maintain the premises in a reasonable state of repair having regarding to their condition at the start of the tenancy (Sch. 1 s 55(1), RTA (ACT)).	A lessor must ensure that the premises are: • habitable; • meet all applicable health and safety standards; • reasonably clean and in a reasonable state of repair when the tenant enters into occupation; and (ss 47, 48, 57, RTA (NT)). A lessor must maintain the premises in a reasonable state of repair, having regard to their age, character and prospective life (s 57 (RTA (NT)).

38 Although proposed in *Residential Tenancies (Minimum Housing Standards) Amendment Bill 2011*, they were rejected in 2012.

		where the tenant had notice of the state of disrepair before entering into occupation (s 63, RTA (NSW)).			occupation (s 68, RTA (SA)).			

	JURISDICTION							
	Queensland	**New South Wales**	**Victoria**	**Tasmania**	**South Australia**	**Western Australia**	**Australian Capital Territory**	**Northern Territory**
URGENT / EMERGENCY REPAIRS	The lessor may nominate a person to act for the lessor in respect to emergency repairs (s 216, RTRAA). "Emergency repairs" includes work to repair the following: • a burst water service; • a blocked or broken lavatory; • serious roof leak; • gas leak or dangerous electrical fault; • a failure or breakdown in the supply of utilities to the premises; and • a fault or damage that makes premises unsafe or insecure (s 214, RTRAA). If the tenant is unable notify the nominated repairer or the lessor about the required repairs, or the repairs are not made within a reasonable time, the tenant may arrange for the repairs to be made or apply to the Queensland Civil and Administrative Tribunal (***QCAT***) for an order about the repairs (e.g. an order that the lessor reimburse the tenant) (s 218, RTRAA).	Lessor must reimburse tenant for reasonable costs of urgent repairs within 14 days of being given written notice (s 64, RTA (NSW)). "Urgent repairs" includes work to repair the following: • a burst water service; • a blocked or broken lavatory system, • serious roof leak, • gas leak or dangerous electrical fault; • a failure or breakdown in the supply of utilities to the premises; and • a fault or damage that makes premises unsafe or insecure (s 62, RTA (NSW)). A tenant must give the lessor notice of the state of disrepair and a reasonable opportunity to make the repairs (if notice is given), and make a reasonable attempt to arrange for a nominated repairer to perform the works (s 64, RTA (NSW)).	A tenant may arrange for urgent repairs to be made if the tenant has taken reasonable steps to arrange for the lessor to carry out the repairs immediately, and the tenant is unable to get the lessor to make the repairs (s 72(1), RTA (Vic)). "Urgent repairs" includes work to repair the following: • burst water service; • blocked or broken toilet system; • serious roof leak; • gas leak or dangerous electrical fault; • a failure or breakdown in the supply of utilities to the premises; • any fault or damage that makes the premises unsafe or insecure (s 3, RTA (Vic)). A tenant can apply to the Victorian Civil and Administrative Tribunal (***VCAT***) for a repair order if the tenant cannot afford to carry out the repairs, the repairs cost more than $1,800, or the lessor will not agree to reimburse them (s 73, RTA (Vic))	Where an essential service ceases to function, the tenant is to notify the owner as soon as practicable of the need for urgent repair and the owner is to carry out the urgent repairs to restore essential services as soon as practicable after the tenant gives notice (s 33(1), RTA (Tas)). An "essential service" means the following services: water, sewerage, electricity, heating, cooking stove, hot water service and the removal of grey water (s 3, RTA (Tas)). If damage occurs to a residential premises, the tenant is to notify the owner as soon as practicable and the owner is to repair any damage as soon as practicable after the tenant gives notice (s 34(1), RTA (Tas)).	See below. A lessor may enter the premises in an emergency without notice to the tenant (s 72, RTA (SA)).	The lessor has 24 hours to contact a suitable repairer if the repair needed is an essential service, and 48 hours for any other urgent repair. The lessor must then ensure the repairs are carried out as soon as practicable (s 43(2), RTA (WA)). If the tenant is unable to contact the lessor, or the lessor fails to ensure the repairs are carried out as soon as possible after being notified, the tenant may arrange for the repairs to be carried out by a suitable repairer to the minimum extent necessary to effect those repairs and be reimbursed for those costs from the lessor (s 43(3), RTA (WA)). 'Urgent repairs' means those necessary for supply of an 'essential service' or to avoid: exposing a person to risk of injury; exposing property to damage; or causing the tenant undue hardship or inconvenience (s 43(1), RTA (WA)). An "essential service" is: electricity, gas, a functioning refrigerator where one was provided with the premises, sewerage, and the supply of water (s 12A, Regulations).	The tenant must notify the lessor of urgent repairs needed as soon as practicable and the lessor must carry out those repairs as soon as possible (Sch. 1 s 59, RTA (ACT)). Urgent repairs are: • a burst water service; • a blocked or broken lavatory; • serious roof leak; • any gas leak or dangerous electrical fault; • any fault making the premises unsafe or insecure; • any fault likely to cause injury (Sch. 1 s 60, RTA (ACT)).	A lessor must either make repairs within 5 business days of receiving written notice of the repairs from the tenant, or advise of arrangements for repairs to be done within 14 days of that advice (s 63(1)(d), RTA (NT)). If the lessor fails to make the repairs, the tenant may apply to the Northern Territory Civil and Administrative Tribunal (***NTCAT***) for an order that the lessor make emergency repairs (s 63, RTA (NT)). "Emergency repairs" means work needed to repair damage including: • burst water service; • a blocked or broken lavatory; • serious roof leak; • a gas leak or dangerous electrical fault; • a failure or breakdown in the supply of utilities to the premises; and • a fault or damage that makes premises unsafe or insecure (s 63(2), RTA (NT)).
NON-URGENT / ROUTINE REPAIRS	A tenant must give notice to the lessor of routine repairs (s 217(2), RTRAA).	A lessor is not in breach of the obligation to repair unless the lessor has notice of the repairs required and	A lessor is not in breach of the obligation to repair unless the lessor has notice of the repairs required and	The tenant is to notify the owner of any repairs needed in respect of the premises within 7 days of the	A lessor is not in breach of the obligation to repair unless the lessor has notice of the repairs required and	The lessor must maintain the premises in a reasonable state of repair having regard to its age and character	The tenant must notify the lessor of any repairs needed and the lessor must make the repairs within 4 weeks of being	A lessor is not in breach of the duty to maintain the premises in a reasonable state of repair unless the lessor

