

# Discussion Paper

Ensuring the annual rent increase frequency limit is effective



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- analysing, responding to and reporting feedback received during the consultation; and
- related research, reporting, policy and planning functions.

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- non-government organisations providing services or engaged in advocacy relating to laws or matters that are the subject of the consultation.

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## Overview

Since the COVID-19 pandemic, many Queenslanders have experienced challenges accessing and sustaining housing. The unprecedented national housing pressures have also led to many Queenslanders across urban, regional, and rural areas being impacted by cost-of-living pressures, low vacancy rates in the private rental market and higher rents.

On 18 April 2023, Queensland Parliament passed amendments to Queensland's rental laws to limit rent increases to once a year for all new and existing tenancies from 1 July 2023 as an immediate action to stabilise rents in response to housing and cost of living pressures. This limit applies for the duration of a tenancy and if at least one renter is the same in the same rental property when a new agreement is made.

Concerns have been raised about practices emerging in Queensland's private rental market to avoid the annual rent increase frequency limit by ending tenancies with current renters when their lease ends to enter leases with new renters at a higher rent. This practice undermines the policy intent of the annual rent increase frequency limit and increases rental insecurity and homelessness risk for those impacted.

This discussion paper seeks to ensure the policy intent of the annual rent increase frequency limit is achieved and describes a potential further reform to potentially address this emerging practice.

### **Feedback to the questions raised in this Discussion Paper can be made:**

**Online** – at [qld.gov.au/rentinginqld](https://qld.gov.au/rentinginqld)

**By email** – send your submission to: [rentinginqld@chde.qld.gov.au](mailto:rentinginqld@chde.qld.gov.au)

**By post** – send your submission to:

Renting in Queensland

Department of Housing

PO Box 690

BRISBANE QLD 4001

**Feedback should be provided to the Department of Housing by 5.00pm on 11 August 2023.**

## Current laws

The *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act) sets a framework for managing tenancy arrangements in Queensland by establishing the rights and responsibilities of parties to a tenancy and regulating the content and operation of tenancy agreements.

Under the RTRA Act, a rental property owner or manager must advertise rent at a fixed price. A prospective renter may offer the rental property owner or manager additional rent to secure a property. The rental property owner or manager must not disclose this information to other prospective renters as this may cause “rent-bidding”.

Under the RTRA Act, rent bidding is illegal. A rental property must be advertised at a fixed price and penalties of up to 20<sup>1</sup> penalty units may apply if a rental property manager or owner:

- advertises a rent range
- puts a property up for rent auction
- asks for offers of higher rent or additional rent in advance from prospective renters.

Rental property owners and managers can only request renters to pay two weeks rent in advance for a periodic tenancy agreement or four weeks rent in advance for a fixed term agreement.

However, a prospective renter can offer to pay a higher weekly rent than advertised or can offer to pay more rent in advance and the property manager or owner may accept this offer.

From 1 July 2023, the limit on the frequency rents can be increased changed from once every six months to once a year for new and existing tenancies. Any rent increase after 1 July 2023 is only payable by a renter if at least 12 months has passed since the last rent increase or rent became payable. The limit applies for the duration of the tenancy and if at least one renter is the same when the agreement is renewed, regardless of whether the rental property owner or manager has changed. Failure to comply with the rent increase frequency limit carries a penalty of up to 20 penalty units.

Further protection against excessive or frequent rent increases is provided under the RTRA Act, including that:

- renters must be given at least two months written notice and renters can dispute rent increases they believe are excessive, including between successive agreements.
- If the parties have entered a fixed term agreement, the rent can only increase if the agreement provides for it and outlines the amount of rent increase.

Dispute resolution must be attempted through the Residential Tenancies Authority (RTA) before a renter can apply to the Queensland Civil and Administrative Tribunal (QCAT) for an order about an excessive rent increase.

The RTRA Act also regulates how parties can end tenancy agreements. Either party can end a tenancy agreement using an approved ground under the RTRA Act by giving the other party the required notice. Approved grounds for a rental property owner or manager to end a tenancy include the end of a fixed term agreement. Either party may also apply to QCAT for an order to end the tenancy agreement if they will suffer excessive hardship if the tenancy continues.

