

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

Statement of Compatibility

Prepared in accordance with Part 3 of the Human Rights Act 2019

In accordance with section 38 of the Human Rights Act 2019, I, Amy MacMahon, Member for South Brisbane, make this statement of compatibility with respect to the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021.

In my opinion, the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021 is compatible with the human rights protected by the Human Rights Act 2019 (HR Act). I base my opinion on the reasons outlined in this statement. It limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

Overview of the Bill

The Bill seeks to amend the *Residential Tenancies and Rooming Accommodation Act 2008* (Tenancies Act) and the *Police Powers and Responsibilities Act 2000* (Police Powers Act) to provide better rights and protections for renters in Queensland.

It amends the 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
- 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.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 Human Rights Act 2019)

In my opinion, the human right under the HR Act that is relevant to the Bill is Property rights (Section 24 of the HR Act).

The Bill has the potential to limit a lessor's right to property as it places a number of limits on how a lessor may use their real property while it is being leased to a tenant, including when and how the lessor may access the property, evict a tenant from the property, receive rental payment for a lease of the property, and restrict modifications to the property.

Clauses 18 and 24 of the Bill increase the notice period for entry by the lessor and provide that the lessor or their agent must not enter the property for 48 hours after an entry notice is provided to the tenant.

Clauses 34-38 of the Bill remove the lessor's ability to forcibly remove a tenant under a rooming accommodation agreement without a tribunal order.

Clauses 26 and 27 respectively of the Bill remove a lessor's ability to evict a tenant for a sale contract or without grounds, and Clauses 27 and 29 increase the notice period that a lessor

must provide before evicting a tenant for owner/ relative occupation, major renovations, the ending of employment entitlement or the ending of accommodation or housing assistance.

Clauses 8-15 of the Bill limit the lessor's ability to increase the rental amount for their property.

Clauses 19 and 23 of the Bill permit the tenant to make minor modifications to the lessor's property without the lessor's prior consent, including:

- Painting walls
- Installing picture hooks or nails
- Installing furniture anchors
- Installing shelving

It is considered that any impact that the amendments in the Bill make upon the property rights and liberties of individuals in this context is justified, having regard to the balance between the human rights of tenants and those of lessors.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)

Section 13 of the Human Rights Act provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

(a) The nature of the right

Section 24 of the Human Rights Act 2019 protects the right of all persons to own property (alone or with others) and provides that people have a right to not be arbitrarily or unlawfully deprived of their property. This right does not provide a right to compensation.

Case authority suggests that 'arbitrary' in the human rights context refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought.

One could argue that the Bill limits lessors' property rights especially if the right includes traditional aspects of property rights including use and exclusion of one's property.

(b) The nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of potential limitations on lessors' property rights are to improve tenants' rights to enjoy a safe and secure home. In my opinion this is consistent with a free and democratic society particularly because access to housing is a critical component of human dignity.

The amendments in this Bill are intended to improve the existing balance of power between renters and lessors, having particular regard to the fact that tenants pay rent to a lessor for use and enjoyment of their real property as the tenant's home, while lessors hold the power to make a tenant homeless.

The provisions are made with regard to the increasing proportion of renters and the need to ensure their equal access to safe, secure housing by providing lease security and a right to remain unless reasonable grounds exist for eviction, the ability to feel truly at home in their rental property by making minor changes, and the right to privacy in their own home without unreasonably short notice periods for entry.

The provisions also take into account the fact that rental affordability is a key barrier to housing access particularly for low income persons, and that rents have risen faster than wages across Queensland for a decade. The amendments in this Bill that limit the lessor's ability to arbitrarily increase rent are designed to improve housing affordability for all persons.

(c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a lessor's ability to access their property without providing reasonable notice to the tenant will allow tenants to enjoy a fairer level of privacy in and enjoyment of their home.

Removing a lessor's ability to forcibly remove tenants in rooming accommodation without a tribunal order will give rooming accommodation tenants equal rights under the law with regard to eviction from their home.

Removing a lessor's ability to evict a tenant to sell the property or without grounds will provide tenants with a right to remain in their home unless the lessor has reasonable grounds to end the lease. This will allow tenants to exercise their rights without fear of losing their home and improve security and stability for tenants in their home.

Limiting the lessor's ability to increase the rental amount for their property will cap rents at a level consistent with inflation, improve rental affordability and enable more tenants to stay in their home without fear of being "priced out". Rent controls will help address homelessness and wealth inequality.

Removing the lessor's right to require tenants to seek permission before making minor modifications to their property will allow tenants to feel more at home in their rental property.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

The limitations imposed by this Bill to lessor's property rights are the least restrictive and reasonably available ways of achieving the purpose of improving the ability of tenants to enjoy a safe and secure home.

The Bill 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. The amendments still allow landowners to receive payment should they choose to rent out their property, and the provisions relating to rent caps simply provide that rent increases should be consistent with other price increases under inflation.

(e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Any potential impact on property rights is considered to be relatively insignificant, given the provisions that remain for the preservation of a person's property rights and particularly regarding the rights afforded to lessors including those outlined at section (d) above.

It is my opinion that the potential limitations on property rights are outweighed by the benefits to the community in ensuring that tenants have adequate rights to enjoy a safe and secure home.

Given the existing legislation and private real estate market provides landlords with an inordinate level of power, their rights to access, use and receive payment for their property must be weighed against the rights of tenants.

The amendments in the Bill are made in order to provide all persons, including renters, with a safe and secure home, consistent with other rights in the HR Act including Recognition and equality before the law (Clause 15 of the HR Act), Privacy and reputation (Clause 25 of the HR Act) and Protection of families and children (Clause 26 of the HR Act).

It is my opinion that protection of those rights should outweigh and take precedence over potential impacts on the right to one's property. The social and economic impacts of the Bill, including to improve housing affordability, address homelessness and housing insecurity and reduce wealth inequality, are sufficiently important public benefits to justify the potential limitations on lessors' right to property.

(f) Any other relevant factors

While the HR Act does not include a right to housing, that right is included in International human rights declarations and a number of submissions on the Human Rights Bill suggested that housing should have been included. This Bill is wholly consistent with that right and particularly with improving all persons' ability to access and enjoy safe, secure housing regardless of land ownership status.

Conclusion

In my opinion, the Residential Tenancies and Rooming Accommodation (Tenants' Rights) and Other Legislation Amendment Bill 2021 is compatible with human rights under the Human Rights Act 2019 because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.