

Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021

Explanatory Notes

Short Title

This Bill may be cited as the *Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021* (**the Bill**).

Policy Objectives and the reasons for them

The objective of the Bill is to improve rights for renters in Queensland, address rental affordability concerns and improve access to safe and secure housing.

The Bill is introduced in the context of a growing rental crisis in Queensland, and an enduring imbalance of power and rights between tenants and lessors.

From 2017–18, renters comprised the largest proportion of Queenslanders, at 36% of all households versus 35% mortgage-holders and 27% who owned their home outright¹. It acknowledges that home ownership is increasingly difficult for a growing mix of people, and more people - especially families - are renting long term.

For many renters, rental affordability is their greatest concern.² The Queensland Government's "Open Doors to Renting Reform" consultation report stated that:

"Tenants feel overwhelmingly dissatisfied and stressed about paying rent that they believe is too high. Tenants expressed that they live in a constant state of fear about rent increases, and many expressed the crippling effects of repeated and unsustainable rent increases."

The COVID-19 crisis has further compounded the issue of rental affordability. Anglicare Australia's 2021 Rental Affordability Snapshot describes:

"Compared with 2020, every single household type is worse off as rents continue to rise for the Australians who can afford it least."³

¹ Australian Bureau of Statistics, 2019, *Housing Occupancy and Costs, 2017-18*, cat. no. 4130.0

² In the Queensland Government's "Open Doors to Renting Reform" online survey, there were 2,440 comments that discussed rent in response to an open question about "anything else you would like to share with us". This dwarfed the second most popular topic, being 725 mentions regarding pets. In the postcard surveys, there were 2,986 comments that discussed rent (29% of the total) - by far the most common concern at more than twice the next category (1,403 comments that discussed property management).

³ Anglicare Australia (April 2021), Rental Affordability Snapshot

In every major population centre in Queensland, rents have grown faster than median wages over the last 10 years. The situation is significantly worse in regional Queensland.

Prior to the COVID-19 pandemic, approximately 36% of renting households were in “rental stress”⁴ in Queensland. A report from Equity Economics has shown that “rental stress” in Queensland is projected to grow by 11.4% from February 2020 (pre-pandemic) to June 2021 (post-pandemic)⁵. In Central Queensland the situation is significantly worse. “Rental stress” is projected to grow by 55.2% in the region, and homelessness by 31.9%.

This Bill aims to bring rent increases in line with inflation, to curb arbitrary rent increases which are not justified by improvements to the property.

In addition to rental affordability, this Bill also aims to improve renters' safety, security and enjoyment of their home.

Under the current law, “no grounds” evictions give lessors the extraordinary power to make a tenant homeless without any given reasons. Under the existing legal framework, around one in five moves in the private rental market are made involuntarily by the tenant.⁶ For vulnerable renters in particular, this can have grave impacts on their housing and financial security, as well as their health and safety.

This fear of eviction creates a situation where tenants are hesitant to exercise their existing rights, including to request repairs, to avoid attracting negative attention or retaliation from the lessor. This means a significant number of tenants are living in rental properties that are poorly maintained, including with serious health and safety issues⁷.

In addition to the pervasive uncertainty about the length and security of one's lease, renters are prevented from putting down roots in their home by unreasonable restrictions on their use of the property.

Tenants pay a significant amount of rent to stay in rental properties, so they should be able to make them feel like home. Existing laws that prevent tenants making minor modifications, such as hanging a picture, are outdated and do not reflect our current reality, with an increasing number of long-term renters. This Bill gives renters additional rights to make minor modifications.

Similarly, for a rented property to truly feel like a tenant's home, they should be given the right to keep a pet unless the lessor has reasonable grounds to refuse them. Keeping a pet should not be a barrier to finding a home, nor should renters be forced to surrender their pets due to a lack

⁴ “Rental stress” is an indicator used by the Australian Bureau of Statistics and is defined as “low income rental households paying more than 30% of their income on rent”

⁵ Equity Economics report commissioned by Everybody's Home (December 2021), “Double return: How investing in social housing can address the growing homelessness crisis and boost Australia's economic recovery”

⁶ Australian Government Productivity Commission Research Paper (September 2019), “Vulnerable Private Renters: Evidence and Options”

⁷ 12% of respondents to the government's Open Doors to Renting Reform survey reported their current property condition as “Poor - needs repair or maintenance for health and safety e.g. mould, broken locks, structural issues”. Over 60% of respondents to a snap poll agreed that they had seen a rental property with serious safety problems.

of pet-friendly housing⁸. The right to keep a pet was one of the most popular topics raised during the Government's consultation on renting reforms⁹.

