Tenants Queensland

Submission to the

Queensland Government

on the

Stage Two Rental Reform consultation paper

May 2023

Contents

1 ABOUT TENANTS QUEENSLAND

Tenants Queensland (TQ) is a statewide community and legal service providing free tenant advisory services for residential renters. TQ aims to protect and improve the rights of all people who rent their home in Queensland. This includes renters in private rental and social housing as well as those 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. 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 range of other projects. Our Domestic and Family Violence Sector Capacity Building Project supports DFV workers when working with clients with renting issues. Our Financial Counselling Project recently commenced to provide additional support for renters, particularly those whose financial situation was impacted by COVID -19.

2 INTRODUCTION

The commencement of the second stage reforms has been long awaited and Tenants Queensland (TQ) is pleased to see consultations commence. Overall, the paper contains some positive proposals (if they eventuate), however, we think that our government needs to do more to regulate the rental market in order to deliver greater stability, safety, amenity and affordability to Queensland renters.

3 RENT INCREASES

The key issue of limiting the quantum which rents can rise does not appear in the consultation paper at all. This is a major omission, and failure to canvass this vital and current issue facing Queensland renters is a significant oversight.

TQ is extremely concerned that the government consultation paper has removed rent as a topic for discussion. This topic was designated as far back as 2019 as a topic to be included in stage two rental reforms but it appears to have been completely omitted from the consultation process.

For a government discussion paper on tenancy law reforms to be released in the current environment and **not** canvass the issue of rent and rent increases, does a disservice to all Queenslanders who rent their home. TQ is extremely disappointed in the decision by government to leave rent and rent increases out of the identified topics for consultation.

TQ urges the Queensland government to implement a limit on rent increases to one per year at the amount of the Consumer Price Index. This is fair to both renters and lessors. It maintains returns to lessors and provides stability, predictability and protection from bill shock for renters. More included below.

4 RESPONSE TO THE CONSULTATION PAPER

4.1 Installing modifications (p7)

TQ is pleased to see the issue of safety and accessibility minor modifications finally come forward as an issue for reform.

The paper proposes a good option which TQ supports– identifying items which do not require lessor agreement prior to modification, and if the lessor disputes the issue falls into this category, requiring that the lessor take a dispute through to the tenancy tribunal and provide evidence as to why the modification should not be undertaken. However, we disagree with the timeframe for the lessor to action the dispute. The paper allows a lessor/agent 14 days to notify they will dispute the issue and a further 28 days following notification to apply to the tribunal for adjudication. This allows 6 weeks before an application to QCAT needs to be made (let alone the time to have the matter heard), which it too long when the issue is about making a home safe and accessible. The timeframe should be reduced to 7 days for the lessor to notify they will dispute the matter then 7 days to apply to QCAT. The latter is the same time a tenant gets to apply to QCAT for their bond if conciliation with the Residential Tenancies Authority (RTA) fails during a bond dispute.

In addition, we do not agree that a qualified person must make changes simply because they interact with the structure of the property and require a level of skill. Renters should be subjected to the same rules of installation that anyone else is – if a qualified tradesperson is required by law, then owner occupiers and renters should require it. If not, then renters should not require it simply because they are renters. This would impose a higher requirement on them than owner occupiers and lessors.

We also call for the government to include requirements for lessors to consent to energy performance improvements to the property if there is no cost to them.

4.2 Making minor personalisation changes (p14)

TQ also supports the proposal to identify minor modifications which do not require prior agreement to undertake, to allow renters to personalise their homes. These items will need to be broad enough to be meaningful. We support including the items listed under option 3 on page 17.

In addition (and as above), TQ supports the proposal that responsibility to resolve any dispute arising about allowable modifications requires action by the landlord and not the tenant. Again though, we disagree with the proposed timeframe for the lessor to act – it should be reduced to allowing seven days to inform the tenant of the intent to dispute then seven days to file the dispute with QCAT.

