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Renting in Queensland,
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20th December 2019

RE: REVIEW OF THE RESIDENTIAL TENANCIES AND ROOMING ACCOMMODATION ACT 2008

We thank you for the opportunity to make a submission in relation to the proposed changes to the Tenancy Law. We note the many important issues that are sought to be addressed.

Preliminary Consideration: Our Background for Meaningful Comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 26 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander people.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout the entirety of Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by four and a half decades of legal practise at the coalface of the justice arena and we therefore believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

COMMENT

We welcome the consideration of improvements to the tenancy law of Queensland and note the considerable impact that improvements to the law will have for Aboriginal and Torres Strait Islanders living in Queensland.¹ The particular issue we wish to comment upon is the need for renters to achieve safe and secure housing, an issue which touches upon three of the modules identified for feedback, namely:

- a) Minor Modifications;
- b) Domestic and Family Violence; and
- c) Minimum Housing Standards.

Minor Modifications – comment on options

Presently, under the current Act, tenants must have written permission from an owner to attach fixtures or make structural changes to a rental property. By law, owners cannot reasonably refuse a request, but they can add conditions to the permission. Currently there is no definition of what fixtures and structural changes are.

Anecdotally, it can be quite difficult for renters to get agreement for quite reasonable modifications. One story included a client's wish to accede to a Child Safety demand to modify the premises to include a suitably lockable gate to avoid children escaping onto the road, but the clients were told by the landlord that they would be in breach of the lease if they complied with the requirement to make such modifications. The prospect of taking on an unreasonable refusal by the landlord is often overwhelming for the tenant and creates worries about the precariousness of renewals of leases.

We would support option 3, which establishes mechanisms to manage minor modifications with appropriate safeguards for property owners to protect their investment. This includes notices and notice periods, reasonable grounds for refusing requests for minor modification for tenants' amenity or personalisation, with the onus falling on the owners to seek a QCAT order to refuse health, safety, accessibility or security modifications. In our view that would create a fairer and more reasonable balance of interests between the parties.

Domestic and Family Violence – comment on options

With respect to proposed changes to the *Residential Tenancies and Rooming Accommodation Act 2008* to improve tenancy law protections for tenants experiencing domestic and family violence, the changes proposed under option 3, which would allow tenants to end tenancies quickly, access part rental bonds or install safety and security measures, appear both practical and sensible. Tenants should be able to achieve reasonable levels of safety and security by installing safety and security measures without the impediments that they currently face. While the notice times may need to be considerably truncated compared to those proposed for minor modifications, there should also be reasonable grounds for refusal by the landlord such as when added security measures would not comply with fire regulations.

¹ We note the Queensland Government Statistician's Office report estimating the proportion of Aboriginal and Torres Strait Islander households living in rental accommodation (42.3%) compared with Other households (29.9%). Source: Aboriginal and Torres Strait Islander peoples in Queensland, Census 2016 available at <https://www.qgso.qld.gov.au/issues/2796/aboriginal-torres-strait-islander-peoples-qld-census-2016.pdf>

There would also be room for abuse – such as a tenant manufacturing a claim of domestic violence in order to ‘escape’ required notice periods or indeed, fulfilling the term of the lease. Accordingly, some safeguards, such as the need for a related police report, could be considered.

Minimum Housing Standards – comment on options

In our view the current law is inadequate for dealing with deficiencies in dwellings when safety and habitability of the residence is sub-standard, especially at the cheapest end of the market. We support Option 5 which combines the features of both option 3 and option 4.

While it is important to make the improvements envisaged in option 3, that is to increase the time given for tenants to complete the entry condition report, to provide tenants with contact details for nominated repairers and property owners and to increase the amount tenants can authorise for emergency repairs, to allow property managers to authorise repairs up to a set amount, and to enhance QCAT repair orders, these measures are not enough by themselves. The current remedies, even if strengthened in accordance with option 3, place the tenant on a collision course with the landlord which in turn is likely ultimately to result in loss of housing for the tenant. Relying on the actions of the party with the weakest position is an ineffective mechanism for ensuring residences are habitable. The imposition of objective standards as outlined in option 4 combined with more effective compliance and enforcement will provide an effective means of ensuring that rental dwellings, especially ones at the cheapest end of the market, are safe, secure and functional.

We thank you for the opportunity to provide comment and thank you for your careful consideration of these submissions.

Yours faithfully,

Mr. Shane Duffy
Chief Executive Officer
ATSILS (Qld) Ltd.