This Bill is a first step towards ensuring all persons have access to safe and secure housing, a right enshrined in international human rights declarations. The Queensland Government has a responsibility to ensure that right is upheld and, where housing is increasingly provided by the private, for-profit sector, to moderate the risk of monopolies and exploitation of renters.

Achievement of policy objectives

The Bill achieves its policy objectives by amending the *Residential Tenancies and Rooming Accommodation Act 2008* (Tenancies Act) to:

- Improve lease security by removing the ability for "no grounds" evictions or evictions for sale contract by the lessor, and replacing these provisions with two new grounds for a notice to leave, being:
 - Occupation by the property owner or the owner's close relative
 - Major renovations to be made to the property
- Vary minimum notice periods for a notice to leave, including:
 - 6 months notice for owner/ relative occupation and major renovations
 - 2 months notice for ending of employment entitlement
 - 6 months notice for ending of accommodation or housing assistance
- Create an offence for lessors who issue a notice to leave on false grounds
- Ensure certain inclusions in regulations made regarding minimum standards for rental homes
- Require lessors or lessors' agents to provide more comprehensive information about the property to prospective tenants
- Remove the lessor or lessors' agents ability to ask inappropriate rental application questions of prospective tenants
- Remove the lessor or lessors' agents ability to accept rent bids from prospective tenants
- Limit rent increases to once every 24 months and by no more than CPI per year, including if there is a period for which the property is not rented or if current tenants move out and new tenants enter on a new lease.
- Give tenants the right to keep a pet unless the lessor applies successfully to the Queensland Civil and Administrative Tribunal ("the Tribunal") for an order refusing the pet on reasonable grounds
- Allow tenants to make minor modifications to a rental property without first obtaining the landlord's consent
- Improve tenant privacy by increasing notice periods for entry to the premises
- Provide for the prompt forwarding of water bills by lessors where a tenant is required to pay for water consumption charges

⁸ Approximately a quarter of the animals currently surrendered to the Animal Welfare League Queensland are surrendered due to a lack of affordable pet-friendly rentals.

⁹ The ability for a tenant to keep a pet in a rental property accounted for 27% of responses across all channels during the "Open Doors to Renting Reform" consultation.

- Remove the ability for a lessor to remove a resident under a rooming accommodation agreement without a Tribunal order, to bring the rights of tenants in rooming accommodation in line with tenant's rights in other residential rental accommodation.

The Bill amends the *Police Powers and Responsibilities Act 2000* to reflect the amendment regarding lessor's rights to remove a resident without a Tribunal order, by removing the provision that permits a police officer to enter and stay in a person's room in rental premises while the provider removes the tenant and/or their property.

The new rights created by the Bill apply to both rooming and residential tenancy agreements.

Alternative way of achieving the policy objectives

There is no alternative method of achieving the policy objectives.

Administrative cost to government of implementing the bill

Any financial implications arising out of amendments to the Residential Tenancies and Rooming Accommodation Act 2008 will be met by the Residential Tenancies Authority.

A public information campaign will be conducted on the amendments to the Act. The State Government will incur an additional one-off cost to provide additional resources to the Residential Tenancies Authority to conduct this public information campaign.

It is anticipated that the State Government will incur an additional ongoing cost, as these changes are likely to result in the need to provide the Residential Tenancies Authority (RTA) and the Tribunal (QCAT) with additional resources to administer these changes. However it is also anticipated that these changes will result in a reduced need for housing and homelessness support services, reducing long-term costs to the State Government. Ensuring people have safe, secure and affordable housing can also result in significant long-term savings for our state health and justice systems.

Consistency of the bill with Fundamental Legislative Principles

The Bill raises issues in relation to fundamental legislative principles, but this interference is well justified on the basis of the need to protect renters from unfair and unaffordable rent increases following the implementation of this Bill.

Compulsory acquisition of property without fair compensation

It could be argued that clauses 26 and 28 of the Bill, which remove a lessor's ability to evict a tenant to sell the property or without grounds respectively, contradict the FLP that legislation should not provide for the compulsory acquisition of property without fair compensation unless there is a good reason.¹⁰

¹⁰ Queensland Legislation Handbook available at <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook.aspx>

It is very unlikely that removing the provision for “no grounds” or “sale contract” evictions by a lessor would qualify as an “acquisition”. The Bill relates to tenancy agreements which have been voluntarily entered into by the lessor and tenant, where the tenant pays rent to a lessor for use and enjoyment of their real property as the tenant's home. It ensures that lessors retain the ability to evict tenants on a range of reasonable grounds, including owner or relative occupation, major renovations, or breaches of the lease agreement such as nonpayment of rent. Ultimately, under the Bill there is no provision for acquisition of the lessor's property as they retain the right to live in and use it or sell it should they choose. Rather, the Bill addresses the existing extraordinary power held by lessors to make a tenant homeless for no good reason.