4.3 Balancing Privacy and Access (P18)

We are pleased with proposals to:

- Limit the first general inspection entry for a new tenancy to after the first three months,' which is not the case as the moment.
- Limiting physical entries to once annually if the tenant supports virtual inspections of some kind.
- Extend entry notice periods currently requiring 24 hours to 72 hours.
- Extend the notice period informing a tenant of the lessor's intention to sell from 7 days to 14.
- Provide avenues to compensate renters if their possessions are damaged or stolen during entries by lessors, agents or their contactors.
- Require reasonable steps to be taken to accommodate requests from renters to be present during entries. However, we consider this should be changed to 'all reasonable steps' to strengthen the proposal.

We do not agree with the proposal to introduce new entry grounds to allow inspections required under a contract for sale of the property as exampled in the paper as 'mortgage valuation, pest inspection or pre-settlement inspection'. There are already separate rights of entry for a valuation and to show a prospective buyer, and no reason to add additional entry grounds.

In addition, we do not agree that lessors and agents should be allowed to enter the property for the purpose of taking photographs for advertising. Photographs taken during an entry for a valid reason such as a general inspection or for repairs. should only be allowed to be used for the purpose of the agent reporting to the lessor unless the tenant agrees to other uses.

We do not agree with proposed changes which would allow two entries per week to show the premises to prospective purchasers or tenants as this is excessively intrusive and a diminution of current rights to reasonable peace, comfort and privacy. If changes are made, we propose a limit of two entries in the first week and no more than one per fortnight after that unless otherwise agreed with the tenant.

Regarding tenancy applications, we support prohibiting requests for prospective renters to provide:

- Information on previous legal action and tenancy disputes with a lessor or agent.
- Information on prior bond disputes and bond disbursements.
- Financial statements
- Information about protected attributes defined by Anti-Discrimination laws.

We also support requirements for information provided by prospective renters:

- To be securely stored
- Accessed only for the purpose of assessing tenancy suitability.
- Destroyed if the person is not successful.
- To include a real choice for renters whether to use or not use an online or third-party platform.
- To include a real choice for the prospective renters to show documentation rather than provide a copy.

4.4 Improving the rental bond process (P26)

We support clarifying that renters who use a commercial provider of funds to support bond payments are the recipients of the bond return and not the commercial product.

We also support requirements for lessors or agents to provide evidence of claims against a bond.

However, the proposals in the consultation paper do not go far enough. Bond contributors should never be required to be applicants in QCAT to claim their bond against an agent or lessor. The bond is the renters' money. The bond return process should assume it will be returned to the renter unless an evidenced claim comes forward from the other party.

Requiring the person alleging a debt to make the QCAT application will remove the race to make a bond claim. The 'race' disadvantages renters, who as consumers, are likely to have more limited knowledge of the process. It also acknowledges the bond as the renters' money, and it allows the renter to be fully informed of any claim against the bond before they arrive at a QCAT hearing. This is not the case if they are the applicant and the agent or lessor the respondent.

4.5 Fairer fees and charges (P31)

The issue of unaffordable rent increases is absent from the paper at a time when Queensland renters expect that to be front and centre. We return to this issue below.

We support:

- renters being provided with a fee free method of paying rent.
- legislated time limits to forward bills to renters if they are required to pay them (e.g., water bills)
- limiting the utility costs which can be passed onto renters, such as water consumption, to consumption over a reasonable quantity (comparative to other households and premises of a similar nature)
- limiting the fees which can be charged for ending a tenancy agreement early ('breaklease fees') to the lower of the following:
    - the rent payable before the rental property is relet to another renter, or
    - no fees if at least one renter has remained on the lease for more than three years, or
    - as determined by the time remaining on the agreed term:
        - four weeks rent if 75 per cent or more of the agreed term remains.
        - three weeks rent if 50 per cent and less than 75 per cent of the agreed term remains.
        - two weeks rent if 25 per cent and less than 50 per cent of the agreed term remains.
        - one weeks rent if less than 25 per cent of the agreed term remains.