	JURISDICTION							
	Queensland	**New South Wales**	**Victoria**	**Tasmania**	**South Australia**	**Western Australia**	**Australian Capital Territory**	**Northern Territory**
	The lessor should make the repairs in a reasonable time. The tenant may issue a notice to remedy breach to the lessor in respect of the lessor's failure to make the repairs (s 301, RTRAA).	fails to act with reasonable diligence (s65(3), RTA (NSW)). A tenant may apply to the NSW Civil and Administrative Tribunal (***NCAT***) for an order that the lessor carry out specific repairs where the lessor has breached the obligation to maintain the premises in a reasonable state of repair (s 65, RTA (NSW)).	fails to act with reasonable diligence (s 68(2), RTA (Vic)). Tenant may apply to Consumer Affairs Victoria (***CAV***) to investigate a breach of duty to maintain the property in good repair. CAV must investigate and provide tenant with a written report and may negotiate for repair to be carried out if the lessor has breached their duty (s 74, RTA (Vic)). If repairs are still outstanding, the tenant may apply to VCAT for an order (s 75, RTA (Vic)).	need arising (s 32(2), RTA (Tas)). The owner is to carry out any repairs in the notice that do not arise from any fault of the tenant within 28 days, unless the repair is to a heating element of a cooking stove, in which case repairs are to be made within 14 days (s 32(3), RTA (Tas)).	fails to act with reasonable diligence (s 68(2), RTA (SA)). A tenant must notify the lessor of damages to the premises (s 69(1)(b), RTA (SA)). The tenant will be entitled to reasonable compensation and costs where: • the premises are in a state of disrepair that is likely to result in personal injury, property damage or undue inconvenience; and • the lessor has been notified but fails to take reasonable action to remedy the disrepair (s 68(3), RTA (SA)).	and conduct repairs within a reasonable period after the need for repair arises (s 42, RTA (WA)).	notified (unless the repairs are urgent repairs) (Sch. 1 ss 55(2), 57, RTA (ACT)).	has notice of the repairs required and fails to act with reasonable diligence (s 57(2), RTA (NT)). A tenant must notify the lessor of the repairs required as soon as reasonably practicable after becoming aware of the need for repairs (s 58, RTA (NT)). In some circumstances, a tenant may be able to make repairs and claim money from the lessor for the repairs (ss 60, 61, RTA (NT)).
LOCKS & SECURITY	The lessor must supply and maintain the locks that are necessary to ensure the premises are reasonably secure (s 210, RTRAA).	A lessor must provide and maintain the locks or other security devices necessary to ensure that the residential premises are reasonably secure (s 70, RTA (NSW)).	The lessor must provide locks to secure all external doors and windows of the rented premises (s 70, RTA (Vic)).	The owner must ensure that the property is fitted with locks and security devices necessary to secure the premises and that these are maintained during the tenancy (s 57, RTA (Tas)).	The lessor will take reasonable steps to provide and maintain locks and other devices necessary to ensure the premises are reasonably secure (s 66, RTA (SA)).	The lessor must ensure the premises are 'reasonably secure' as prescribed in the regulations (s 45, RTA (WA)): • external doors must be fitted with a deadlock or lockable security screen door; • exterior windows must be fitted with a lock preventing windows from being opened from outside; • electrical light must illuminate main entry to premises. (s 12B, Regulations).	At the start of the tenancy, the lessor must ensure that the premises are reasonably secure (Sch. 1 s 54, RTA (ACT)). A tenant may apply to the ACT Civil & Administrative Tribunal (***ACAT***) for a rent reduction where the tenant's use and enjoyment of the premises has been diminished significantly as a result of, amongst other things, the lessor's failure to provide and maintain the locks and other security devices necessary to ensure that the premises are reasonably secure (s 71(1), RTA (ACT).	The lessor must take reasonable steps to provide and maintain the locks and other security devices that are necessary to ensure the premises are reasonably secure (s 49, RTA (NT)).
SMOKE ALARMS & FIRE SAFETY	**Federal**: A lessor must ensure that a rental premises have the required number of smoke alarms in accordance with applicable Australian Standards and the	**Federal**: A lessor must ensure that rental premises have the required number of smoke alarms in accordance with applicable Australian Standards and the	**Federal**: A lessor must ensure that rental premises have the required number of smoke alarms in accordance with applicable Australian Standards and the	**Federal**: A lessor must ensure that rental premises have the required number of smoke alarms in accordance with applicable Australian Standards and the	**Federal**: A lessor must ensure that rental premises have the required number of smoke alarms in accordance with applicable Australian Standards and the	**Federal**: A lessor must ensure that rental premises have the required number of smoke alarms in accordance with applicable Australian Standards and the	**Federal**: A lessor must ensure that rental premises have the required number of smoke alarms in accordance with applicable Australian Standards and the	**Federal**: A lessor must ensure that rental premises have the required number of smoke alarms in accordance with applicable Australian Standards and the