Retrospective imposition of obligations

It could also be argued that clauses 10 and 14 of the Bill, which would prevent lessors from increasing rent on existing agreements except for in accordance with the new provisions created under clauses 10 to 15 of the Bill, contradicts the FLP that legislation should not retrospectively impose obligations without good reason.

Given application of rent controls to existing leases would only affect a lessor's ability to increase rent after the Bill takes effect, this is not a retrospective obligation. Even if this does qualify as a retrospective obligation under current jurisprudence, the growing threat of housing insecurity and rental stress, and particularly the risk that lessors could implement retaliatory rent increases to force tenants out of their home once “no grounds” evictions are no longer available, justify the measures in this Bill.

Rental affordability is a key barrier to housing access particularly for low income persons, and homelessness is of increasing concern for Queensland. The retrospective application of rent controls to existing rental agreements is necessary to protect tenants from being “priced out” into homelessness by the lessor.

Consultation carried out in relation to the bill

The Member has developed these amendments based on stakeholder and community feedback including consultation with Tenants Queensland, Anglicare Australia and the Queensland Council of Social Services.

The development of the Bill has also been informed by the publicly available results of the Government's extensive Open Doors to Renting Reform consultation process conducted in late 2018.

Consistency with legislation of other jurisdictions

Each Australian jurisdiction has unique approaches to addressing the matters contained in these amendments.

Other jurisdictions including Tasmania, ACT, Victoria and New South Wales have recently made legislative changes to improve renters' rights, including limiting rent increases to once per year in New South Wales. Section 5A of the *Residential Tenancies Regulation 1998 (ACT)* sets a

prescribed amount for rent increases that is based on the rents component of the housing group of the Consumer Price Index for Canberra.

Residential Tenancies Regulations 2021 (Vic) includes some analogous provisions, including the right to make a range of minor modifications to a rental property (clauses 17 and 21) and minimum housing standards (clause 6). The right to keep a pet (clauses 18-21 of this Bill) is loosely modelled on rights created by an analogous provision in the *Residential Tenancies Amendment Act 2018 (Vic)*.

Explanation of the purpose and intended operation of clauses / notes on provisions

Part 1 Preliminary

Clause 1 Short Title

Clause 1 provides that when enacted, the Bill may be cited as the *the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Act 2021*.

Part 2 Amendment of Police Powers and Responsibilities Act 2000

Clause 2 Act Amended

Clause 2 states that this part amends the *Police Powers and Responsibilities Act 2000*.

Clause 3 Remove police power to enter tenant's room while provider removes them

Clause 3 amends s 611 to remove the provision permitting a police officer to enter and stay in a person's room while a rooming accommodation provider removes the tenant and/or their property under former section 375 of the *Residential Tenancies and Rooming Accommodation Act 2008* (to be omitted under clause 32 of the Bill).

Clause 4 Transitional provision

Clause 4 inserts a new Chapter 24 Part 19 which provides that the former s 611 of the *Police Powers and Responsibilities Act 2000* continues to apply to rooming accommodation agreements entered into prior to the commencement of this Bill.

Part 3 Amendment of Residential Tenancies and Rooming Accommodation Act 2008

Clause 5 Act Amended

Clause 5 states that this part amends the *Residential Tenancies and Rooming Accommodation Act 2008*.

Clause 6 Minimum housing standards

Clause 6 amends s 17A(3) to provide that regulations made about prescribed minimum housing standards for rental properties must cover the standards currently listed in the Act as non-compulsory components of such regulation, being:

- (a) sanitation, drainage, cleanliness and repair of the premises, inclusions or park facilities;
- (b) ventilation and insulation;
- (c) protection from damp and its effects;
- (d) construction, condition, structures, safety and situation of the premises, inclusions or park facilities;
- (e) the dimensions of rooms in the premises;
- (f) privacy and security;
- (g) provision of water supply, storage and sanitary facilities;
- (h) laundry and cooking facilities;
- (i) lighting;
- (j) freedom from vermin infestation;
- (k) energy efficiency.

Clause 7 Premises must be offered for rent at a fixed amount

Clause 7 amends section 57 by adding a new section 57(2A) to prohibit lessors or lessors' agents from accepting amounts in rent greater than the advertised amount, banning what can be called "rent bidding".