5 OTHER REFORM ISSUES

5.1 Limiting the amount rent can be increased

As noted above, Queensland renters deserve to be consulted in the current law reform process about regulating rent increases, including the amount that rent can be increased.

TQ interrogated 300 records of renters contacting our service this year with enquiries about a rent increase in their current tenancy. Of these, less than 10% had increases at the rate of the Consumer Price Index (CPI) or below. On average, rents were increasing by 24.8% of the current rent. However, 30% of clients had increases of between 25%– 50% of the current rent, 3.5% of clients had increases between 51% & 75% and 2% of clients had increases of between 75% to 100% to their current rent.

These rent increases are unaffordable and push people into homelessness. Many increases arrive in an offer of a new fixed term with the increase rent, along with a NTL for the 'End of a Fixed Term'. In many instances, agents refuse attempts by the renter to negotiate.

Renters need protection from these unaffordable increases and bill shock.

Rent increases should be limited to an annual increase of not more than the CPI. Current debates in European countries which already limit rent increases to the CPI are that CPI is too high a benchmark. In contrast, Queensland has no regulation regarding the rate of rent increases at all.

Limiting increases to CPI is fair to both parties. It maintains returns to landlords whilst providing predictability and stability to renting households.

This method of stabilising rents by smoothing increases over time is not unlike the use of averaged value for the application of land tax (also to prevent bill shock). In calculating land tax, the Queensland Revenue Office states the following:

"Averaged value

The averaged value of land is:

- the average of the statutory land value for the current and previous 2 financial years

or

- the current year's statutory land value multiplied by the averaging factor for the year (where the previous 2 statutory land values are not available)."

5.2 Non-enforcement of Warrants of Possession where rent arrears are paid in full

TQ proposes changes to the process of eviction for rent arrears, to prevent homelessness and maximise the potential for renters to save their tenancies after a warrant of possession due to rent arrears has been issued.

Examples of other jurisdictions where practices delay evictions for rent arrears and link tenants to payment plans and assistance include the following:

- the Netherlands restricts eviction by lessors if the tenant is participating in a debt assistance program.
- tenancy laws in New South Wales prevent the enforcement of a Warrant of Possession (WoP) for a premise if the tenant rectifies the entire amount of arrears prior to the bailiff taking possession.

TQ recommends similar provisions to NSW be included in the current reform process.

The aim of such change is to prevent the enforcement of a WoP for rent arrears if the tenant rectifies the arrears in full between the issuing and enforcement of the WoP. This change has benefits for both the lessor and tenant - the lessor receives the unpaid rent and avoids vacancy and additional agency costs whilst the tenant can apply any money they have to paying the arrears without having to decide whether to save it for an inevitable move.

5.3 Removing Notices to Leave for the End of a Fixed Term

TQ urges the Queensland Government to remove the lessor's ability to end a tenancy simply due to the 'End of a Fixed Term'. This ground was added in the final stage of Rental Reforms Stage 1 and equates to eviction with no reason. It undermines the security and stability of renting households, and their ability to enforce the rights they have for fear of an eviction at the end of their fixed term agreement. The power imbalance experienced by renters will continue as long as this ground for eviction remains in Queensland's tenancy laws.

Should the 'End of a Fixed Term' continue as a ground for termination of tenancies in Queensland, TQ urges the Queensland government to limit the ability to issue the NTL to within one month of the current fixed term agreement ending. This would prevent agents following the best practice advice of the REIQ to give a tenant a NTL using the ground 'End of a Fixed Term' at the same time as signing up and commencing that same tenancy agreement. This practice leaves people living under an active NTL for the duration of their tenancy agreement. Such practice impacts people's mental health, leaving them living in fear throughout the tenancy.

This change would also reduce the pressure on renters who are forced to decide on an offer of a new fixed term agreement many months before the end of the current term. These offers often come with NTL for the 'End of a Fixed Term' or with the threat of one if the agreement is not signed up within a short time.

