

Housing Legislation Amendment Bill 2021

Statement of Compatibility

FOR

Amendments moved during consideration in detail by the Honourable Leeanne Enoch, MP, Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts

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

In accordance with section 38 of the *Human Rights Act 2019*, I, Leeanne Enoch, Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts make this statement of compatibility with respect to amendments during consideration in detail to be moved to the Housing Legislation Amendment Bill 2021 (the Bill).

In my opinion, the amendments to be moved to the Bill are compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the amendments

The amendments to be moved to the Bill will:

- clarify 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* to reduce legislative complexity;
- apply relevant offences and misuse provisions to the ending of rooming accommodation agreements; and
- make minor drafting corrections.

Human Rights Issues

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

Amendments 1 and 2 clarify that if there is more than one renter and one of the renters ends their interest due to domestic and family violence, the residential tenancy agreement or rooming accommodation agreement will continue on the same terms with the remaining renters. Amendments 3, 4, 5 and 12 are minor corrections. These amendments provide clarification and do not change the human right considerations previously addressed in the Statement of Compatibility that was tabled with the Bill.

Amendment 11 include offences relating to provision of false or misleading information in relation to rooming accommodation and reletting rooming accommodation. This replicates offences for residential tenancies.

Amendments 6 to 10 relate to the notice to leave for owner occupation under section 290G in clause 58 of the Bill. Section 290G allows the owner to give the renter a notice to leave if the owner or their immediate family need to occupy the premises. 'Immediate family' is defined as the owner's spouse, child or parent or another person who normally lives with the owner and is dependent on them for health care or financial support. Under the amendments the notice may be given if a 'relative of the owner' needs to occupy the premises. 'Relative' is already defined in schedule 2 of the *Residential Tenancies and Rooming Accommodation Act 2008* as 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 and specifically recognises Aboriginal and Torres Strait Islander peoples' traditional and customary family relationships.

In my opinion, the human rights that are relevant to the amendments to be moved to the Bill are as follows:

- Freedom of expression (section 21)
- Property rights (section 24)
- Privacy and reputation (section 25)

For the reasons outlined below, I am of the view that the amendments to be moved to the Bill are compatible with each of these human rights.

If the Bill is enacted and limits a human right, consideration of whether the limits are reasonable and demonstrably justifiable (section 13 of the *Human Rights Act 2019*)

Freedom of expression (section 21)

(a) the nature of the right

Section 21 of the *Human Rights Act 2019* provides that every person has the right to hold an opinion without interference and that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether orally, in writing, in print, by way of art or in another medium chosen by the person. Freedom of expression promotes the self-fulfilment of individuals in society and is the lifeblood of democracy, through informing debate and enabling accountability.

(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

Restricting the provision of false or misleading information in a notice to leave is to ensure that a rooming accommodation agreement is ended fairly and not on false grounds and this is consistent with dignity, equality and freedom.

(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

Restricting the provision of false or misleading information in notices to leave helps achieve the purpose of ensuring a rooming accommodation agreement is ended fairly.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Given the seriousness of providing false or misleading information in a notice to leave and the importance of ensuring a rooming accommodation agreement is not unfairly ended, creating an offence for provision of false or misleading information in a notice to leave is considered to be the least restrictive and reasonably available way of ensuring agreements are not unfairly ended.

(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

The importance of ensuring tenancies are not unfairly ended outweighs the freedom of expression that would be exercised through providing false or misleading information in notices to leave.

Property rights (section 24 of the *Human Rights Act 2019*)

(a) the nature of the right

Section 24 provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom.

The right includes the protection from the deprivation of property. Deprivation in this sense has been held to include the substantial restriction on a person's use or enjoyment of their property. Property is likely to include all real and personal property interests recognised under general law (for example, interests in land, contractual rights and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude). The right does not provide a right to compensation.

Under the Bill, the owner would no longer be able to end a tenancy without ground but would have access to a wider range of specific stated grounds in the legislation to end the tenancy. One of the specific grounds allows a notice to leave for owner occupation under section 290G. Amendments 6 to 10 will adjust this ground so that the owner may give the notice if a broader range of relatives of the owner need to occupy the property. This adjustment does not arbitrarily deprive a person of their property.

Amendment 11 will replicate the offences for residential tenancies and prevent a provider from reletting rooming accommodation to another resident for a period of six months after the provider has ended a rooming accommodation agreement under a notice to leave for rental

premises being sold or notice to leave for change in use. These offences will not arbitrarily deprive a person of their 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 provisions about ending tenancies are intended to provide a tenant or resident with more certainty about the continuation of their tenancy or rooming accommodation agreement by removing the owner's unlimited discretion to end the tenancy without grounds and adding grounds to enable the owner to end the tenancy in specific circumstances. The adjustment to the grounds by enabling a owner to end a tenancy where the owner's relatives need to occupy the premises rather than only the owner's immediate family aligns with accepted definitions within the residential rental sector and is culturally inclusive. This adjusts the balance of rights of owners and tenants in a way that is consistent with a free and democratic society and is consistent with cultural rights under sections 27 and 28 of the *Human Rights Act 2019*.

The provisions which prevent a provider from reletting premises for a period after giving a notice to leave discourage providers from falsely relying on a ground to end a rooming accommodation agreement and enhance residents' housing security.

- (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

The adjustment to the notice to leave for owner occupation provisions align the provisions with accepted definitions within the residential rental sector and are culturally inclusive.

Preventing providers from reletting premises in certain circumstances discourages purported ending of a rooming accommodation agreement where a ground to end the agreement has not arisen.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Less restrictive and reasonably available ways to achieve the purposes of the amendments to the Bill have not been identified.

- (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

The adjustments to the notice to leave for owner occupation provisions and the restrictions on providers of rooming accommodation reletting in certain circumstances are not considered to arbitrarily limit property rights. The adjustments are considered to strike an appropriate balance between the rights of owners and renters.

Privacy and reputation (section 25)

(a) the nature of the right

Section 25 of the *Human Rights Act 2019* provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked. The right protects privacy in the sense of personal information, data collection and correspondence, as well as also extending to an individual's private life more generally.

The Bill supports a renter's rights in respect of their home by removing the owner's right to end a tenancy without ground and provides for specific grounds on which the tenancy may be ended. The adjustment to the notice to leave for owner occupation provisions so that the owner may give the notice if a broader range of relatives of the owner need to occupy the property is not considered to unlawfully or arbitrarily interfere with the renter's home.

(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 adjustment to include additional relatives aligns with accepted definitions within the residential rental sector and is culturally inclusive.

(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

The adjustment helps achieve the purpose of aligning definitions and being culturally inclusive.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Less restrictive and reasonably available ways to achieve the purposes of the amendments to the Bill have not been identified.

(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

The adjustment allow the owner to end a tenancy if a broader range of relatives of the owner need to occupy the property but overall the Bill still enhances the renter's rights through removing the owner's right to end a tenancy without ground and including specific grounds. The adjustment is important to align with accepted definitions within the residential rental sector and be culturally inclusive and strikes a fair balance between the rights of the owner and renter.

Conclusion

In my opinion, the amendments moved to the Housing Legislation Amendment Bill 2021 are compatible with human rights under the *Human Rights Act 2019* because they limit human

rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

Leeanne Enoch MP
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