

Housing Legislation Amendment Bill 2021

Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable Leeanne Enoch MP

Title of the Bill

Housing Legislation Amendment Bill 2021

Objectives of the Amendments

The amendments will improve clarity to enhance implementation of Stage 1 rental law reforms and address minor drafting errors by:

- clarifying the effect of a vacating tenant's or resident's interest in a rental agreement ending due to domestic and family violence where multiple tenants or residents are parties to the agreement;
- ensure the familial relationships to be recognised for the purposes of a notice to leave for owner occupation align with existing terms in the *Residential Tenancies and Rooming Accommodation Act 2008* (the Act) to reduce legislative complexity;
- applying relevant offences and misuse provisions to the ending of rooming accommodation agreements; and
- making minor drafting corrections.

Achievement of the Objectives

Effect of vacating renter's interest in an agreement ending due to domestic violence

New sections 308E *Effect of notice ending tenancy interest if more than 1 tenant* and 381E *Effect of notice ending residency interest if more than 1 resident* clarify the rights and obligations of lessors, providers and remaining tenants or residents under their rental agreement when the vacating tenant or resident ends the agreement due to domestic and family violence.

An explicit statement will be inserted in each section that the residential tenancy agreement or rooming accommodation agreement will continue on the same terms with the parties to the agreement being the lessor, agent or provider and the remaining renters if one of the renters ends their interest due to domestic and family violence. This will remove any doubt about the operation and effect of these important protections and will avoid potential confusion or dispute.

Familial relationships to be recognised for notices to leave for owner occupation

New section 290G establishes a ground for a lessor to end a residential tenancy agreement for owner occupation if the rental property is needed for occupation by themselves or their 'immediate family'. 'Immediate family' for a lessor is defined in the Bill as their spouse, a child of the lessor or spouse, a parent of the lessor or their spouse, or another person who normally lives with the lessor and is dependent on the lessor for health care or financial support.

Schedule 2 *Dictionary* of the Act defines "relative" to include the person's spouse, child, grandchild, great grandchild, parent, grandparent, great grandparent, brother, sister, uncle, aunt, cousin, nephew, niece, parent-in-law, daughter-in-law, son-in-law, sister-in-law, or brother-in-law. The definition of 'relative' also specifically recognises Aboriginal and Torres Strait Islander peoples' traditional and customary family relationships.

The existing definition of 'relative' in the Act will be adopted in new section 290G to replace 'immediate family' for the grounds of owner-occupation. This will improve clarity by aligning with existing accepted definitions of family in the sector and reduce legislative complexity.

Applying offences and misuse provisions to the ending of rooming accommodation agreements

New offences are introduced in the Bill to prevent misuse of new grounds for lessors to end residential tenancy agreements, including if false or misleading information is given to a tenant in a notice to leave or if a lessor relets the premises within a specified period after issuing particular notices to leave to a tenant.

Relevant offences will be replicated for rooming accommodation notices to leave. This will ensure these misuse protections are applied consistently and fairly to both residential tenancy and rooming accommodation agreements.

Minor drafting corrections

Errors to numbering and cross-referencing of sections are rectified. The amendments are required due to the staggered introduction of some provisions and ensures legislative accuracy and consistency in referencing.

Alternative Ways of Achieving Policy Objectives

A range of policy options were considered to achieve the policy objectives. Legislative amendment was determined to be the most appropriate option given the requirement and need to address minor drafting errors and also provide clarification to existing provisions. The legislative reforms will be supported by a communication and education campaign.

Estimated Cost for Government Implementation

The amendments do not add to the cost of government implementation as outlined below and will address inconsistencies and clarify original policy intent.

Financial implications of the overall rental reform package in the Bill have been modelled and estimated for affected Queensland Government agencies, including the Residential Tenancies Authority, the Queensland Civil and Administrative Tribunal, Queensland Magistrates Courts systems, and the Office of the Commissioner for Body Corporate and Community Management.

Calculating the full cost of the impact of the reforms is based on estimations in the absence of accurate data. It is not possible to definitively quantify reform impacts on business and operations at this stage as reliable data is not available to predict likely changes in party's behaviour, including their uptake of new renting rights and demand for information, advisory, investigation, dispute resolution, and decision-making services.

Consistency with Fundamental Legislative Principles

Amendments to apply new offences to prevent misuse of new grounds for providers to end rooming accommodation agreements, including if false or misleading information is given to a resident in a notice to leave or if a provider relets the premises within a specified period after issuing particular notices to leave to a resident may infringe the Fundamental Legislative Principle relating to proportion and relevance.

Consequences imposed by legislation should be proportionate and relevant to the actions to which they are applied, provide differing penalties reflecting the seriousness of the offences, and be consistent with other penalties within the legislation. The new offences replicated for rooming accommodation notices to leave are considered proportionate and appropriate responses to encourage providers to comply with the Act. The new penalty provisions are consistent with existing offences of similar severity provided for under the Act.

Consultation

The Bill was referred to the Community Support and Services Committee (the Committee). On 25 July 2021 the Committee invited stakeholders and subscribers to make written submissions on the Bill. Feedback from the Committee consultation was analysed and taken into consideration for these amendments. The Committee tabled its report to Parliament on 16 August 2021.

Analysis of feedback received through the Committee's consultation process informed amendments to clarify the effect of a notice ending tenancy interest due to domestic violence where more than one tenant or resident are parties to the rental agreement and the appropriate definition of family for the purposes of the new ground for lessors to end residential tenancy agreements for owner occupation.