An NTL where there is no fault by the tenant usually provides two months' notice. Currently, agents' issue these notices to expire on the last day of the fixed term. Tenants actively search for properties but are still bound to the tenancy if they find somewhere earlier that the end date on the NTL. This doubling up of rent causes financial stress for many tenants.

Restricting the issuing of such notices to within one month of the end of the fixed term (whilst keeping the two month notice period) would provide tenants a month in which they could provide notice to the lessor and avoid having to pay double rent if they find a property before the end date on the NTL.

An alternate would be to allow tenants and residents to end tenancies with (no grounds) notice periods once they received a NTL for any reason (other than a breach of agreement).

5.4 Ending immediate and self-eviction in rooming accommodation

For those in rooming accommodation the concerns regarding current eviction processes are even greater than general tenancies. The existing provisions:

- Allow the housing provider to self-evict residents (for failure to leave for a NTL for any reason), using reasonable force and without due process or a tribunal order (s375), and,
- Allow housing providers to immediately evict residents for untested allegations of serious breaches (s370) and leading to self-eviction.

These provisions leave rooming accommodation residents in a particularly precarious housing situation. The industry previously argued 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 calls for the removal of provisions for immediate eviction and self-eviction of rooming accommodation residents. We propose that all disputed evictions take place only when the Tribunal has heard the matter and issued a termination order. To effect this, 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.

5.5 Remove compensation claims against rooming accommodation residents in hardship

TQ recommends the removal of section 383(3) which allows the Tribunal to make an order compensating the provider of rooming accommodation when a resident obtains a termination order for 'Excessive Hardship'. If a rooming accommodation resident is deemed to be in hardship, they should not have to compensate the other party for the ending of the fixed term agreement. This principle was established in the Supreme Court for general tenancies in Noffke v Oceanside Management Pty Ltd t/as Broadwater Apartments [2017] QCA 156

5.6 Energy efficiency in rental properties

TQ is calling on the Queensland Government to legislate for and implement mandatory and enforceable performance-based energy efficiency minimum standards for rental properties in line with the *Community Sector Blueprint: A National Framework for Minimum Energy Efficiency Rental Requirements*.

We call for inclusion of the following energy efficiency provisions in regulations to the Residential Tenancy and Rooming Accommodation Act (2008) to effect the following:

- Initially require the energy efficient features of a home to be disclosed at the point of advertisement, and eventually the energy efficiency rating to be disclosed on Entry Condition Reports; and,
- Require lessors to consent to energy performance improvements to the property if there is no cost to them.

5.7 Other Bond Issues

5.7.1 Bond transfers when Bond in dispute

With spiralling rents, Queensland tenants have thousands of their own dollars caught up in a rental bond. When a tenant is moving between properties, they may have to pay a new bond (along with two weeks' rent in advance) before receiving the bond back from their previous property. This comes at a financially difficult time for renters, with a recent report from the Tenants' Union of NSW estimating that moving house costs renters $4,000 on average[1].

Currently, a tenant can transfer a bond from one property to another, but only if there is no dispute about the bond at the end of the tenancy. TQ proposes that Queensland allow the provisional transfer (or certificate) of all or part of the bond to a new property once the NTL or Notice of Intention to Leave has ended, whether or not a dispute arises. Our proposal is to allow the provisional transfer of bond whilst a dispute is resolved.

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, until the dispute on the previous bond is finalised. There is limited risk of a new tenancy ending in the first few weeks, and therefore limited risk if the bond is held as a certificate for that period rather than as cash.

A tenant would be required to pay any amount of bond required for the new premises that is above the amount of bond on the previous premises. For example, if the bond for previous premises was $1200 and the new $1400, the tenant pays the additional $200 within the current requirements. In addition, any undisputed bond amount is transferred. Following settlement of the disputed bond, bond returned to the tenant is credited to the new agent/landlord's account to fulfil the provisional certificate.

If the previous agent/landlord is awarded monies in settlement of the bond dispute, the bond is used to pay that amount to the previous lessor, with the tenant required to pay that amount in bond for the new premises over a prescribed period. If the tenant does not add the shortfall within the time limit, it becomes a breach of the agreement for non-payment of bond.

