

Inquiry into the worsening rental crisis in Australia

Brisbane hearing – 23 August 2023

Question on Notice from the Chair, Senator Janet Rice

Answer due COB 30 August 2023

Real Estate Institute of Queensland (REIQ)

1. Please take on notice—and I don't know whether you have a view on this—whether you think landlords should be licensed.

29 August 2023

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Canberra ACT 2600

By Email: Community.Affairs.Sen@aph.gov.au

Dear Committee,

**RE: SENATE INQUIRY - THE WORSENING RENTAL CRISIS
RESPONSE TO QUESTION ON NOTICE – LESSOR LICENSING AND REGISTRATION**

The Real Estate Institute of Queensland (the **REIQ**) appreciates the opportunity to provide our position on whether lessors should be licensed in Australia, in response to the Question on Notice from Senator Janet Rice at the Public Hearing for the Inquiry into the worsening rental crisis in Australia in Brisbane on 23 August 2023 (**Public Hearing**).

Scope of Lessor Licensing

The proposal of a lessor licence scheme in Australia was raised by Tenants Queensland (**TQ**) in their written and oral submissions at the Public Hearing. The scope of the proposal, however, was not discussed in any detail. On this matter, TQ has previously stated:

A register could lift the professionalism and standard of Queensland landlords, not just through a fit and proper person test, but by requiring engagement with landlord training and education on entry and at intervals ... 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.¹

For the purpose of this Submission, we presume the introduction of a lessor licensing and registration scheme would involve:

1. the implementation and maintenance of a public register of lessors;
2. licensing eligibility criteria including a minimum education/qualification or undertaking and a 'fit and proper' person test;
3. ongoing professional development obligations to maintain registration;
4. Government administered mechanisms for compliance monitoring, enforcement and penalisation of lessors; and
5. multi-level Government funding and collaboration to develop the necessary infrastructure to deliver this scheme.

¹ Paper to the Queensland Housing Summit (October 2022) Tenants Queensland: <https://tenantsqld.org.au/wp-content/uploads/2023/05/Tenants-Queensland-Housing-Summit-paper.pdf>

Our position

We do not support the introduction of a lessor licensing scheme in Australia, ultimately because, we believe the significant cost and administrative burden of establishing, implementing and enforcing same significantly outweighs any perceived benefit a register may have on the current rental housing crisis or tenants' experience of renting in Australia.

Data and privacy

The proposal for a public register, while seemingly intended to enhance transparency and regulatory oversight, raises significant concerns given that same will involve the collection of personal and property related information for over 2.6 million homes².

In our view, there is a strong argument that collecting the type of information needed could infringe upon the privacy rights of individuals who participate in the rental market, including both lessors and tenants.

A significant concern is the potential for the data collected through such a register to be misused or mishandled.

Implementation

Unless a new statutory authority was established to administer this scheme, the burden of administering and maintaining a register would place a significant strain on local Governments, particularly those with limited resources.

The costs associated with setting up and managing the register and licensing scheme would in our view, divert resources away from initiatives that may have a more meaningful impact on housing supply and affordability.

In order to implement this proposal, on the basis of our presumed scope above, the Government would need to:

1. develop and pass legislation that establishes a legal basis for a lessor register and licensing scheme:
 - a. with a defined scope and purpose including types of information that will be collected;
 - b. establishing a statutory authority to be responsible for the administration of the scheme;
 - c. determining the initial and ongoing qualifying educational requirements and criteria for licensing;
 - d. stipulating obligations and responsibilities of all stakeholders;
 - e. providing a mechanism for compliance oversight and enforcement;
2. develop the infrastructure to deliver the scheme, including a secure online system to collect and publish information for the public register, or, should the scheme be administered by local governments, upgrade existing systems;

² ABS Census 2021

3. establish the Government body to oversee the administration of the scheme including verification of licensing requirements and the oversight of compliance and enforcement;
4. develop and deliver nationwide the education and training required under the scheme to meet qualifying criteria for licensing and any ongoing education requirements, including for international lessors;
5. create a national awareness campaign to inform and educate stakeholders of the new scheme;
6. oversee and monitor the registration of 2.6 million homes;
7. establish the infrastructure needed for enforcement, for example, a system for identifying offences, issuing fines, debt collection and taking other legal action;
8. facilitate the integration of information held at Local, State and Federal Government bodies such as the ATO, State revenue offices, RTA's and LGA's.