Clause 7 renumbers section 57(2A) and (3) to sections 57(3) and (4).

Clause 8 Rent increases and information for prospective tenants (residential tenancies)

Clause 8 inserts 57A to provide for capped rent increases between different tenancies for residential tenancies.

Proposed section 57A(1) provides that this section applies to a rental premises, if a residential tenancy agreement has previously been entered into for the premises, regardless of whether or not the lessor is the same person as the lessor for the previous residential tenancy agreement.

Proposed section 57A(2) provides that a lessor or lessor's agent cannot advertise or offer a premises for an amount of rent greater than what is outlined in proposed section 57A(4).

Proposed section 57A(3) provides that a lessor or lessor's agent can advertise or offer a premises for an amount of rent greater than what is outlined in proposed section, if any of the following conditions are met—

- if additional services, facilities or goods are to be provided
- if the amenity or standard of the premises has increased substantially
- The rates for the premises have increased by more than 20%

Proposed section 57A(4) defines the "indexed rent amount" for new s 57A. Rent increases would be calculated using the following formula—

$$A = R \times B / C$$

A is the indexed rent amount.

R is the amount of the rent for the most recent residential tenancy agreement for the premises.

B is the latest CPI published for a quarter before the lessor advertises or otherwise offers a residential tenancy for the premises.

C is the CPI published for the corresponding quarter in the year in which the rent was last increased

CPI, for a quarter, means the all groups consumer price index for Brisbane published by the Australian Statistician for that quarter, meaning any of the following periods in a year—

- 1 January to 31 March;
- 1 April to 30 June;
- 1 July to 30 September;
- 1 October to 31 December.

Clause 8 inserts 57B to provide limitations on what information the lessor or lessor's agent may ask of the prospective tenant.

Proposed section 57B(1) prohibits the lessor or lessor's agent from requesting the following information from the prospective tenant:

- whether or not the applicant has previously taken legal action, been a respondent to legal action, or has had a dispute with a lessor;
- bond history, including whether or not they have had a claim made on their bond;
- passport details, if they have provided other evidence of identity;
- an unredacted bank statement;
- residency status or nationality details, unless these are needed for a social housing service or NRAS assessment

Clause 8 inserts 57C to provide mandatory information that a lessor or lessor's agent must give a prospective tenant prior to entering into a tenancy agreement.

Proposed section 57C(1) requires the lessor or lessor's agent to give the following information to the prospective tenant:

- if the lessor has engaged an agent to sell the premises or prepared a contract of sale;
- if a mortgagee has commenced a proceeding over the premises;
- if the lessor not the owner, that they have the right to let the premises;
- if the premises have an embedded electricity network, and if so, the details of that network;
- if there has been damp or mould on the premises within the last 3 years;
- if the lessor knows about any contamination, asbestos, development applications, building defects, safety concerns, building work disputes, or body corporate disputes related to the premises.

Clause 9 Rent increases for prospective tenants (rooming accommodation agreements)

Clause 9 inserts 79A to provide for capped rent increases between different tenancies for rooming accommodation agreements.

Proposed section 79A(1) provides that this section applies to a premises, if a rooming accommodation agreement has previously been entered into for the premises, regardless of whether or not the provider is the same person as the lessor for the previous rooming accommodation agreement.

Proposed section 79A(2) provides that the provider or provider's agent cannot advertise or offer accommodation for an amount of rent greater than what is outlined in proposed section 79A(4).

Proposed section 79A(3) provides that a provider or provider's agent agent can advertise or offer accommodation for an amount of rent greater than what is outlined in proposed section, if any of the following conditions are met—

- if additional services, facilities or goods are to be provided
- if the amenity or standard of the premises has increased substantially
- The rates for the premises have increased by more than 20%

Proposed section 79A(4) defines the "indexed rent amount" for new s 57A. Rent increases would be calculated using the following formula—

$$A = R \times B / C$$

A is the indexed rent amount.

R is the amount of the rent for the most recent rooming accommodation agreement for the rental premises.

B is the latest CPI published for a quarter before the lessor advertises or otherwise offers a rooming accommodation agreement for the premises.

C is the CPI published for the corresponding quarter in the year in which the rent was last increased

CPI, for a quarter, means the all groups consumer price index for Brisbane published by the Australian Statistician for that quarter, meaning any of the following periods in a year—

- 1 January to 31 March;
- 1 April to 30 June;
- 1 July to 30 September;
- 1 October to 31 December.

Clause 10 Rent increases for current tenants (residential tenancies)

Clause 10 amends s 91 to provide for capped rent increases from one fixed term agreement to the next.