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.

5.7.2 Bond Exit Survey

Understanding why tenancies end will help make policy decisions that bring greater stability and satisfaction to renters and lessors alike but currently insights and evidence are extremely limited.

TQ proposes the introduction of a Bond Exit Survey, administered by the Residential Tenancies Authority (RTA), to better understand the experiences of renters, lessors and agents.

The survey would be voluntary and simple, issued to both parties to the bond when a claim is initiated through the RTA.

The survey could encompass three simple questions, including one which draws out the rent at the end of the tenancy. This would expand our knowledge of rent entry costs (on bond lodgement) to include rent exit costs on bond claim. The questions would include how and why the tenancy was ended, and what the weekly rent was at the end of the tenancy.

The results from lessors and tenants would be correlated.

[1] Tenants' Union of New South Wales (2022), *Eviction, Hardship, and the Housing Crisis*

A similar process is undertaken in New South Wales.

5.7.3 Bonds for Boarders and Lodgers

In recent interactions with the RTA doubt has been cast on their coverage of bonds paid for rooming accommodation for which the *Residential Tenancies and Rooming Accommodation Act (2007)* (RTRAA) does not apply. Consequently, this impacts a boarder or lodger's ability to take compliance action for the non-lodgement of bond.

It is the intent of the RTRAA to cover bonds taken for all rooming, boarding and lodging and student accommodation, as well general and moveable dwelling tenancies.

To remove any doubt, TQ seeks changes to s44 clarifying that the provisions of the RTRAA about rental bonds apply to a rental bond paid for a rooming accommodation agreement to which the Act does not apply. This could be achieved by adding a sub-section in s44 similar to s32(2).

5.7.4 Improving standards - *A Register of Landlords*

TQ proposes the Queensland Government implement a simple register of landlords for both short- and long-term rentals. A register, similar to Scotland, would provide on-going transparency about how rental stock in Queensland is being used and provide important insights into Queensland investors and their behaviour. For example, what is the transition of properties between short or long-term rental accommodation, and how long does stock remain in the market, does it return over time.

The public register would also identify any outstanding compliance issues with a property, including outstanding Repair Orders, introduced recently under Stage One tenancy law reforms.

Given the number of small holding landlords, a register could lift the professionalism and standard of Queensland landlords, through both a fit and proper person test and by requiring engagement with landlord training and education on entry and at intervals.

A register would provide the ability for the state government to communicate directly with landlords, something which it cannot do now, with the vast majority of bonds held by the RTA held in the name of the real estate agency. Direct contact would support education by government on new laws and emerging issues. It would have been of great benefit to the landlords during COVID-19, when government introduced a raft of interventions, including land tax exemptions and grants, as well as tenancy law changes.

A register could be self-funded (through a modest registration fee) and deliver a mechanism to ensure minimum legal and risk management requirements are undertaken. Queensland already requires registration of Residential Services. This simple licensing scheme would extend this requirement. Other examples include NSW's register of short-term lettings.

Ireland also has a mandatory landlord registration scheme, a single database of tenancies and landlords.[2] The information is available to local councils, who use it to monitor the landlords' compliance with the law and improve tenancy management. Landlords pay a fee for a three-year registration and receive information and quarterly newsletters through this registration.

5.8 Code of Conduct

In addition to the above, we need shared standards and expectations around industry behaviour. To increase accountability, we are calling for a code of conduct for the industry covering both landlords and agents and including requirements for improved training in property management.

[2] https://www.citizensinformation.ie/en/housing/renting-a-home/registering-a-tenancy/

This would set standards and expectations and provide renters with an avenue to challenge poor practice.

A code of conduct for real estate agents existed in Queensland until the Property Agents and Motor Dealers Act was repealed in 2014.