	JURISDICTION							
	Queensland	**New South Wales**	**Victoria**	**Tasmania**	**South Australia**	**Western Australia**	**Australian Capital Territory**	**Northern Territory**
SWIMMING POOLS	National Construction Code. **State**: Queensland-specific requirements are imposed by the *Fire and Emergency Services Act 1990*, *Building Fire Safety Regulation 2008* and *Building Regulation 2006*.	National Construction Code. **State:** The lessor must ensure that smoke alarms are installed and maintained in accordance with the *Environmental Planning and Assessment Regulation 2000* (Sch. 1 cl. 38, *Residential Tenancies Regulations 2010*).	National Construction Code. **State:** Owners must install fire safety systems in all buildings in accordance with the *Building Act 1993* and the *Building Interim Regulations 2017*.	National Construction Code. **State:** An owner of a rental property must ensure that smoke alarms are in place in accordance with the Residential *Tenancy (Smoke Alarms) Regulations 2012* (s 36C, RTA (Tas)).	National Construction Code. **State**: The premises must be fitted with smoke alarms in accordance with regulation 76B of the *Development Regulations 2008* (s 13(k), HIR).	National Construction Code. **State:** The lessor must ensure that smoke alarms are no more than 10 years old, in working order, permanently mains-powered and compliant with the *Building Act 2011* and the *Building Regulations 2012*.	National Construction Code. **State:** A lessor not to enter into a new lease unless smoke alarms that comply with requirements prescribed by the Regulation are installed (s 11B, RTA (ACT)). A lessor has an obligation to install smoke alarms in existing tenancies (s 145, RTA (ACT)).	National Construction Code. **State:** A lessor must ensure that smoke alarms are in place in accordance with the *Building Act, Fire and Emergency Act* and the *Fire and Emergency Regulations.*
	The lessor must ensure that the requirements of the *Building Act 1975, Building Regulation 2006,* the Queensland Development Code (MP 3.4), the National Construction Code and relevant Australian Standards are complied with in respect of any swimming pool on the premises.	The lessor must ensure that the requirements of the *Swimming Pools Act 1992* are complied with in respect of any swimming pool on the premises (Sch. 1 cl. 40, *Residential Tenancies Regulations 2010*). The National Construction Code and relevant Australian Standards will also apply.	The lessor must ensure that swimming pools and any associated barriers or safety equipment satisfy the requirements of the *Building Act 1993* and the *Building Interim Regulations 2017*. The National Construction Code and relevant Australian Standards will also apply.	The lessor must ensure that the requirements of the *Building Act 2016,* the *Building Regulations* 2016, the National Construction Code and relevant Australian Standards are complied with in respect of any swimming pool on the premises.	Any swimming pool on the grounds of the premises must comply with the requirements relating to swimming pool safety features under section 71AA of the *Development Act 1993* (s 13(l), HIR). The National Construction Code and relevant Australian Standards will also apply.	Under the *Building Regulations 2012*, owners and occupiers are responsible for ensuring that a suitable enclosure is provided around a swimming pool or spa-pool on the property. The National Construction Code and relevant Australian Standards will also apply.	The lessor must ensure that the requirements of the *Building Act 2004, Planning and Development Regulation 2008, Building (General) Regulation 208,* the National Construction Code and any relevant Australian Standards are complied with in respect to a swimming pool on the premises.	The lessor must ensure that the requirements of the *Swimming Pool Safety Act 2004*, the *Swimming Pool Safety Regulations,* the National Construction Code and relevant Australian Standards are complied with in respect of any swimming pool on the premises.
OTHER	-	-	A lessor must ensure that replacement water appliances have at least a prescribed rating in a prescribed rating system (s 69, RTA (Vic)).	-	Refer to Table 2.	-	It is an offence for a person to advertise a property for rent without identifying whether there is an existing energy efficiency rating for the premises and, if so, a statement of the rating (s 11A, RTA (ACT)).	