Proposed section 91(1)(c) provides that this section will also apply to increases in rent for 1 fixed term agreement to the next.

Proposed new section 91(5) provides that rent can only be increased in accordance with the indexed rent amount defined in the proposed section 91A unless the tenant agrees or the landlord makes a successful application to the Tribunal for a greater rent increase.

Proposed section 91(6) provides that rent will be payable on the date stated in the notice of rent increase or on a date stated in a Tribunal order made under proposed section 92A.

Proposed sections 91(6)A and 91(6)B provide that the rent for a fixed term agreement may be increased before the term ends only if the agreement provides for a rent increase in accordance with the proposed section 91, and that if a rent increase is payable under this section, the agreement is taken to be amended accordingly.

Clause 10(3) omits the note at section 91(9) which excludes application of section 91 to rent increases from one fixed term to another. Clause 10(4) renumbers the proposed new sections 91(6A) to (9) as sections 91(7) to (11).

Clause 11 Formula for fixed rent increases (residential tenancies)

Clause 11 inserts a new section 91A which defines the "indexed rent amount" for a residential tenancy agreement. Rent increases would be calculated using the following formula:

$$A = R \times B / C$$

where:

A is the indexed rent.

R is the amount of the current rent.

B is the CPI number for the quarter preceding the rent increase.

C is the CPI number for the quarter when the rent was last increased.

CPI, for a quarter, means the all groups consumer price index for Brisbane published by the Australian Statistician for that quarter, meaning any of the following periods in a year—

- 1 January to 31 March;
- 1 April to 30 June;
- 1 July to 30 September;
- 1 October to 31 December.

Clause 12 Lessor's application to tribunal about rent increase above CPI

Clause 12 inserts a new section 92A which provides that a lessor may apply to the Tribunal for an order if they want to increase rent by more than the indexed rent amount and the tenant does not agree to the proposed increase.

Proposed section 92A(2) provides that when making an order for a rent increase greater than the indexed rent amount the Tribunal must have regard to:

- if the amenity or standard of the home has substantially increased
- if additional services, goods or facilities are to be provided by the lessor
- if the council rates for the property have gone up by more than 20%

- the proposed increased rent
- the state of repair of the premises
- the term of the tenancy

Clause 13 Minimum period before rent can be increased

Clause 13 amends section 93(2) and (3) to provide that landlords may only increase rents once every 2 years.

Clause 14 Rent increases (rooming accommodation agreements)

Clause 14 amends s 105 to provide for capped rent increases under rooming accommodation agreements.

Clause 14(2) amends s 105(3)(b) to increase the minimum notice period for rent increases under rooming accommodation agreements from 4 weeks to 2 months (in line with residential tenancy agreements).

Clause 14(3) amends s 105(4) so that rent can only be increased in accordance with the indexed rent amount defined in the proposed section 105A unless the tenant agrees or the landlord makes a successful application to the Tribunal for a greater rent increase.

Proposed section 105(4)A provides that rent will be payable on the date stated in the notice of rent increase or on a date stated in a Tribunal order made under proposed section 105B.

Proposed sections 105(4)B and C provide that the rent for a fixed term rooming accommodation agreement may be increased before the term ends only if the agreement provides for a rent increase in accordance with the proposed section 105(4), and that if a rent increase is payable under this section, the agreement is taken to be amended accordingly.

Clause 14(4) states that the proposed section 105 should not apply if the parties amend the rooming accommodation agreement to provide for another service to be provided by the provider to the resident and for an increase in the rent in payment of the service.

Clause 14(5) renumbers the proposed new sections 105(4A) to (5) as section 105(5) to (9).

Clause 15 Formula, timing and tribunal applications for rent increases (rooming accommodation agreements)

Clause 15 inserts new sections 105A-C which set out the formula and timing for fixed rent increases under rooming accommodation agreements, and the procedure for provider applications to the Tribunal for rent increases above the indexed rent amount.

Proposed section 105A defines the "indexed rent amount" for a rooming accommodation agreement. Rent increases would be calculated using the following formula:

$$A = R \times B / C$$

where:

A is the indexed rent.

R is the amount of the current rent.

B is the CPI number for the quarter preceding the rent increase.

C is the CPI number for the quarter when the rent was last increased.

CPI, for a quarter, means the all groups consumer price index for Brisbane published by the Australian Statistician for that quarter, meaning any of the following periods in a year—

- 1 January to 31 March;
- 1 April to 30 June;
- 1 July to 30 September;
- 1 October to 31 December.

