



**Queensland Public Interest Law Clearing House
Incorporated**

**HOMELESS PERSONS'
LEGAL CLINIC**

SUBMISSION

Policy Review Paper
Review of the *Residential Tenancies Act 1994*

June 2007

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Summary of recommendations

Recommendation 1: That coverage of the Tenancies Act be extended to include boarders and lodgers.

Recommendation 2: That a statutory definition for boarders and lodgers be provided in the Tenancies Act.

Recommendation 3: That the incorporation of the Accommodation Act into the Tenancies Act as separate sections guarantees equal rights, protections and obligations across all tenures.

Recommendation 4: That a system of regulating rent be introduced to protect low income earners. This would involve a mechanism for recognising low income tenancies and would ensure that:

- a) the frequency of rent increases for low income tenancies would be limited to 12 monthly intervals; and
- b) rent increases for low income tenancies would be fixed to increases in the Consumer Price Index.

Recommendation 5: That without grounds terminations be applicable only to high income tenancies. This can be achieved by establishing a mechanism for recognising low income tenancies as per recommendation 4.

Recommendation 6: That the timeframe for storage of goods under the Tenancies Act be extended to 60 days.

Recommendation 7: That the Tenancies Act include a provision requiring the lessor to provide evidence in support of their reasonable belief of the prescribed value for goods.

Recommendation 8: That the prescribed value for goods be reduced to \$500.

Recommendation 9: That the Tenancies Act be amended to require real estate agents, upon listing, to provide listed tenants with information about:

- what listings are allowable under Queensland law;
- their rights;
- how to access personal information held by Private Tenancy Database operators;
- specific information about how to have a listing removed if a tenant believes it is inaccurate or unjust; and
- time frames for doing so.

This information could be provided by way of a standard form set out in the Schedule of the Act.

Recommendation 10: That the Tenancies Act be amended to enable the Small Claims Tribunal to award compensation against a real estate agent who makes a listing in breach of s284C or who makes a knowingly unjust, misleading or inaccurate listing.

Recommendation 11: That the Tenancies Act be amended such that a listing can only remain on a database for 12 months, after which time the listing agent must ensure that the listing is completely removed.

Recommendation 12: That Private Tenancy Database operators be required to provide a system for free and immediate access to personal information such as by a secure internet site which, for access, requires various unique personal identification numbers, such as license or passport number.

Recommendation 13: That a Tenancy Tribunal be established to specialise in issues arising out of the Tenancies Act and the Accommodation Act. Its procedure and monetary jurisdiction should be similar to that of the Small Claims Tribunal however it should:

1. record its decisions including written reasons;
2. allow public access;
3. allow appeals on the merits and/or points of law; and
4. be empowered to consider & award compensation for matters of non-economic loss.

Recommendation 14: That if a specialist Tenancy Tribunal is not established, the Small Claims Tribunal should be reformed such that it should:

1. record its decisions including written reasons;
2. allow public access;
3. allow appeals on the merits and/or points of law; and
4. be empowered to consider & award compensation for matters of non-economic loss.

Introduction

The Homeless Persons' Legal Clinic is grateful for the opportunity to respond to the Policy Review Paper regarding review of the *Residential Tenancies Act 1994* (**the Tenancies Act**).

QPILCH

The Queensland Public Interest Law Clearing House Inc. (**QPILCH**) is a non-profit community legal service that coordinates the provision of pro bono legal services in public interest matters for individuals and community organisations.

The Homeless Persons' Legal Clinic

The Homeless Persons' Legal Clinic (**HPLC**) is a project of QPILCH. It provides free legal advice and assistance to people experiencing or at risk of homelessness at 10 outreach locations in Brisbane and Toowoomba. The types of legal assistance focus on civil law matters and include a wide variety of areas of law, including credit, debt, employment, discrimination, housing & tenancy law issues. Providing legal services through an outreach model aims to remove a structural barrier to accessing the law for people whose legal issues would otherwise likely go unaddressed.