	JURISDICTION							
	Queensland	**New South Wales**	**Victoria**	**Tasmania**	**South Australia**	**Western Australia**	**Australian Capital Territory**	**Northern Territory**
ENFORCEMENT PROCESS & REMEDIES	When a dispute arises, tenants and lessors may be able to mediate the dispute using the Residential Tenancies Authority's dispute resolution service. A tenant may also apply to the Queensland Civil and Administrative Tribunal (***QCAT***) for orders in respect of a lessor' breach of the rental agreement, including:	A Fair Trading Officer will assist both parties to agree on a mutually beneficial solution. This service is free. An application to NCAT may be lodged for a range of tenancy disputes, including a lessor's breach of obligations. NCAT may make orders including: • restraining orders • specific performance orders,	A tenant may serve the lessor with a breach of duty notice where the lessor has breached a duty owed to the tenant under the RTA (Vic) (s 208, RTA (Vic)). A tenant may give a lessor a notice of intention to vacate if the premises are unfit for human habitation (s 238, RTA (Vic)) or may terminate the rental agreement prior to taking possession	A tenant may serve a notice of termination upon the owner where: • the owner failed to carry out any repairs that do not arise from the fault of the tenant within 28 days after being notified of the need for repair; • the owner has failed to comply with any provision	A tenant may apply to the South Australian Civil and Administrative Tribunal for orders including: • an order terminating the rental agreement where the lessor has breached the agreement and the breach is sufficiently serious to justify terminating the tenancy (s 88, RTA (SA));	Failure to comply with obligations under the RTA (WA) (e.g., failure to complete repairs within required timeframe) may be redressed through orders of a competent court (s 15(1), RTA (WA)). The Magistrates Court has exclusive jurisdiction to hear and determine disputes involving a claim for $10,000 or less. Claims	A tenant may apply to ACAT an order terminating the rental agreement. ACAT may terminate the agreement if it is satisfied that: • the lessor has breached the standard residential tenancy terms; • and • the breach of the standard residential tenancy terms was not in	A tenant may terminate a lease on 2 days' notice in writing where the premises are uninhabitable, or continued occupation of the premises is a threat to health and safety of the tenants (s 92, RTA (NT)). A tenant may apply to NTCAT for an order terminating the lease due to the lessor committing a serious breach of the tenancy

	JURISDICTION							
	Queensland	**New South Wales**	**Victoria**	**Tasmania**	**South Australia**	**Western Australia**	**Australian Capital Territory**	**Northern Territory**
	• an order terminating the agreement due to the lessor's failure to comply with a notice to remedy breach (s 309, RTRAA) or because the lessor has caused or is likely to cause serious damage to the tenant's goods or an injury to the tenant (s 311, RTRAA); • restraining orders; • specific performance orders; • compensation orders; • an order requiring the payment of rent to QCAT (s 420, RTRAA).	• payment orders, • compensation orders, • remedial orders, • an order requiring the payment of rent to NCAT; and • a termination order (s 187, RTA (NSW)). Other aspects of the RTA (NSW) are enforceable through the Local Court or the Supreme Court.	where the premises are not in good repair or are unfit for human habitation (s 226, RTA (Vic)). A tenant may apply to the Victorian Civil and Administrative Tribunal (***VCAT***) for a compliance order (in respect to failure to comply with a breach of duty notice) or a compensation (ss 209, 210, RTA (Vic)). VCAT may make orders including: • restraining orders; • specific performance orders; • an order to remedy the breach; • compensation orders; and • an order requiring the payment of rent into the Rent Special Account (ss 212, 472, 77, RTA (Vic)).	of the tenancy agreement (s 38(1), RTA (Tas)). The Residential Tenancy Commissioner can investigate breaches and issue fines. Other aspects of the RTA (Tas) are enforceable through the Magistrates Court.	• a declaration that the rent is excessive, having regard to, amongst other considerations, the state of repair and general condition of the premises (s 56, RTA (SA)). The Tribunal has the power to make orders of the kind set out in s 110 of the RTA (SA). Minimum housing standards in the HIR are enforceable by the Housing Safety Authority (***HSA***). If a complaint about a substandard residential property cannot be resolved by discussion between tenant and lessor or though contact with Consumer and Business Services, defects posing a health or safety risk can be raised with the HSA. The HSA will send a Housing Inspecting Officer to inspect the property and, where the housing is believed to be unsafe or unsuitable, the HSA may issue: • a housing assessment order (s 13 HIA); • a housing improvement order (s 14 HIA); or • a housing demolition order (s15 HIA).	exceeding this amount may be heard by any court competent to hear and determine a claim for that amount. The court may make orders including: • restraining orders; • specific performance orders; • payment orders; • compensation orders; • an order requiring the payment of rent to the Magistrates Court until the agreement has been performed or any application for compensation has been determined (s 15(2), RTA (WA)).	• accordance with a term of the residential tenancy agreement endorsed by ACAT; and • the breach justifies the termination of the tenancy (s 43(1), RTA (ACT)). ACAT may also make orders including: • restraining any action in breach of the rental agreement; • requiring any action in performance of the agreement; • requiring payment to a person; • requiring payment of compensation; and • requiring payment of rent into ACAT (s 83, RTA (ACT)). Claims more than $10,000 may be brought in a competent court (s 77, RTA (ACT)).	agreement (s 98, RTA (NT)). A lessor or tenant may apply to NTCAT for compensation for loss or damage for failure to comply with the tenancy agreement or with an obligation under the Act (s 122, RTA (NT)). The Commissioner of Tenancies has powers including the power to investigate suspected infringements of the RTA (NT) and the Regulations and to take appropriate action, including issuing infringement notices (s 13(3)(d), RTA (NT)).