Proposed Section 105B provides that a rooming accommodation provider may apply to the Tribunal for an order if they want to increase rent by more than the indexed rent amount and the tenant does not agree to the proposed increase. The Tribunal may make an order for a rent increase greater than the indexed rent amount if the amenity or standard of the home has substantially increased or if additional services, goods or facilities are to be provided by the lessor.

Proposed section 105C provides that a rooming accommodation provider may only increase rents once every 2 years and creates a maximum penalty of 20 penalty units.

Clause 16 Water service charges for premises other than moveable dwelling premises

Clause 16 amends section 166(2) to require a lessor to forward a copy of a bill containing water charges to the tenant within one month of it being issued when a tenant is required to pay an amount for the water consumption charges for the premises.

Clause 17 Grounds for entry for significant breach regarding keeping a pet

Clause 17 amends section 192(2)(c) to allow for a significant breach, for a notice to remedy breach, to include “keeping a pet on the premises” only other than in accordance with proposed new section 221A.

Clause 18 Notice periods for entry

Clause 18 of the Bill amends section 193(1)(c)(ii) to increase the notice period for entry by the lessor for any entry other than an entry to inspect the premises under section 192(1)(a) from 24 hours to 48 hours.

Clause 19 Minor modifications

Clause 1 inserts a new ch 3, pt 5, div 1A Minor modifications. Proposed section 209A would allow a tenant to make minor modifications to the premises.

Clause 20 Keeping of pets

Clause 20 inserts a new ch 3, pt 5, div 4 which grants tenants the right to keep a pet at the rental premises if they notify the lessor in writing of their intention to keep the pet and unless by-laws which apply to the premises under the Body Corporate and Community Management Act 1997 prohibit the keeping of an animal on the premises.

Proposed s 221C provides that the lessor may apply for a Tribunal order preventing the tenant from keeping a pet at the premises having regard to:

- (a) the type of pet the tenant intends to keep at the premises;
- (b) the character and nature of the premises;
- (c) the character and nature of the appliances, fixtures and fittings on the premises;
- (d) a matter prescribed by regulation; or
- (e) any other matter the Tribunal considers relevant.

Proposed s 221B(b) provides that the lessor must make such an application to the Tribunal within 14 days of receiving notice from the tenant that they wish to keep a pet at the premises, otherwise permission is deemed granted.

Parties are prohibited from contracting out of this right under a residential tenancy agreement and landlords will not be able to require tenants to pay additional amounts for rent or bond if they wish to keep a pet.

Clause 21 Rules about pets in moveable dwelling parks

Clause 21 amends s 228(2)(g) to replace the ability of the owner of a moveable dwelling park to make rules about whether pets can be kept with the ability to make rules about how pets must be looked after when kept at the park.

Clause 22 Rooming accommodation resident obligations - keeping pets

Clause 22 amends s 253(e) to reflect the new right to keep a pet in accordance with proposed new s 256B.

Clause 23 Rights to make minor modifications and keep a pet in rooming accommodation premises

Clause 23 inserts new sections 256A-D which give rooming accommodation tenants the right to make minor modifications to the premises and to keep a pet at the premises.

Proposed section 256A would allow a tenant to make minor modifications to the resident's room.

Proposed section 256B would grant rooming accommodation tenants the right to keep a pet at the premises if they notify the provider in writing of their intention to keep the pet and unless by-laws which apply to the premises under the Body Corporate and Community Management Act 1997 prohibit the keeping of an animal on the premises.

Proposed s 256D provides that the provider may apply for a tribunal order preventing the tenant from keeping a pet at the premises having regard to:

- (a) the type of pet the tenant intends to keep at the premises;
- (b) the character and nature of the premises;

- (c) the character and nature of the appliances, fixtures and fittings on the premises;
- (d) a matter prescribed by regulation; or
- (e) any other matter the Tribunal considers relevant.

Proposed s 256C provides that the provider must make such an application to the Tribunal within 14 days of receiving notice from the tenant that they wish to keep a pet at the premises, otherwise permission is deemed granted.

Parties are prohibited from contracting out of this right under a rooming accommodation agreement and providers will not be able to require tenants to pay additional amounts for rent or bond if they wish to keep a pet.

Clause 24 Notice periods for entry under rooming accommodation agreements

Clause 24 of the Bill amends s 259(2), (4) and (5)(c) to increase the notice period for entry into a tenant's room by the provider from 24 hours to 48 hours.

Clause 25 Rules about pets in rooming accommodation

Clause 25 amends s 268(1)(f) to replace the ability of the provider of rooming accommodation to make rules about whether pets can be kept with the ability to make rules about how pets must be looked after when kept at the premises.