Each clinic is staffed by volunteer lawyers from private law firms on a rostered basis and in total, approximately 150 lawyers from 11 private law firms in Brisbane actively participate in the HPLC. Current HPLC Clinic location and operating times include:

Clinic	Operating time
Brisbane Homelessness Service Centre South Brisbane	Tuesday 8.30am to 10.30am
Anglican Women's Hostel New Farm	Fortnightly Tuesday 10am to 11am
Red Cross Youth Night Café City Hall, Adelaide Street	Tuesday 7pm to 9pm
Salvation Army Pindari Men's Hostel Spring Hill	Tuesday 9.30am to 10.30am
Salvation Army Pindari Women's Hostel Spring Hill	Fortnightly Wednesday 12noon to 2pm
Mission Australia Café One Fortitude Valley	Thursday 9am to 11am
4AAA Kiosk Boundary Street, West End	Friday 12.30 to 1.30pm
HART4000 Eagle Terrace, Brisbane City	Fortnightly Tuesday 10am to 11am

Due to previous resource constraints, this submission is the first opportunity that the HPLC has had to contribute to the Tenancies Act Review. The HPLC is well placed to respond to the review as it:

- is the only legal service dedicated to addressing the legal needs of homeless people in Brisbane; and
- has direct experience in assisting clients with housing and tenancy law issues that are governed by the Tenancies Act and the *Residential Services (Accommodation) Act 2002* (**the Accommodation Act**).

Homelessness defined

Homelessness means more than not simply having a roof over one's head. In Australia, the most recognised definition of homelessness is one which categorises homeless as primary, secondary or tertiary homelessness.¹

- *Primary homelessness* refers to people without conventional accommodation, such as sleeping rough in parks or on the streets, squatting, living in vehicles or in improvised dwellings.
- *Secondary homelessness* refers to people moving between various forms of temporary shelter, such as refuges, emergency hostel accommodation or 'couch surfing' between the homes of family and friends.
- *Tertiary homelessness* is where a person lives in a boarding house on a medium to long-term basis.

A fourth category of those who are 'marginally housed' is comprised of those who live in caravan parks because they are unable to afford or find alternative accommodation.

In addition to housing status, homelessness also refers to a person's feelings of disconnection and exclusion from society.² Being "at home" therefore incorporates subjective feelings of personal safety, connectedness with one's community and a sense of personal autonomy and control.

How big an issue is homelessness in Queensland?

On any given night, more than 20,000 people are homeless in Queensland. The Australian Bureau of Statistics estimates that on the night of the 2001 census, 24,596 Queenslanders were homeless.³ Of that number, an estimated 16% of people were primary homeless, 62% secondary homeless and 22% tertiary homeless. The rate of homelessness for Queensland in 2001 was 69.8 per 10,000, the second highest in Australia. In 2003, a census by the Brisbane Homelessness Taskforce estimated that on one particular night, there were 345 homeless people sleeping rough or staying in crisis accommodation within three kilometres of Brisbane City Hall.⁴

Causes of homelessness

Causes of homelessness are complex and varied, however they are generally acknowledged to include:

- *structural causes* (poverty, unemployment and inadequate supply of affordable housing);

¹ Chris Chamberlain and David MacKenzie, 'Understanding Contemporary Homelessness: Issues of Definition and Meaning' (1992) 27 *Australian Journal of Social Issues* 274

² See Council to Homeless Persons Information Sheet Number 1, http://www.chp.org.au/public_library/items/2005/03/00055-upload-00001.doc Accessed 26 June 2007.

³ Chamberlain and MacKenzie, 'Counting the Homeless - Queensland' 2004 http://www.salvationarmy.org.au/reports/Counting_The_Homeless/SWI002_Old_report.pdf Accessed 26 June 2007

⁴ See <http://www.qshelter.asn.au> & City South Homelessness Profile, Brisbane City Council http://www.brisbane.qld.gov.au/bccwr/plans_and_strategies/documents/cs_homelessness_profile.pdf at 7. Accessed 26 June 2007.

- *fiscal, social and public policy causes* (taxation policy and expenditure on public and community housing, health care, education and vocational training);
- *individual causes* (ill health, mental illness, intellectual disability, substance and alcohol dependency, problem gambling, domestic violence, family breakdown);
- *cultural causes* (the provision of culturally inappropriate housing or support services to indigenous communities).

In many cases of homelessness, these causes intersect and interrelate.⁴

Submission focus

This submission does not attempt to address every recommendation contained within the Policy Review Paper. We have deliberately focused on a number of key areas that we see as being particularly relevant for people experiencing or at risk of homelessness, namely:

- Coverage of the Act;
- Rent increases;
- Without grounds terminations;
- Dispute resolution process;
- Goods left behind; and
- Private tenancy databases.

Coverage

The HPLC shares the view that the Tenancies Act provides a higher degree of protection for residents than that contained within the Accommodation Act.

