Dear Members,

I would like to take the opportunity to thank the Committee for allowing the Association the opportunity to offer our views and observations. Unfortunately, the short time-line has severely disadvantaged us because the Law Library was closed for the Whit Break and barristers were on holiday. This limited our ability to get legal opinion on the Bill.

**General Comments**

On preliminary reading, this bill will cause alarm to the market and landlords will exit, reducing the supply of available accommodation. The Irish Rental Market is predominately made up of small investors with 92% of landlords owning less than three properties. Most landlords are unaware of the complexities and pitfalls around letting property but they are learning. We are increasingly finding that after dealing with the dispute resolution services, due to the complexities, length of time, and stress involved members/investors leave the market within a few years.

Investors have a choice at the outset and increasingly members are telling us that they are moving to Commercial Property. It is easier to manage, let on full repairing and insuring leases.

Confidence and stability are key components for investors and the States continual interference in the rental market has undermined the sector. There is a belief that the
amount of rental accommodation is increasing as a result of the presence of REITS however they own less than 10,000 units. RTB have 7000 less tenancies this year than last year.

The aim in 2004 was to have a quick easy dispute resolution service but the Act is a nightmare to navigate, to the extent that some agents have left the private rental market.

The legislation is a technical nightmare, designed to frustrate and make letting more difficult for investors which results in less investment. Nothing in this legislation will assist in increasing the supply of available accommodation, and the fear of being criminalised will result in a loss of accommodation.

1. There are constitutional issues.

The primary purpose of the Bill is to provide for criminal sanctions against landlords. The imposition of sanctions is part of the criminal power of the State which under the Constitution is vested in the administration of justice i.e. the Courts. It is part of the judicial power and to give this power to a body such as the RTB to exercise the fact-finding power is in contravention of the separation of powers provisions in the Constitution.

Furthermore, under Article 38 of the Constitution a person subject to criminal sanctions is entitled to trial in accordance with law. This requires observance of the principles of natural justice: audi alteram sanctum and nemo iudex in causa sua. An individual must be tried by an unbiased and independent fact finding tribunal and given an opportunity to make their case. The recommendations in the Bill do not correspond with natural justice as they treat the RTB as judge, jury and prosecutor which is seriously flawed.

In addition, the Constitution specifically provides that minor offences are entitled to jury trial. Some of the sanctions contemplated potentially fall outside the definition of minor offences e.g. page 25 of the Scheme provides for compensation under Part 6 in addition to a penalty of €30,000. This will result in a 'double-compensation' provision.

This aspect of the Bill is fundamentally flawed and open to obvious constitutional challenge and requires amendment.

2. The Bill is one sided, predominately for the tenant.

The lengthening of the termination periods is on the landlords' side only. We note the Department's intervention in the first six months, retaining the 28 days which is positive and makes sense.

The Rent Pressure Zone (which is rent control see Blake v. The Attorney General [1982] I.R. 117) fundamentally disadvantages landlords with low rents but this is not addressed in the Bill. However, sanctioning landlords who act illegally is included.
This Bill on the balance of fairness should address this and also include a method to bring rents that are below market rent to market rent.

The requirement of 90 days on page 27 of the Scheme could end up leaving a property empty for 3 months - something which is financially detrimental to the landlord and, additionally, does not make financial sense while there are people homeless.

We are pleased to note the reduced time periods for remedied termination notices, this is a very positive development. We would like this to be taken one step further.

There should be provisions in place ensuring that a landlord’s genuine attempt to prevent a part 4 tenancy arising should not be defeated by a technically defective notice. It should be possible for a landlord who has served such a notice which, if valid, would have prevented a Part 4 tenancy arising, to serve a fresh notice out of time which operates to determine such tenancy. Currently the penalty for getting it wrong is a tenancy for a further 6 years.

There should be no right to appeal in rent arrears situations unless the rent is lodged with RTB.

The Residential Tenancies Act as Amended is needlessly complex, difficult and is not fit for the market it serves. Prior to any further intervention, there should be a pause for detailed review on the subject of the private rental sector in the interest of supply for the future. Currently corporate supply is less than 10,000 units which leaves the traditional property owner supplying some 303,000 units. This area needs protection now.

IPOA are available for any discussion for the further development of the sector and would advise caution going forward.

Yours sincerely,

Stephen Faughnan
Chairman