A renter can apply to QCAT to have a notice to remedy breach, notice to leave, or rent increase issued by the rental property owner or manager set aside if the renter reasonably believes the action was taken to punish or intimidate them for asserting their rights.

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<sup>1</sup> From 1 July 2023, the value of one penalty unit is \$154.80

## Jurisdictional comparison

New South Wales (NSW), Victoria, South Australia, Tasmania, and the Australian Capital Territory (ACT) limit rent increase frequency to once a year and Western Australia has announced that amendments will be introduced to implement this limit soon. These limits operate similarly to the limit in Queensland where it applies to the tenancy rather than to the rental property. Victoria and NSW introduced annual rent increase frequency limits in 2019 with 12- and nine-month lead-in times respectively before commencement.

## Potential Reform

### Objective

The objective of the reform proposed in this discussion paper is to:

- a) ensure the annual rent increase frequency limit achieves the policy intent of effectively stabilising rents in the private rental market; and
- b) prevent or disincentivise the emerging practice of ending tenancies with existing renters and entering shorter leases with new renters at a higher rent to avoid the annual rent increase frequency limit.

The paper proposes an amendment to policy, if feedback indicates it is required to meet these objectives.

### Apply the rent increase frequency limit to the rental property not the tenancy agreement

Applying the rent increase frequency limit to the rental property rather than the tenancy would prevent rental property owners from being able to increase the rent more frequently than once a year even if the lease with the current renters ends and new renters enter a lease for the same rental property.

#### How would it work?

The existing provisions of the RTRA Act about rent increases would be amended to apply the annual rent increase frequency limit to the rental property rather than the tenancy agreement and enforced using existing penalty provisions.

The RTA would monitor rent information reported when bonds are lodged or topped-up to ensure the annual rent increase frequency limit for the rental property is complied with and investigate instances where an offence may have been committed. A renter could also use existing processes under the RTRA Act to request the RTA to investigate if they believe a rental property owner or manager has committed the offence.

Rental property owners could apply to QCAT for an order to increase rent before the annual rent increase frequency limit was met if complying with the limit would cause the rental property owner undue hardship. When considering the rental property owner's application for an order to increase rent before the annual rent increase frequency limit was met, QCAT would be required to consider any representations made by the renter about the proposed rent increase and the likely impact of the increase on the affordability of the rental property and the renter's ability to sustain their tenancy at the rental property.

#### When would the reform be applied?

The annual rent increase frequency limit attached to the tenancy agreement commenced on 1 July 2023.

Transitional provisions for the amendments would be necessary to determine the status of any rent increases provided for in existing tenancy agreements entered between 1 July 2023 and before commencement of the potential reform (the affected period).

The amendments to implement the potential reform would prescribe the commencement date for the changes.

The potential reform would apply from the prescribed date and would not affect any agreements reached between renters and rental property owners about rents during the affected period. Once the potential reform commenced, rent could only be increased by the rental property owner if at least 12 months had passed since the current rent for the rental property became payable.

Consideration has been given to applying the potential reform retrospectively to 1 July 2023 to align with the original reform to stabilise rents. Retrospective application would unwind any rent increases that did not comply with the annual rent increase frequency limit during the affected period. The renter would only be required to pay the previous rent amount until the annual rent increase frequency limit was met. Rental property owners would be required to refund to the renter the difference between the amount of rent payable by the renter and the increased rent. Rental property owners would not be prosecuted for increasing the rent before the minimum period before rent could be increased was met.

Applying the potential reform retrospectively would be complex to administer and is likely to create further confusion and uncertainty in the private rental market while also imposing additional regulatory burden on the sector. It is also not possible to identify and reinstate tenancies that have been ended to avoid the annual rent increase frequency limit. Requiring rental property owners to refund the difference between the amount of rent payable by the renter and the increased rent could also have significant financial impacts for some rental property owners who are experiencing financial hardship due to increasing investment costs, including from successive interest rate increases.

The preferred approach is for the potential reform to commence and apply from a prescribed date.

## Consultation questions

- How effective would the potential reform be to achieve the reform objectives?
- What other impacts may the potential reform have on rental sector stakeholders and Queensland's private rental and broader housing market?
- Are there any unintended consequences or adverse impacts the potential reform may have?
- What other options or approaches could government consider taking to address the issue?