To this end, we applaud the RTA's intention to incorporate the Accommodation Act into the Tenancies Act as indicated by Recommendations 2 and 3 in the Policy Review Paper. However in our view, these Recommendations do not go far enough. Any incorporation must ensure the equal rights, protections and obligations of tenants across all tenures. Therefore, in addition to the Policy Review Paper recommendations we add the following:

Recommendation 1: *That coverage of the Tenancies Act be extended to include to boarders and lodgers.*

Recommendation 2: *That a statutory definition for boarders and lodgers be provided in the Tenancies Act.*

Recommendation 3: *That the incorporation of the Accommodation Act into the Tenancies Act as separate sections guarantees equal rights, protections and obligations across all tenures.*

Rent increases

The HPLC is a service not only for people experiencing homelessness, but also clients at risk of becoming homeless. Approximately 12% HPLC clients reside in private rental accommodation. Our clients in private rentals experience significant housing stress and rely on homelessness support services to help supplement basic living costs such as food

⁴ We acknowledge the work of the PILCH Homeless Persons' Legal Clinic for this definition of causes of homelessness.

and clothing. The experience of our client base suggests that there is a direct causal relationship between the cost of rent and homelessness.

The Tenancies Act currently permits rent increases on two months written notice for periodic tenancies, and one month written notice for fixed term agreements. Our service is primarily concerned about the impact of frequent and high rent increases on low income tenancies. The impact of unprecedented population growth and rent increases in Queensland, together with the relative scarcity of public and social housing stock, means that the number of people on social security benefits who are dependent on the private rental market will continue to grow. The HPLC therefore considers it necessary to amend the Tenancies Act to limit the amount and frequency of rent increases for tenants in the low income bracket.

We therefore reject Recommendations 11 and 20 of the Policy Review Paper and instead recommend:

Recommendation 4: That a system of regulating rent be introduced to protect low income earners. This would involve a mechanism for recognising low income tenancies and would ensure that:

- c) the frequency of rent increases for low income tenancies would be limited to 12 monthly intervals; and*
- d) rent increases for low income tenancies would be fixed to increases in the Consumer Price Index.*

Time periods for terminations

Like other tenant advocacy groups, the HPLC considers that lessors should be precluded from terminating a tenancy without grounds. Our view is that, particularly for tenancies involving families with young children on low incomes, without ground terminations under the current time periods provide a clear pathway into homelessness. We know of one client who, as a result of a without ground termination, ended up living in the family car for 3 weeks with his wife and two young children under five years, until alternative housing could be arranged with the help of a homelessness support agency.

The HPLC considers that the cost to the landlord for providing a genuine ground for termination is far outweighed by the cost to a low income tenant who risks considerable stress & family instability as a consequence of receiving a without grounds termination.

We therefore reject Recommendations 47 and 48 of the Policy Review Paper and instead recommend:

Recommendation 5: That without grounds terminations be applicable only to high income tenancies. This can be achieved by establishing a mechanism for recognising low income tenancies as per recommendation 4.

Goods left behind

Many HPLC clients who leave rental premises do so in a state of upheaval and chaos. We know of many clients who have had to immediately leave their rental property to attend hospital or who have had to leave suddenly due to domestic violence. Many of our clients are without close family and personal which would ordinarily result in the client's belongings being looked after while the client is in a crisis situation. It often takes in excess of the current maximum 1 month time period to arrange for collection of the client's belongings once the crisis situation has been resolved.

It is also common for disagreements to exist between the former landlord and tenant about the value of the tenant's goods, with the landlord often stating that the tenant's goods were 'worthless' and that they therefore had no legal obligation to store them. Many of our clients lose their entire personal belongings in such a situation irrespective of monetary value of the goods.

We therefore recommend:

Recommendation 6: *That the timeframe for storage of goods under the Tenancies Act be extended to 60 days.*

Recommendation 7: *That the Tenancies Act include a provision requiring the lessor to provide evidence in support of their reasonable belief of the prescribed value for goods.*

Recommendation 8: *That the prescribed value for goods be reduced to \$500.*

Private tenancy databases

The Policy Review Paper correctly identifies homelessness as a consequence of listing on a private tenancy database. It is a sad fact that many clients of the HPLC continue to be locked out of the private rental market because their name remains on a tenancy database. Whilst we commend the RTA for its previous positive regulatory reforms in the area of private tenancy databases, our view that the current operation still has a disproportionate and detrimental impact on tenants and that further improvements are therefore necessary.

We therefore reject Recommendations 89, 91 and 92 of the Policy Review Paper and instead make the following recommendations:

Recommendation 9: *That the Tenancies Act be amended to require real estate agents, upon listing, to provide listed tenants with information about:*

- *what listings are allowable under Queensland law;*
- *their rights;*
- *how to access personal information held by Private Tenancy Database operators;*
- *specific information about how to have a listing removed if a tenant believes it is inaccurate or unjust; and*
- *time frames for doing so.*

This information could be provided by way of a standard form set out in the Schedule of the Act.