This list is not exhaustive and there are likely additional actions required to establish a lessor registration and licensing scheme in Australia. Enacting such a significant transformation within our existing tenancy and property law framework will inevitably give rise to a considerable administrative workload and associated expenses.

Costs

As outlined above, a significant and ongoing investment from Federal, State and Local Governments across Australia is integral for a lessor registration and licensing scheme to be established.

Additionally, the cost to the consumer cannot be overlooked. TQ state that the scheme could be self-funded through a registration fee.

In our view, lessors should not be required to pay a fee to the Government to provide housing to Australians as part of a registration system imposed upon them.

In any event, as seen in other jurisdictions noted below, any fees a lessor is required to pay will likely ultimately be passed on to the tenant. For this reason, imposing a registration fee may lead to further rental affordability issues.

Compliance

One of the key positions in support of a lessor register is the perception that tenancy law compliance will be improved and the number of lessors breaching their legal obligations will be reduced if they are being monitored by the Government.

As noted in our previous Submission and at the Public Hearing, we believe the data shows that the prevalence of lessor non-compliance is overrepresented by some stakeholders and the media.

In Queensland there are approximately 624,427 tenancies³. The reported statistics indicate that the actual instances of disputes and breaches are relatively low compared to the total number of tenancies.

Out of these tenancies, there were only 19,733 conciliated disputes (3.1% of tenancies), 241 investigations into RTRA Act breaches (with 243 requests received), and merely 13,089 bond dispute resolution requests in financial year 2021/22. These figures suggest that the majority of tenancy agreements are conducted amicably, with only a very small fraction encountering disputes or breaches.

We note at the Public Hearing, TQ claimed that tenants may have trouble accessing information on the RTA website to help them make a complaint against lessors, and that this has led to low reporting.

The above figures are notwithstanding that the RTA received in the same period 368,695 phone enquiries to the Contact Centre, being an average of 1,440 calls each working day. The REIQ has a proud history of working with the RTA and can attest to the knowledge and professionalism of employees that provide advice to and assist tenants.

In the same reporting period, TQ via its Queensland Statewide Tenant Advice and Referral Service (QSTARS) assisted 35,200 persons⁴, being comparatively less than 5% of tenancies in Queensland.

There is strong anecdotal evidence, as seen throughout the Senate Inquiry process, that increased social housing is desperately needed for those who are most vulnerable in our communities, that are presently forced to rent in the private sector. Data does not, however, support assertions that lessor non-compliance is as widespread as claimed, or the cause of poor experiences of vulnerable tenants.

Presently in Queensland, lessors and property managers can be penalised under almost 70 sections of the RTRA Act⁵.