In Wales, the Code of Practice for Landlords and Agents licenced under Part 1 of the Housing (Wales) Act 2014 was prepared to assist landlords and agents licensed through the Rent Smart Wales scheme. The Rent Smart Wales scheme was introduced by the Wales government to improve the image of the private rental sector and implements Part 1 of the Housing (Wales) Act 2014. There are two parts to the code of practice:

a) the first sets out what landlords and agents must do (i.e., "Requirements"); and

b) the second provides information on what can be done to raise standards above the minimum level required by law ("Best Practice").

All landlords and agents who hold a licence under the Rent Smart Wales scheme must abide by the requirements of the code or run the risk of losing their licence. The scheme requires every landlord of a rented property in Wales to register with Rent Smart Wales and list every property they rent out in Wales.

In Canada, some provinces have legislation that regulates real estate behaviour. For example, in Ontario, those trading in real estate must comply with the Real Estate and Business Brokers Act, 2002 (REBBA), and the regulations under the REBBA (which include a code of ethics and requirements around education, insurance and records). This legislation covers agents involved in rentals.

The Real Estate Council of Ontario (**RECO**) is a not-for-profit corporation delegated by the provincial government to administer and enforce the REBBA, and addresses inquiries, concerns and complaints about the conduct of brokers, salespersons, brokerages and those required to be registered to trade. It can act, such as refuse or revoke someone's registration, lay charges for breaches or consider disciplinary actions.

Similarly, there is the Real Estate Council Alberta is an independent governing authority which enforces relevant legislation and rules in Alberta, including the Real Estate Act Rules which include industry standards of practice for real estate agents and property managers.

5.9 Unfair contract terms

Some landlords and agents include unacceptable requirements in tenancy agreements, leaving renters with no choice but to agree. Whilst Australian Consumer Law protects consumers from unfair contract terms, a tenant or resident cannot remedy this by taking a tenancy dispute through the usual channels.

Common issues arising include renters being forced to take out specific insurances or to indemnify the lessor, both of which are outside their responsibility as a tenant.

Victoria includes protection against these aspects of unfair contract terms under s27B of their tenancy laws. This includes prohibiting requirements for renters to take out insurance of any kind protecting lessors and providers from liability. Including these issues in tenancy law makes them clear and the remedies accessible.

TQ recommends the prohibition of unfair contract terms mirroring current Australian Consumer Law be included in the current review.

5.10 Transfer and sub-let

Issues of affordability experienced by low-income renters are being exacerbated by unreasonable rent increases and are extending into the low to middle income households.

To mitigate affordability issues, some households share with other unrelated persons ('sharehouse'). In sharehouses the need commonly arises for a transfer of tenant/s or a request for sub-let, as people move in and out of the property.

Currently a tenant is only allowed to transfer or sub-let the premise with the qualified, written discretion of the lessor and disputes arise regarding the reasonableness of a refusal for a tenancy transfer or sub-let. Currently these disputes are managed as 'non-urgent' matters and may take weeks if not months to finalise. For renters, this is ineffective – the lack of a timely resolution to the dispute often means that the prospective tenant or sub-tenant has found somewhere else to move to. In the meantime, the current tenant may struggle with paying the rent and end up in rent arrears.

Given the extreme issues of affordability being experienced, disputes about transfers and sub-let need to be resolved as quickly as possible.

TQ recommends that applications made under RTRAA s239 (tenancy transfer and sublet by the tenant) **become urgent applications**.

5.11 Residential Tenancy Databases

Current tenancy laws identify the restrictions on listings on a tenancy database (s459), however TQ advises numerous renters where the restrictions have not been complied with. Commonly this involves allegations of end of tenancy debt, unsubstantiated by a Tribunal order or agreement. If not agreed, claims of this nature made by agents and lessors can be taken as bond disputes or as breaches of agreement to the Tribunal.

Faced with a tenancy database listing made in contravention of s4589, a tenant's only option is to apply to the Tribunal for a removal. At best, the process or finding out about the listing, applying and appearing in the Tribunal will take weeks to conclude. During this time, the listed person is often facing or experiencing homelessness.

To bring better compliance with the current law, TQ recommends that non-compliance with s459(1) should be an offence with penalty units attached.