	JURISDICTION							
	Queensland	**New South Wales**	**Victoria**	**Tasmania**	**South Australia**	**Western Australia**	**Australian Capital Territory**	**Northern Territory**
PENALTIES	Failure to comply with an order of QCAT may result in a fine not exceeding 50 penalty units (s463, RTRAA).	The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence against the RTA (NSW) is 50 penalty	CAV can issue an infringement notice if it identifies breaches of certain sections of the RTA. The fine is less than the maximum penalty a court can	Breaches of the RTA (Tas) may result in a fine not exceeding 50 penalty units ($7,850.00) being issued for each breach.	Failure to comply with an order made by the HAS carries a maximum penalty of $10,000.	Failure to comply with an order of the court under section 15(2) of the RTA (WA) may result in a fine of $10,000.	ACAT may impose a fine of up to $5,000 for failure to comply with ACAT orders (s 86, RTA (ACT)).	Failure to comply with an order of NTCAT (other than a monetary order) may result in a maximum penalty of 100 penalty units or 6 months imprisonment

		units (s 202(3), RTA (NSW)). Penalty notices may be issued in respect of specific offences identified in Schedule 3 of the Regulations. Further penalties are identified in the RTA (NSW).	impose. Fines are generally up to 60 penalty units (but up to 300 penalty units for some infringements).	While the RTA (Tas) permits fines not exceeding 50 penalty units for breaching a minimum standard, the Regulations specify that a fine of 10 penalty units applies for infringement notices issued for breach of a minimum standard.				(s84B, *Northern Territory Civil and Administrative Tribunal Act*).

Schedule 2– Table 2: Comparison of minimum housing standards

	JURISDICTION										
	AUSTRALIA			INTERNATIONAL							
	Queensland[39]	**South Australia**[40]	**Tasmania**	**New Zealand**	**Republic of Ireland**	**Alberta, CA**	**Ontario, CA**	**Mass., USA**	**Oregon, USA**	**Vermont, USA**	**Tennessee, USA**
SOURCE OF MINIMUM STANDARDS	A regulation may prescribe minimum housing standards for a residential premises let, or to be let, under a residential tenancy agreement; or a rental premises; or inclusions for premises; or facilities in a moveable dwelling park: *Residential Tenancies and Rooming Accommodation Act 2008*	The owner of residential premises must take reasonable steps to ensure that the premises are safe and suitable for human habitation, including by complying with the prescribed minimum standards: *Housing Improvement Act 2016*, s 34.	Part 3B of the *Residential Tenancy Act 1997* sets out the minimum standards that apply to premises the subject of a residential tenancy agreement.	The lessor shall comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises: *Residential Tenancies Act 1986*, s 45(1)(c). The content of minimum housing standards is set out in the *Housing Improvement Regulations 1947*..	The minimum standards shall apply to every house let, or available for letting, for rent or other valuable consideration solely as a house unless the house is let or available for letting as, inter alia, a holiday home: *Housing (Standards for Rented Houses) Regulations 2017*, reg. 3.	The lessor covenants that the premises will meet at least the minimum standards prescribed for housing premises under the *Public Health Act* and regulations: *Residential Tenancies Act*, s 16(c).	A lessor is responsible for providing and maintaining a residential complex in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards: *Residential Tenancies Act 2006*, s 20(1).	No person shall occupy as owner-occupant or let to another for occupancy any dwelling, dwelling unit, mobile dwelling unit, or rooming unit for the purpose of living, sleeping, cooking or eating therein, which does not comply with the requirements of Chapter II of the State Sanitary Code: 410.010, State Sanitary Code Chpt II.	A lessor shall at all times during the tenancy maintain the dwelling unit in a habitable condition: Oregon Revised Statutes, 90.320.	A lessor is deemed to covenant and warrant to deliver over and maintain, throughout the period of the residential tenancy, premises that are safe, clean, and fit for human habitation and which comply with the requirements of applicable building, housing, and health regulations: Vt. Stat. Ann. tit. 9, ch 137, 4457.	The lessor shall comply with the requirements of applicable building and housing codes materially affecting health and safety and make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition: TCA, tit. 68, ch. 28, pt. 3, 304.