³ RTA Annual Report 2022

⁴ TQ Annual Report 2022

⁵ Residential Tenancies and Rooming Accommodation Act 2008 (Qld), ss 53 - Contracting out, 57 - Advertising with no fixed rent amount, 57 - Accepting Bond for property with no fixed rent, 57a - Must disclose particular information, 57a - Accepting Bond for property with no particular information, 58 - Must give tenant particular information to prospective tenant, 59 - Taking restricted amounts from prospective tenant, 61 - Not having a Tenancy Agreement in writing, 61 - Not giving the Tenancy agreement to tenant on day of or before, 62 - Not giving tenant copy of agreement, 63 - Not keeping Agreement for 1 year, 65 - Not supplying and signing an ECR on day of occupation, 65 - Returning a signed ECR copy to tenant, 65 - Not keeping the ECR for 1 year, 67 - Not providing a tenant with an information statement, 69 - Not providing Body Corp Laws to tenant, 84 - Not providing tenant with approved options for rental payments, 87 - Requiring rent to be in advance more than prescribed amount, 87 - Requiring rent payment when already paid, 88 - Not providing a receipt when rent in cash, 88 - Not providing a receipt if asked, 88 - Not keeping a record of payment or providing to tenant when asked, 89 - Not keeping records of payments for 1 year, 90 - False or misleading rental payments, 93 - Increasing rent more than every 6 months, 95 - Seizing tenants goods for rent, 96 - Receipting rent to any other purpose, 116 - Not forwarding Bond to RTA within 10 days, 117 - Failure to forward instalment Bond to RTA, 145 - Failure to give a receipt for rental Bond, 145 - Failure to keep the records for 1 year, 146 - Accepting a rental Bond more than allowed amount, 157 - Not providing a key deposit receipt, 158 - Not refunding a key deposit, 159 - Accepting another holding deposit, 160 - Not providing a receipt for holding deposit, 161 - Failure of obligations of holding deposit, 171 - Requiring tenant to buy goods or services from a person in an agreement, 172 - Receiving incentive amount other than prescribed funds, 173 - Including voided terms of the agreement, 183 - interfering with quiet enjoyment of tenant, 202 - Unlawful entry, 203 - Using photos of tenant possessions in advertising without consent, 204 - Conducting open house without consent, 206 - No providing tenant with name and address of lessor or agent, 206 - Not providing tenant with change of detail in agreement, 211 - Providing a key (when tenant changed locks) to another person without tenant consent, 221c - Failure to comply with repair order, 221c - Penalty for repair order each week it is unresolved, 240 - Requiring tenant to pay more than reasonable expenses for subletting or transfer, 308i - Breaching confidentiality of DV, 317 - Not providing 2 months' notice for mortgagee possession, 353 - Recovering possession of property other an approved action, 363 - Selling goods belonging to tenant, 364 - Failure to forward personal belongings to tenant, 365a - False or misleading information on a Notice to leave, 365b - NTL sent for selling - Can not rent for 6 months, 365c - NTL for change of use - Can not rent for 6 months, 365d - NTL for owner occupation - Can not rent for 6 months, 409 - Recording a conciliation process, 458a - Not advising tenant of database checks, 458b - Not advising tenant of database listing, 459 - Breaching listing on tenancy database, 459 - Providing false information to tenancy database, 459d - Keeping information in tenancy database for more than 3 years, 463 - Breach of tribunal order, 514 - False or misleading documents to Authority, 527 - Breach of confidentiality

In comparison, there are only 4 sections which impose a penalty on a tenant for breaching the RTRA Act⁶.

For example, on 1 October 2022, new provisions commenced to protect tenants from retaliation, so that lessors cannot **end a tenancy agreement** or **refuse to enter into a new tenancy agreement** on the basis that⁷:

- (i) the tenant has taken action to enforce their rights, including by giving the lessor a notice to remedy breach, requesting repairs or maintenance to the premises or inclusions, or requiring the lessor to reimburse the tenant for an amount properly incurred by the tenant for emergency repairs, or applying for an order from QCAT;
- (ii) the lessor or property manager knows the tenant has complained to the RTA or another government entity about an act or omission of the lessor that adversely affected the tenant; or
- (iii) an order of QCAT is in force in relation to the lessor and tenant.

If the lessor tries to end the tenancy agreement (even at the end of a fixed term) or refuses to renew an agreement, the tenant can apply to QCAT to set aside the Notice to Leave and compel the lessor to enter into a new agreement.

Since 1 October 2022, we have already received numerous reports of matters where QCAT has upheld a tenancy and set aside an otherwise valid Notice to Leave for end of fixed term tenancy, on the basis that same was given chronologically after a tenant had requested repairs and maintenance to be undertaken to the property.

In most cases, these provisions will greatly benefit tenants. It was disappointing to see during the Public Hearing, the narrative that tenants are too scared to request repairs and maintenance on the basis of fearing their tenancy will be ended or will not be renewed.