Clause 26 Remove provision for notice to leave if premises being sold

Clause 26 omits s 286 to remove the ability for a lessor under a periodic agreement to give a tenant notice to leave the premises because the lessor has entered into a contract to sell the premises with vacant possession.

Clause 27 Reasonable grounds for notice to leave

Clause 27 replaces sections 291 and 292, which currently give lessor the ability to issue the tenant with a notice to leave without grounds, with two new grounds. Proposed new section 291 would create grounds to issue a notice to leave for occupation by the lessor or their relative for at least 1 year. Proposed new section 292 would create grounds to issue a notice to leave for major renovation or repairs that will make the premises completely or partly unfit to live in for a period of not less than 4 weeks. Proposed section 292(3) would require the lessor to offer the tenant another residential tenancy agreement for the premises after the renovations or repairs are completed.

Proposed section 292A creates an offence with a maximum penalty of 50 penalty units for lessors who give a notice to leave unless the lessor believes on reasonable grounds the lessor may give the notice.

Clause 28 Notice to leave

Clause 28 amends s 326(1)(e) and (f) to reflect the removal of a lessor's ability to issue a notice to leave without grounds and requires a lessor to state the ground on which the notice is given and give particulars of the ground on which the notice is given.

Clause 29 Handover day for notice to leave premises other than moveable dwelling premises

Clause 29(1) omits section 329(2)(f) to reflect the removal of the ability for a lessor to issue a notice to leave for sale contract.

Clause 29(2) amends s 329(2)(g) and (h) to increase the notice period required for a notice to leave because of ending of entitlement under employment or the ending of accommodation assistance respectively both from 4 weeks to 2 months.

Clause 29(3) amends s 329(2)(i) to increase the notice period required for a notice to leave because of ending of housing assistance from 1 month to 2 months.

Clauses 29(4) and (5) amend s 329(2)(j) and (k) and s 329(3) to omit references to a notice to leave given without grounds and replace this with proposed new s 329(2)(j) and (k) which set the notice period for a notice to leave because of occupation by lessor or major renovation respectively both at 6 months.

Clause 30 Handover day for notice to leave moveable dwelling premises

Clause 30(1) omits section 330(2)(f) to reflect the removal of the ability for a lessor to issue a notice to leave for sale contract.

Clause 30(2) amends s 330(2)(i) and (j) to increase the notice period required for a notice to leave because of ending of entitlement under employment or the ending of accommodation assistance respectively both from 4 weeks to 2 months.

Clauses 30(3) and (4) amend s 330(2)(l) and (m) and s 330(3) to omit references to a notice to leave given without grounds and replace this with proposed new s 330(2)(l) and (m) which set the notice period for a notice to leave because of occupation by lessor or major renovation respectively both at 6 months.

Clause 30(5) renumbers s 330(4) as s 330(3).

Clause 31 Failure to leave for other grounds

Clause 31(1) omits the reference for a notice to leave for sale contract at 340(1)(b)(iii).

Clause 31(2) inserts a new s 340(1)(b)(x) and (xi) to include references to proposed new grounds for notice to leave for occupation by lessor or major renovation respectively.

Clause 31(3) renumbers s 340(1)(b)(iv) to (xi) as s 340(1)(b)(iii) to (x).

Clause 32 Failure to leave without ground

Clause 32 omits the reference to a notice to leave without ground at s 341.

Clause 33 Reducing the penalty for obstructing a warrant of possession

Clause 33 amends s 354 to reduce the penalty for someone who is obstructing a warrant of possession from 50 penalty units down to 10 penalty units.

Clause 34 Ending of room accommodation agreements

Clause 34 amends s 366(4) to provide that if a resident gives a notice under this part terminating the rooming accommodation agreement on a stated day, the agreement ends on the stated day.

Clause 35 Reasonable grounds for notice to leave rooming accommodation premises

Clause 35 replaces sections 372 and 373, which currently give providers the ability to issue the resident with a notice to leave without grounds, with two new grounds. Proposed new section 372 would create grounds to issue a notice to leave for occupation by the provider or their relative for at least 1 year. Proposed new section 373 would create grounds to issue a notice to leave for major renovation or repairs that will make the premises completely or partly unfit to live in for a period of not less than 4 weeks. Proposed section 373(4) would require the provider to offer the resident another residential tenancy agreement for the premises after the renovations or repairs are completed.

Clause 36 Replacing provider's power to remove resident and creating penalty for misuse of grounds for notice to leave

Clause 36 omits s 375 which currently gives a rooming accommodation provider the power to remove a resident without a Tribunal order, to make the procedure for removal by an owner or provider the same for rooming accommodation and residential agreements.