39 The *Residential Tenancies and Rooming Accommodation Act 2008* provides that a prescribed minimum housing standards may be for "any matter relating to the premises, inclusions or park facilities", including the examples noted in the table.

40 South Australia is presently reviewing the content of the minimum housing standards. The Housing Safety Authority published an Issues Paper in October 2017.

	JURISDICTION										
	AUSTRALIA			INTERNATIONAL							
STANDARDS	Queensland[41]	South Australia	Tasmania	New Zealand	Ireland	Alberta, CA	Ontario, CA	Mass., USA	Oregon, USA	Vermont, USA	Tennessee, USA
Locks & security	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	-
Privacy	Yes	Yes	Yes	-	Yes	-	-	Yes	-	Yes	Yes
Heating	-	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Supply of water	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Sanitation e.g. vermin, refuse facilities & sewerage	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Bathroom & toilet	Not specifically named but list is not exclusive	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	Yes	Yes
Kitchen	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-[42]	Yes	Yes
Weatherproof	-	Yes	Yes	Yes	-	Yes	Yes	Yes	Yes	Yes	Yes
Laundry	Yes	Yes	-	Yes	Yes	-	-	-	-	-	-
Lighting, gas & electricity	Yes (lighting)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

41 The *Residential Tenancies and Rooming Accommodation Act 2008* provides that a prescribed minimum housing standards may be for "any matter relating to the premises, inclusions or park facilities", including the examples noted in the table.

42 An "essential services" under the Residential Lessor and Tenant Act includes any cooking appliance or refrigerator supplied or required to be supplied by the lessor. It does not impose an obligation upon a lessor to provide those items unless the lessor has so agreed.

	JURISDICTION										
	AUSTRALIA			INTERNATIONAL							
STANDARDS	Queensland[41]	South Australia	Tasmania	New Zealand	Ireland	Alberta, CA	Ontario, CA	Mass., USA	Oregon, USA	Vermont, USA	Tennessee, USA
Energy efficiency	Yes	-[43]		Yes							
Ventilation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Overcrowding	-	-	-	Yes	Yes[44]	Yes	Yes[45]	Yes	Yes[46]	Yes[47]	Yes
Fire safety	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Structural condition	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Other	Room dimensions	Room dimensions; accessibility; environmental performance		-	-	-	-	Size requirements; accessibility; surface coverings	Accessibility	-	Accessibility

JURISDICTION

43 The *Housing Improvement Act 2016* permits the making of regulations regarding water and energy efficiency although no such regulations are presently prescribed. The Building Code of Australia imposes energy efficiency standards only with respect to new residential premises. The issue of whether minimum standards for power consumption should be introduced for existing residential premises was raised in the Issues Paper.

44 *Housing Act 1966*, Part IV.

45 The lessor may terminate if the number of occupants results in a contravention of health, safety or housing standards required by law (*Residential Tenancies Act*, section 67). Municipalities may also impose by-laws imposing occupancy standards: see City of Ottawa, Property Standards By-law No. 2013-16, section 38.

46 Section 90.262 of the Oregon Revised Statutes permits the adoption of occupancy guidelines. By-laws may also impose occupancy requirements: see City of Portland, Code &Charter, Title 29.30.220.

47 Municipal occupancy limits apply. See e.g. City of Barre, Charter & Ordinance, ch 7 "Minimum housing standards", s 7-20.

	JURISDICTION										
	AUSTRALIA			INTERNATIONAL							
STANDARDS	**Queensland[41]**	**South Australia**	**Tasmania**	**New Zealand**	**Ireland**	**Alberta, CA**	**Ontario, CA**	**Mass., USA**	**Oregon, USA**	**Vermont, USA**	**Tennessee, USA**
	AUSTRALIA			**INTERNATIONAL**							
ENFORCEMENT	**Queensland[48]**	**South Australia[49]**	**Tasmania**	**New Zealand**	**Ireland**	**Alberta, CA**	**Ontario, CA**	**Mass., USA**	**Oregon, USA**	**Vermont, USA**	**Tennessee, USA**
Administering authority	Unknown[50]	Consumer & Business Services Housing Safety Authority (***HSA***)	Consumer, Building and Occupational Services Residential Tenancy Commissioner	Tenancy Tribunal	Department of Housing, Planning and Local Government Residential Tenancies Board Local authorities	Public Health Inspectors Regional Health Authorities	Local municipal authorities Lessor and Tenants Board	Department of Public Health Board of Health	Local authorities	Town Health Officers (***THO***)/ Municipal Code Inspectors	Local building inspector / county public health department
Enforcement process / remedies	Unknown	Complaints may be made to the HSA. The HSA may issue a housing assessment order, housing improvement order, or housing demolition order.	Tenant may request repairs or terminate lease with 14 days' notice for breach of a minimum standard. The notice will not be effective if the owner remedies the breach within	Tenants can apply to the Tenancy Tribunal for orders including a work order, an order permitting a tenant to undertake work to the premises and recover that	Tenants can contact their local authority and request than an inspection take place. Local authorities may issue an improvement	Inspections may be initiated by Public Health Inspectors / Regional Health Authorities. An order may be issued requiring the vacation or closure of the premises or	Local municipal authorities are responsible for monitoring compliance with the maintenance standards. Tenants can make complaints to local	The Board of Health may inspect a premises upon request or on its own initiative and may: issue a correction order; find that the premises are not fit for human	Tenant may terminate the rental agreement on at least 30 days' notice where there has been material noncompliance with the lessor's obligation to	Tenant may request that an inspection occur. THO will set a date for compliance in respect of any violations. THO may issue a health order or	Tenants and third parties may complain to the local building inspector / county public health department if premises do not comply with