Given that TQ is a well Government-funded tenant advocate and education body, they must do more to ensure tenants are provided with information about their existing rights. We call on them to provide a State-wide education campaign for tenants to ensure there is a more widespread understanding of existing protections for tenants under the RTRA Act, including under s 246A.

We agree that more can be done to encourage private lessors, that do not engage the services of a professional property manager, to educate themselves about tenancy laws, their obligations, and tenants' entitlements under the law.

We believe this can be effectively achieved through education targeted at those small number of lessors that do the wrong thing, rather than implementing a costly and harmful system that seeks to punish all lessors.

⁶ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), 65 – 3 – Not returning an ECR, 205 – Providing a false name or place of employment, 205 – Not providing a forwarding address (unless they have a reasonable excuse), 354 – Obstructing a Warrant of Possession (unless they have an excuse)

⁷ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), s246A

If it is proposed that the relevant Government authority could undertake inspections of a rental property on the register to determine compliance, we question whether this would extend to tenants as well. For example, if during the inspection, it was apparent that the tenant was in breach of the tenancy agreement, how would this be treated?

It is not reasonable or fair to develop policy that requires one party to comply with their legal obligations, but not the other. Both the lessor and tenant have legal obligations with respect to the property that must be complied with.

Enforcement

The imposition of fines, imprisonment, suspensions, or even compelling a lessor to withdraw their property from the rental market, all appear to be enforcement approaches that, from our perspective, could pose significant challenges.

Any punishment which could potentially lead to a lessor being prohibited from renting their property is, for very obvious reasons, highly damaging to our private rental market.

Additionally, such extensive government intervention in our view, opposes the fundamental rights that each Australian is entitled to under our legal system.

Punishments should be commensurate with an offense, avoiding excessive and disproportionate measures. Penalising lessors with fines or imprisonment for matters related to property management, goes beyond what is already regarded as acceptable to our society and could be seen as an overreach of state power, infringing upon property rights and individual liberties.

Introducing severe penalties for property-related issues may in our view, undermine the core principles of equality before the law and the protection of individual rights, which are cornerstones of a well-functioning liberal democracy.

However, unless robust penalties are in place, there is no deterrent for failing to register a property or comply with the licensing scheme. This presents a critical flaw in the proposal.

Unless the Government is willing to venture into such dangerous policy-making, then introducing a lessor licensing and registration scheme will be futile.

International Outcomes

If this proposal is being seriously considered, we strongly recommend a Regulatory Impact Statement is prepared by the Government to analyse and evaluate the experiences of international jurisdictions that have introduced similar measures.

For example, TQ mentioned in their oral submissions that similar measures exist in Scotland. Brief research into the Landlord Registration Scheme and current state of the private rental market in Scotland are disparaging.

The mandatory private landlord registration scheme was first implemented in 2006⁸. Since, there has been frequent reviews into the scheme due to systemic failings. A review in 2011 found that “evidence collected suggests that Landlord Registration has not removed the 'worst' landlords from the sector⁹.”

Importantly, it should be noted that the private rental sector in Scotland is not comparable to our property landscape in Australia. There are only around 340,000 households on the private rental market in Scotland, being around a seventh of all homes¹⁰. Institutional investment, build-to-rent schemes and landlord business enterprises are also much more prevalent in Scotland than Australia.

In Australia, the rental market relies almost exclusively on private investors to provide housing for tenants. Private investors currently provide 91% of housing for tenants in Australia, being over 2.6 million homes¹¹.

The system in Scotland is heavily reliant on local government authorities to administer the register and determine whether a lessor is a ‘fit and proper person’ for registration.

Under this system, if a lessor rents out a property without being registered, the penalties are:

- fines of up to £50,000;
- being banned from being registered for up to 5 years; and
- being served with a notice stating that rent will not be payable on your property for a certain period.

