

13 July 2021

Our ref: WD/BDS/BT/KS: MC

Committee Secretary
Community Support and Services Committee
Parliament House
George Street
Brisbane Qld 4000

By email: CSSC@parliament.qld.gov.au

Dear Committee Secretary

Housing Legislation Amendment Bill 2021

Thank you for the opportunity to provide feedback on the Housing Legislation Amendment Bill 2021 (**Bill**).

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law and help protect the rights of individuals. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been prepared with the assistance of the QLS Property and Development Law Committee.

QLS has raised concerns about the specific issues below. By not commenting on other provisions in the Bill, this should not be taken as support or otherwise for the legislation.

Executive Summary

- QLS broadly supports the intention to review and modernise rental laws in Queensland.
- While QLS supports the proposed grounds on which tenancies can end "without grounds", they may not account for the wide variety of personal circumstances that may precipitate a lessor's need to end a tenancy. However, QLS welcomes the decision not to prohibit a lessor from bringing a tenancy to an end for "no reason" other than reaching the end of the contractual lease period. This is consistent with the fundamental nature of a contract, under which the parties reach agreement at the outset that the contract is for a specified period.

- We recommend the definition of “immediate family” in the proposed new section 290G of the *Residential Tenancies and Rooming Accommodation Act 2008 (RTRA Act)* be revisited, as the current drafting is too narrow.
- QLS is concerned the Bill appears to omit any provision for a lessor to give a notice to leave “without ground” for a periodic agreement. QLS does not support this approach. Periodic agreements generally arise following the end of a fixed term agreement and are for the convenience of both parties. The Bill should be amended to permit a lessor to give a notice to leave “without ground” for a periodic agreement. A reasonable time would appear to be 2 months after the notice is given to the tenant, similar to the notice to leave period for the end of a fixed term agreement.¹
- QLS supports the reforms in relation to providing support to tenants attempting to escape domestic and family violence.
- There are a number of proposals in the legislation providing for disputes to be referred to QCAT. We are aware QCAT is experiencing significant delays in hearing matters due to resource challenges. It is critical QCAT is allocated appropriate resources and funding to ensure such disputes are resolved in a timely manner, given they affect crucial rights of the affected parties, being residential security for tenants and an owner’s property rights.

Grounds on which tenancies can be ended

QLS welcomes the decision not to prohibit a lessor from bringing a tenancy to an end for “no reason” other than reaching the end of the contractual lease period. This is consistent with the fundamental nature of a contract, under which the parties reach agreement at the outset that the contract is for a specified period.

However, QLS raises two issues of concern with this aspect of the Bill.

Definition of ‘immediate family’ in new section 290G of the RTRA Act

While QLS generally supports the proposed grounds on which tenancies can end “without grounds”, they may not account for the wide variety of personal circumstances that may precipitate a lessor’s need to end a tenancy.

For example, clause 58 of the legislation proposes to insert a new section 290G in the RTRA Act, providing that a lessor may give a notice to leave the premises to the tenant if the lessor, or the lessor’s immediate family, needs to occupy the premises.

QLS considers that the definition of “immediate family” is too narrowly defined, and may not take into account all of the lessor’s personal circumstances. In particular, subsection (4)(d)

¹ See clause 67 which omits current section 329 of the *Residential Tenancies and Rooming Accommodation Act 2008 (RTRA Act)* and new Schedule 1, Part 1, Division 2 Notices to leave for premises other than moveable dwelling premises, which does not replicate current section 329(2)(j) of the RTRA. See also amended section 291 which provides for notice to leave for the end of a fixed term agreement.

includes “another person who normally lives with the lessor and is dependent on the lessor for health care or financial support.”

It is QLS’ view that subsection (4)(d) should be amended to provide for “another person who normally lives with the lessor or is dependent on the lessor for health care or financial support.” This would account, for example, for circumstances where the lessor provides financial support to a sibling, aunt or uncle or close friend who is not otherwise captured under the definition of “immediate family” because they do not live with the lessor.

Periodic agreements

QLS is concerned the Bill appears to omit any provision for a lessor to give a notice to leave “without ground” for a periodic agreement. QLS does not support this approach.

Periodic tenancies generally arise following the end of a fixed term agreement and are for the convenience of both parties. Periodic agreements (and ending periodic agreements) should be treated in the same way as a fixed term agreement.

The Bill should be amended to permit a lessor to give a notice to leave “without ground” for a periodic agreement. A reasonable time would appear to be 2 months after the notice is given to the tenant, similar to the notice to leave period for the end of a fixed term agreement.

The current Bill will have the effect that periodic tenancies can only be brought to an end for the specified reasons in sections 281 to 291 (including the new sections 290B to G inserted by the Bill). This is contrary to the general understanding of a periodic tenancy, which is a ‘rolling’ tenancy which can be brought to an end by either party giving the appropriate period of notice.

There are unintended consequences which will flow from this approach. It would seem likely that lessors will prefer not to enter into any periodic tenancies with a tenant when the fixed term agreement expires, given that under the Bill, there will be limited capacity to bring the periodic tenancy to an end. Instead, if a lessor is not in a position to grant a further fixed term agreement, a lessor will likely require a tenant to leave at the end of the fixed term agreement rather than agreeing to extend for a short period of time. This would reduce the flexibility available to a tenant (and the lessor) where a short period of extension might otherwise suit both parties.

It would appear the reason for removing the ability to give notice to leave “without ground” for a periodic agreement is to improve security for tenants.

QLS suggests that alternative options for achieving greater security for tenants include:

- Providing appropriate funding to community legal centres to assist tenants who seek to enforce their rights against the landlord, so that tenants can legitimately challenge a retaliatory termination or other improper action; and
- Encouraging landlords to consider offering longer fixed term leases to tenants from the outset. It is to the benefit of the landlord to have the property securely leased for a longer period of time, where the longer term arrangement suits both landlord and tenant.

Domestic and Family Violence Protections

Overall, we support the amendments which are intended strengthen tenancy laws in a manner that better protects people attempting to escape domestic and family violence.

QLS has consistently advocated for measures to support and protect people experiencing domestic and family violence. We acknowledge the devastation of domestic and family violence on individuals and families in our community.

The time leading up to and immediately after leaving a violent relationship can be the most dangerous for a person experiencing violence. We agree that tenancy reform is critical in increasing safety for people experiencing domestic and family violence, potentially preventing further violence and reducing homelessness.

We expect there would be some inconvenience caused to a lessor in these circumstances, however, in our view, the recommended options appropriately balance the interests of tenants and lessors, in consideration of the seriousness of domestic and family violence.

As such a reform is a governmental policy response to address a social issue, QLS recommends that consideration be given to establishing a State government fund which can recompense landlords who are adversely affected financially by these changes. QLS also recommends the State government advocate to insurance providers to encourage the availability of landlord insurance cover for loss of rental and property damage in these situations.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Kara Thomson
Vice President