48 The *Residential Tenancies and Rooming Accommodation Act 2008* provides that a prescribed minimum housing standards may be for "any matter relating to the premises, inclusions or park facilities", including the examples noted in the table.

49 South Australia is presently reviewing the content of the minimum housing standards. The Housing Safety Authority published an Issues Paper in October 2017.

50 The Regulations will prescribe how minimum housing standards may be monitored and enforced to encourage compliance.

	JURISDICTION										
	AUSTRALIA			INTERNATIONAL							
STANDARDS	**Queensland[41]**	**South Australia**	**Tasmania**	**New Zealand**	**Ireland**	**Alberta, CA**	**Ontario, CA**	**Mass., USA**	**Oregon, USA**	**Vermont, USA**	**Tennessee, USA**
		The Minister may issue a rental control notice where a housing improvement order has been issued in respect of a property. Details of the noncompliant property may also be published on the Substandard Property Register.	the notice period. Residential Tenancy Commissioner can investigate the breach and issue a fine. Lessor cannot enter into a lease agreement unless certain conditions are met.	cost from the lessor or deduct it from rent payments if the lessor does not comply with a work order, and an order that rent be repaid to the tenant.	notice or a notice prohibiting the lessor from re-letting the property while the breach persists). Failure to comply with a notice is an offence. A fine may be imposed for each day of a continuing offence. Tenants may also be able to apply to the Residential Tenancies Board in respect of a deterioration in the property's condition from the start of the lease.	work to be done, the removal of anything causing a nuisance, or declaring that the premises is unfit for human habitation. A tenant may attempt to resolve the dispute by applying to court or through the Residential Tenancy Dispute Resolution Service (***RTDRS***). The RTDRS or court may award the tenant damages, reduce the rent payable, compensate the tenant for any costs incurred in performing the lessor's obligations, and	municipal authorities, who will inspect the premises and may issue a work order. A tenant or former tenant can apply to the Board for an order determining that the lessor has breached the maintenance standards within 1 year of the breach. The Board may make orders including that the tenancy be terminated, rent abated, authorising repairs made by the tenant and order repayment for those repairs by the lessor, ordering the	habitation and order the occupants to vacate and the owner to secure the premises. A demolition order may be issued where the premises remain unfit for human habitation 1 year after an order to secure is issued.	maintain the premises in a habitable condition. Tenant may perform repairs not exceeding $300 in respect of a minor habitability defect (e.g. faulty light switch) and deduct the cost from the rent payable.	emergency health order if non-compliance is ongoing. Lessor can request a hearing before the Select board or the Local Board of Health prior to the order being made. If the lessor fails to make repairs within a reasonable time and the noncompliance materially affects health and safety, the tenant can withhold rent, obtain an injunction, damages and costs, and terminate the rental agreement on	minimum standards and are unfit for human habitation. An inspection will take place and, if the property is not fit for human habitation, a notice will be issued to the lessor o correct the noncompliance in 30 days Ongoing failure to comply may result in rental payments being redirected to the county clerk and eventual forfeiture, further inspections,

	JURISDICTION										
	AUSTRALIA			INTERNATIONAL							
STANDARDS	Queensland[41]	South Australia	Tasmania	New Zealand	Ireland	Alberta, CA	Ontario, CA	Mass., USA	Oregon, USA	Vermont, USA	Tennessee, USA
						terminate the tenancy.	lessor to do repairs, and prohibiting a rental increase until the lessor has rectified the breaches.			reasonable notice. Tenant may recover costs for minor repairs. Lessor cannot let a non-compliant property.	