Notwithstanding the landlord register, Scotland is currently in the grips of a housing crisis that many believe was exacerbated by failed rental controls (similar to those proposed by the Australian Greens) being introduced on 27 October 2022¹²:

As many private landlords have been effectively legislated out of viability by a succession of changes to regulation within the sector, from removal of tax reliefs to the second increase of Additional Dwelling Supplement (ADS) to 6 per cent, it was hoped that institutional investors would step in to fill the shortage of housing in the Private Rental Sector. However, a number of factors including political intervention in the sector, continues to exacerbate the situation. This means that many people in acute need often cannot be accommodated in the properties we manage. We would love to accommodate them, but there just is not the stock.¹³

There are other jurisdictions with nationwide lessor registers that could be evaluated such as China and Russia.

Some local government jurisdictions in the United States of America have implemented less cumbersome lessor registers, with varying degrees of success. For example, in Baltimore it is reported that over half of the rental properties in the city are unlicensed and unregistered¹⁴.

⁸ Scottish Landlord Register information: <https://www.gov.scot/publications/foi-202100238560/>

⁹ Evaluation of the Impact and Operation of Landlord Registration in Scotland, Freya Lees & Dr. John Boyle, DTZ:

<https://www.webarchive.org.uk/wayback/archive/20170107122524/http://www.gov.scot/Publications/2011/07/13111732/0>

¹⁰ Private Sector Rent Statistics, Scotland, 2010 to 2022, Scottish Government (29 November 2022),

<https://www.gov.scot/publications/private-sector-rent-statistics-scotland-2010-2022/pages/11/>

¹¹ ABS Census 2021

¹² Scottish Rent Controls Have Lost Their Shine, LandlordVision (27 July 2023), <https://www.landlordvision.co.uk/blog/scottish-rent-controls/>

¹³ BTR Market Review summer 2023, Rettie https://mr1.homeflow-assets.co.uk/files/site_asset/image/5770/6024/BTR_Briefing_Summer_2023_-_FINAL.pdf

¹⁴ <https://www.wbaltv.com/article/rental-properties-baltimore-licenses-unlicensed-assistance/43316786#>

This level of government intervention departing from balanced and proportionate policy demands thorough and robust consideration including an evaluation of outcomes of comparable jurisdictions. Additionally, a cost-benefit analysis must be undertaken to properly understand the cost to Government and consumers.

Mandatory CPD for property managers in Queensland

Throughout Australia, the majority of rental properties are managed by professional property managers. Partnering with property managers can ensure lessors are provided with expert guidance and assistance, so that they remain compliant with complex and evolving legal regulations.

As the peak body for real estate in Queensland, the REIQ is committed to education and training to ensure high levels of professionalism in the property management sector. Our commitment to this is reflected in our self-funded free Property Management Support Service for members and our various state-wide training programs and resources.

In our experience, the vast majority of property managers are committed to doing the right thing by their clients and tenants. Unfortunately, as in all industries, there are exceptions and those who act outside the legislative requirements and best practice standards. We've heard of some examples of this during the Public Hearing.

The REIQ has advocated for the past decade for the Queensland Government to help address this by introducing mandatory continuing professional development requirements for real estate professionals in Queensland, as is the case in other jurisdictions. The REIQ calls on the National Cabinet to address this with the Queensland Government to encourage progress on this important matter.

Conclusion

For the reasons outlined in this Submission, we do not support a lessor licensing and registration scheme in Australia. There is no evidence to support that the nominal perceived benefits of a lessor registration and licensing scheme justify the evident burden to lessors, all levels of Government, and the taxpayer.

Our laws must be drafted with a balanced perspective, rather than being solely reactive to the experiences of a minority. The broader societal context must be considered, encompassing the diverse needs, values and interests of the entire population.

While understanding poor tenant experiences are crucial to acknowledging and addressing injustices, a well-rounded approach incorporating input from all stakeholders is essential to avoid undue bias.

As suggested in this submission, there are many less prejudicial measures that could be considered to enhance the housing sector and improve a tenants' experience of renting.



If you have any queries or wish to discuss, please contact Katrina Beavon, REIQ General Counsel and Company Secretary on kbeavon@reiq.com.au or on 07 3249 7303.

Yours sincerely

A handwritten signature in black ink, appearing to read 'AM', written over a horizontal line.

Antonia Mercorella
Chief Executive Officer