Recommendation 10: *That the Tenancies Act be amended to enable the Small Claims Tribunal to award compensation against a real estate agent who makes a listing in breach of s284C or who makes a knowingly unjust, misleading or inaccurate listing.*

Recommendation 11: *That the Tenancies Act be amended such that a listing can only remain on a database for 12 month, after which time the listing agent must ensure that the listing is completely removed*

Recommendation 12: *That Private Tenancy Database operators be required to provide a system for free and immediate access to personal information such as by a secure internet site which, for access, requires various unique personal identification numbers, such as license or passport number.*

Dispute resolution process

The HPLC often sees clients who have been unable to resolve their tenancy dispute informally either under the Accommodation Act or the Tenancies Act. Once a client's dispute progresses to the stage of the Small Claims Tribunal (SCT) our practice is to make an active referral of their matter to a local Tenancy Advocacy and Advice Service (TAAS) service because as lawyers, it is unlikely that we would be granted leave to appear on our client's behalf in the SCT. We also acknowledge that TAAS advocates have greater experience and knowledge of the SCT process than our volunteer lawyers and it is in the client's best interest to have the best possible representation within that forum. The HPLC is of the view that the SCT is in need of reform in many respects.

Written reasons

We reject the notion that the SCT need not provide written reasons for its decisions in order to avoid a possible increase in costs or waiting times. In our view, written reasons are an essential feature of transparent and consistent decision-making processes. Parties on both sides of a dispute are entitled to a greater degree of consistency in the SCT; if for nothing else than to enable them to better assess their prospects before deciding to proceed to the SCT.

Appeal process

Whilst we understand and appreciate the need for finality of decision making, the HPLC considers that the current appeals mechanism within the Act is insufficient and should be broadened. **We therefore support Recommendation 71 of the Policy Review Paper to further consider broadening the appeal provisions to permit an appeal on the grounds of error in law.** We note that there appears to be an inconsistency in the Policy Review Paper with the prospect of introducing an appeal process for errors of law on the one hand, and the decision not to recommend the introduction of written reasons on the other. We find it difficult to conceive how an appeals process on the grounds of error of law could be achieved in the absence of written decisions.

In our view, an alternative appeal process could be that of merits review to an independent review body, such as a State-based Administrative Appeals Tribunal (AAT) or by the establishment of a specialist Tenancy Tribunal (which we recommend below). Currently a State-based AAT does not exist in Queensland however QPILCH has previously made recommendations for the implementation of such a body. Merits review would enable an independent arbiter to consider the matter de novo and therefore in the absence of written decisions by the original decision-maker. We consider that a merits-based appeal process would maintain the benefits of the existing system (informality, low cost, efficiency) whilst rectifying its current deficiencies by improving the system in the areas of consistency, fairness, transparency and accountability.

Compensation for non-economic loss

The HPLC considers that the SCT should be empowered to hear and determine matters for non-economic loss. HPLC clients that become involved in tenancy matters experience a high degree of emotional stress as a result of their involvement in SCT proceedings and, unlike landlords, their losses are more often of a non-economic nature.

Specialist Tribunal

Despite recommendation 73 of the Policy Review Paper, the HPLC is of the view that a specialist Tenancy Tribunal should be established. If not, then we at least consider that the above suggested areas of reform should be incorporated into the existing SCT.

Our main concern with the current SCT process is that the presiding members are not tenancy specialists and often do not have the necessary expertise to determine disputes. We recognise the importance of striking a balance between informality, consistency and fairness and believe that with some careful planning, it is possible to achieve an improved Tribunal system than that which currently operates in Queensland.

We therefore reject recommendations 72 and 73 of the Policy Review Paper and instead recommend:

Recommendation 13: *That a Tenancy Tribunal be established to specialise in issues arising out of the Tenancies Act and the Accommodation Act. Its procedure and monetary jurisdiction should be similar to that of the Small Claims Tribunal however it should:*

1. *record its decisions including written reasons;*
2. *allow public access;*
3. *allow appeals on the merits and/or points of law; and*
4. *be empowered to consider & award compensation for matters of non-economic loss.*

Recommendation 14: *That if a specialist Tenancy Tribunal is not established, the Small Claims Tribunal should be reformed such that it should:*

1. *record its decisions including written reasons;*
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