This clause replaces the existing s 375 with a new s 375 that creates an offence with a maximum penalty of 50 penalty units for providers who give a notice to leave unless the provider believes on reasonable grounds the provider may give the notice.

Clause 37 Application by rooming accommodation provider for termination for failure to leave

Clause 37 inserts a new s 377A which sets out the procedure for a rooming accommodation provider to apply to the Tribunal for a termination order if the provider has given a resident a notice to leave and the due day for leaving has passed, or if the provider has given a resident a notice terminating the rooming accommodation agreement and the agreement has ended.

Proposed section 377A(3) provides that the application for a Tribunal order under new section 377A must be made within 2 weeks after the due day for leaving.

Clause 38 Recovery of possession of premises and compensation for provider of rooming accommodation

Clause 38 inserts a new Chapter 5, Part 2, Divisions 5A and 5B which reflect the existing Division 7 and 9 of the Act relating to the lessor's recovery of possession of premises and compensation in a residential tenancy agreement.

Proposed s 389A provides that if a Tribunal makes a termination order on an application made other than by a resident, it also must issue a warrant of possession, and if the termination order is made on an application made because of excessive hardship, the Tribunal may also make any other appropriate order such as an order that the applicant pay compensation to the other party to the rooming accommodation agreement for the other party's loss of the agreement.

Proposed s 389B-E set out the requirements for how a warrant of possession must be prepared, issued, and executed.

Proposed s 389F provides that, if a rooming accommodation resident fails to hand over vacant possession of the premises after a termination order is made by a Tribunal, the provider may apply to the Tribunal for an order entitling them to receive compensation from the resident for any loss or expense incurred by the provider plus an occupation fee equal to the amount of rent that would have been payable by the resident for the premises for the period the resident remains in possession after termination of the agreement.

Proposed s 389G provides that the rooming accommodation provider has a duty to take all reasonable steps to mitigate any loss or expense incurred because of the resident's failure to hand over vacant possession of rental premises after a termination order is made by a Tribunal or because of another act or omission of the resident, and that the provider is not entitled to receive compensation for any loss or expense that could have been avoided by taking those steps.

Clause 39 Meaning of urgent application

Clause 39(1) omits s 415(5)(l) and (v) which refer to applications made to the Tribunal under the existing s 292 (Application to Tribunal about notice to leave without ground) and s 373 (Application to Tribunal about terminating agreement without ground), to reflect the removal of a lessor's ability to issue a notice to leave or terminate an agreement without ground.

Clause 39(2) replaces s 415(5)(v) with a reference to applications made under the proposed new section 389F which relates to applications by a rooming accommodation provider when a rooming accommodation resident remains in possession of the premises after a termination order is made by a Tribunal.

Clause 40 Tribunal must consider whether provider has met duty to mitigate loss or expense

Clause 40 amends s 421(2)(d) to reflect the rooming accommodation provider's duty to mitigate loss or expense created by the proposed s 389G. It requires the Tribunal, in making an order for compensation in favour of a provider, to have regard to whether the provider has met its duty under that proposed s 389G.

Clause 41 Disputes about lessors' notices

Clause 41 omits the reference to a notice to leave without ground at s 426(5).

Clause 42 Disputes about lessors' notices

Clause 42 omits the reference to a termination of agreement by provider without ground at s 427(1)(b).

Clause 43 Transitional provision

Clause 43 inserts a new Chapter 14 Part 5 which provides that the provisions of the Bill will apply only to a residential tenancy agreement or rooming accommodation agreement entered into on or after the commencement, except for sections 6 and 8 to 13, which relate to minimum housing standards and capped rent increases respectively, and clause 40(2) to the extent it inserts the definition of the "indexed rent amount".

Clause 44 Dictionary

Clause 44 amends Schedule 2 to insert consequential amendments and defines a "close relative" as:

- (a) means the person's spouse, child, grandchild, parent, grandparent, sister or brother; and
- (b) for an Aboriginal person—includes a person who, under Aboriginal tradition, is regarded as a relative of the Aboriginal person; and
- (c) for a Torres Strait Islander person—includes a person who, under Island custom, is regarded as a relative of the Torres Strait Islander person.

Clause 44 amends Schedule 2 to insert consequential amendments and defines a "minor modification" for the purposes of clauses 17 and 21 as:

- (d) painting walls of the premises;
- (e) installing picture hooks or nails in the premises or resident's room;
- (f) installing furniture anchors in the premises or resident's room;
- (g) installing shelving in the premises or resident's room;
- (h) making any other modification to the premises or resident's room prescribed by regulation.