Further consultation on these amendments was not considered necessary.

Consistency with legislation of other jurisdictions

While the Act is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state, several Australian states and territories have recently reviewed their rental laws, including Victoria, New South Wales and the Australian Capital Territory. Queensland is part of this wider national trend towards more contemporary legislation that improves protections for tenants while safeguarding lessor's interests.

Notes on provisions

Clause 1 amends Clause 22 to insert a new subsection to section 308E (Effect of notice ending tenancy if more than 1 tenant) to explicitly state that the residential tenancy agreement continues between the lessor and remaining tenants on the same terms. This will minimise ambiguity in the interpretation of this legislative provision and clarify the policy intent that the agreement continues between the lessor or agent and any remaining tenant/s on the same terms despite the vacating tenant ending their tenancy interest.

Clause 2 amends Clause 26 to insert a new subsection to section 381E (Effect of notice ending residency interest if more than 1 resident) to explicitly state that the rooming accommodation agreement continues between the provider and remaining residents on the same terms. This will minimise ambiguity in the interpretation of this legislative provision and clarify the policy intent that the agreement continues between the provider and any remaining resident/s on the same terms despite the vacating resident ending their residency interest.

Clauses 3 and 4 amend Clause 29(3) and (6) to accommodate amendments to s415(5) that will commence at different times. Existing s415(5)(l) and (v) makes applications to the tribunal under ss292 and 373 of the Act about a notice to leave without ground for residential tenancy and rooming accommodation agreements an urgent application. Clause 29(3) and (6) of the Bill omit and replace s415(5)(l) and (v) to provide that applications to the tribunal about notices ending tenancy or residency interest due to domestic violence under new ss 308H and 381H are urgent applications.

However, the removal of notices to leave without grounds as an approved reason for property owners to end tenancy agreements commence by proclamation, while notices ending tenancy interest because of domestic violence commence on assent. If Clause 29(3) and (6) of the Bill are made as currently drafted, applications to the tribunal about notices to leave without grounds would no longer be considered urgent applications.

Clauses 3 and 4 change the paragraph numbering to retain existing ss 415(5)(l) and (v) and insert new paragraphs 415(5)(la) and (va) to provide for applications to the tribunal about notices ending tenancy and residency interests respectively as urgent applications. A consequential amendment of this drafting change is to renumber the new paragraph inserted by Clause 29(7) of the Bill for death of a sole resident from paragraph 415(5)(va) to 415(5)(vb).

These amendments will ensure appropriate arrangements are in place for amendments commencing on assent to allow urgent applications to be made to the tribunal about notices to leave without grounds, notices ending tenancy or residency interest and notices about the death of a sole resident.

Clause 5 amends Clause 53 to correct a numerical drafting error in amendments to section 253 (Resident's obligations generally) created by insertion of subsections.

Clause 6 amends Clause 54 to correct a numerical drafting error in amendments to section 253 (Residents' obligations generally) created by the insertion of subsections.

Clauses 7 and 8 amend Clause 58 to omit references to and the definition of 'immediate family' and adopt the existing definition of 'relative' in Schedule 2 (Dictionary) of the Act for the purposes of the new ground for lessors to end residential tenancy agreements for owner occupation.

Clause 9 amends Clause 75 to omit references to 'immediate family' and adopt the existing definition of 'relative' in Schedule 2 (Dictionary) of the Act for offence provisions relevant to notices to leave for owner occupation. This is consequential to and consistent with amendments to the familial relationships to be recognised for the purposes of notices to leave for owner occupation made by Clauses 7 and 8.

Clause 10 amends Clause 83 to insert and apply offence and penalty provisions for misuse of notices to leave for rooming accommodation agreements.

New section 396A creates an offence for providers or their agents to knowingly include false and misleading information in notices requiring residents to leave rental premises for premises being sold (s371A), planned demolition or redevelopment (s371B), significant repair or renovation (s371C) and change of use (s371D). The maximum penalty for the offence is 50 penalty units. The offence does not apply if the provider or their agent tells the resident to the best of their knowledge how the document is false or misleading when the notice is given and gives the resident the correct information if they have or can reasonably obtain it.

New section 396B creates an offence for a provider to relet the rental premises within six months of the rooming accommodation agreement ending if they gave the resident a notice to leave for premises being sold. The maximum penalty for the offence is 50 penalty units. It is a defence for the provider to prove that they genuinely made the premises available for sale but received no offers that were acceptable to them or entered a contract for the sale of the premises but this ended without the premises being sold.

New section 396C creates an offence for a provider to relet the rental premises within six months of the rooming accommodation agreement ending if they gave the resident a notice to leave for change of use. The maximum penalty for the offence is 50 penalty units. It is a defence for the provider to prove that the change of use did not occur for reasons outside the provider's control.

Clauses 11 and 12 amend Clause 84 to ensure drafting accuracy and correct a drafting error in relation to separating amendments to section 415 (Meaning of *urgent application*) based upon whether the amendments commence on assent or by proclamation. This amendment will ensure that existing section 415(5)(l) and (v) will be omitted on proclamation of amendments made by clause 84 of the Bill. Section 415(5)(l) and (v) relate to applications to the tribunal about a notice to leave without ground and are consequential amendments to ending tenancy reforms implemented by the Bill.