	JURISDICTION										
	AUSTRALIA			INTERNATIONAL							
ENFORCEMENT	Queensland[51]	South Australia[52]	Tasmania	New Zealand	Ireland	Alberta, CA	Ontario, CA	Mass., USA	Oregon, USA	Vermont, USA	Tennessee, USA
Penalties	Unknown	Maximum penalty of $10,000 for noncompliance with an order.	The Act permits fines not exceeding 50 penalty units for breaching a minimum standard.	The Tribunal may order the lessor to pay damages, including exemplary damages for	The lessor can be fined up to €5,000 and €400 for each day of a continuing offence and/or imprisoned for up to 6 months.	The order may result in a notice of health hazard with the Registrar of Land Titles.	The Board may impose an administrative fine upon the lessor not exceeding $10,000 and the monetary	A fine of between $10 and $500 is payable upon a failure to comply with an order.	Tenant may recover damages or an injunction against the lessor in the Small Claims Court.	Tenant can claim damages, costs and reasonable legal costs.	None, although lessor may cease to receive rental payments

51 The *Residential Tenancies and Rooming Accommodation Act 2008* provides that a prescribed minimum housing standards may be for "any matter relating to the premises, inclusions or park facilities", including the examples noted in the table.

52 South Australia is presently reviewing the content of the minimum housing standards. The Housing Safety Authority published an Issues Paper in October 2017.

				unlawful acts, to the tenant.			jurisdiction of the Small Claims Court.				
Right of appeal	Unknown.	A person who has been issued with an order or an owner who has been issued with a rent control notice may apply to the South Australian Civil and Administrative Tribunal for review of that order / notice.	A decision of the Residential Tenancy Commissioner can be appealed to the Magistrates Court.	Any party to a proceeding before the Tribunal who is dissatisfied with the decision may appeal to the District Court. A work order may only be appealed if the value of work exceeds $1,000.	Where new or additional information is available that was not before the Board, a person may be able to appeal the decision of the Board to the Residential Tenancies Board Tribunal.	A person who is directly affected and feels aggrieved by a decision of a regional health authority may appeal the decision to the Public Health Appeal Board.	A lessor who has received a work order may apply to the Board within 20 days of the order for review of the order. The Board may confirm, vary, rescind or quash the order.	A person upon whom an order has been served, and a person aggrieved by the failure of the inspector to e.g. inspect premises as requested, may request a hearing before the Board of Health.	No appeal lies from the Small Claims Court.	Lessor can appeal a decision of the Selectboard or the Local Board of Health to the State Board of Health.	Lessor may appeal the findings of a building inspector or county public health inspector to the county board of health or otherwise to the county mayor.

Schedule 3 – Sources for Table 2

Legislative instruments, standards or codes marked below with *** set out the content of the minimum standards for the relevant jurisdiction.

1.1 Australia

(a) Queensland

Residential Tenancies and Rooming Act 2008

Residential Tenancies and Rooming Accommodation Regulation 2009

(b) South Australia

Residential Tenancies Act 1995

Housing Improvement Act 2016

Development Regulations 2008

*Housing Improvement Regulations 2017****

Housing Improvement (Fees) Regulations 2017

(c) Tasmania

Residential Tenancy Act 1997, Part 3B***

Residential Tenancy Regulations 2015

1.2 New Zealand

Residential Tenancies Act 1986

*Housing Improvement Regulations 1947****

Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016

Bylaws made pursuant to the *Local Government Act 2002*

1.3 Ireland

Lessor and Tenants Act 1967 to 1994

Residential Tenancies Act 2004

Housing Acts 1966 to 2014 (in respect to houses available for letting by a housing authority or approved housing body)

Housing (Miscellaneous Provisions) Acts

Planning and Development (Housing) and Residential Tenancies Act 2016

*Housing (Standards for Rented Houses) Regulations 2017****

1.4 Canada

(a) Alberta

Residential Tenancies Act

Public Health Act

Safety Codes Act

*Housing Regulation (Alberta Regulation 173/99)****

Minimum Housing and Health Standard***

Municipal bylaws*** (for example, Calgary Bylaw Number 5M2004 requires that owners and occupiers of premises maintain certain structures such as roofs, foundations and balconies in good repair)

(b) Ontario

Residential Tenancies Act 2006

*Maintenance Standards O. Reg. 517/06****

Ontario Fire Code

1.5 United States of America

(a) Massachusetts

Massachusetts General Laws

Massachusetts State Sanitary Code Chapter I: General Administrative Procedures, 105 CMR 400.000

Massachusetts State Sanitary Code Chapter II: Minimum Standards of Fitness for Human Habitation, 105 CMR 410.000***

(b) Oregon

Oregon Revised Statutes, Chapter 90, Residential Lessor and Tenant Act***

(c) Vermont

Vermont Statutes Annotated, Title 9: Commerce and Trade, Chapter 137***

Vermont Residential Energy Code

Vermont Fire and Building Safety Code

Construction of Rental Housing – Rehabilitating and Renovating Vermont Housing

Municipal bylaws***

(d) Tennessee

Tennessee Code Annotated, Title 66, Chapter 28 – Uniform Residential Lessor and Tenant Act

Tennessee Code Annotated, Title 68, Chapter 111 – Rented Premises Unfit for Human Habitation

Rules of Tennessee Department Of Health, Bureau Of Health Services Administration, Division Of General Environmental Health, Chapter 1200—1—2, Rental Premises Unfit For Habitation***

Property maintenance, building and safety codes vary throughout the State

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