

Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022

Statement of Compatibility

Amendments during consideration in detail to be moved by the Honourable Steven Miles MP, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure

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

In accordance with section 38 of the *Human Rights Act 2019*, I, Steven Miles MP, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure make this statement of compatibility with respect to amendments moved in consideration in detail to the Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022.

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 Bill

The *Queensland Housing Strategy 2017-2027* (the Housing Strategy) is a 10-year framework driving key reforms and targeted investment across the housing continuum. The Housing Strategy seeks to ensure Queenslanders have access to safe, secure, and affordable housing.

The Housing Strategy aims to ensure confidence in housing markets, ensure consumers are protected and the housing legislative framework is reformed and modernised.

The amendments to be moved to the Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022 (the Bill) support the objectives of the Housing Strategy by:

- helping stabilise rents in the private rental market by limiting the frequency of rent increases to once a year; and
- correcting a drafting error to wording used to determine when a renter's obligations for a tenancy end.

The Bill will amend the:

- *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act); and
- *Residential Tenancies and Rooming Accommodation Regulation 2009* (RTRA Regulation).

Human Rights Issues

RTRA Act amendments to limit frequency of rent increases

Human rights engaged or limited (Part 2, Divisions 2 and 3 Human Rights Act 2019)

Residential tenancy agreements

Clause 58C will amend section 93 of the RTRA Act to provide that the minimum period before rent can be increased for a residential tenancy agreement is 12 months, rather than the current minimum period of 6 months. As is the case currently, if a lessor or lessor's agent increases rent within that minimum period, they will be liable to a penalty of 20 penalty units.

Section 91 of the RTRA Act sets out a 2-month notification period for rent increases. Clause 58B amends section 91 of the RTRA Act to clarify that the increased rent is not payable until 2 months after the day the notice of the rent increase is given to the tenant or the end of the 12-month minimum period for rent increases under section 93, whichever is later. The Bill will also enact consequential amendments to the RTRA Regulations (clauses 58J and 58L).

Rooming accommodation agreements

Clause 58E will insert a new section 105B into the RTRA Act to provide that the minimum period before rent can be increased for a rooming accommodation agreement is 12 months. Currently there is no minimum period. If a provider or provider's agent increases rent within that minimum period, they will be liable to a penalty of 20 penalty units.

Clause 58D amends section 105 of the RTRA Act to clarify that the increased rent is not payable until 4 weeks after the day the notice of the rent increase is given to the resident or the end of the minimum 12-month period for rent increases under section 105B, whichever is later. The Bill will also enact consequential amendments to the RTRA Regulations (clause 58P).

Clause 58F includes a consequential amendment to section 154 of the RTRA Act in relation to rental bonds for residential tenancy agreements and rooming accommodation agreements.

Engagement or limitation of right to property

The amendments will restrict when lessors may impose a rental increase for residential tenancy agreements from once every 6 months to once every year and will thereby interfere with their property rights in section 24 of the HR Act. The amendments will also interfere with when a rooming accommodation provider can increase rent payable by a resident, and therefore engage their property rights under section 24 of the HR Act. One of the normal incidents of property is that an owner is entitled to determine the amount of rent they are happy to receive in exchange for granting possession of the property, and to periodically change the amount of rent they are happy to receive.

In Europe, rental control measures have been found to engage the right to property: *Mellacher v Austria* (1990) 12 EHRR 391, [1989] ECHR 25; *Edwards v Malta* [2006] ECHR 887; and *Lindheim v Norway* [2012] ECHR 985.

Whether any limits on human rights are reasonable and justifiable (section 13 Human Rights Act 2019)

(a) the nature of the right

The right not to be arbitrarily deprived of property (section 24(2)) –

Section 24 of the HR Act 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 protection from arbitrary 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. A deprivation of property will be arbitrary if it is capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. If a deprivation of property is proportionate under section 13 of the HR Act it will not be arbitrary. Accordingly, it is convenient to consider arbitrariness below when considering proportionality.

(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 limitations on the frequency of rent increases are intended to provide a tenant or resident with more certainty in their tenancy or rooming accommodation agreement and to help stabilise the rental market. By facilitating greater certainty and stabilising the rental market, the amendments will promote the human rights of tenants and residents, including their:

- freedom to choose where to live (section 19);
- right not to have their family and home arbitrarily interfered with (section 25(a)); and,
- protection of families and children in their best interests (section 26(1) and (2)).

The protection of these interests is a legitimate aim consistent with a free and democratic society based on human 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

Limiting the frequency of rent increases to 12 months will promote certainty in tenancy and rooming accommodation agreements, and it will help stabilise the rental market.

(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 have not been identified. In particular, a shorter minimum period before rent can be increased will not be as effective as in promoting certainty for tenants and residents, and it will not be as effective in stabilising the rental market. A shorter period would also not be consistent with most other jurisdictions. The annual limit on rent increase frequency is also consistent with most other Australian jurisdictions, including New South Wales, the Australian Capital Territory, South Australia, Victoria, and Tasmania.

- (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

On one side of the scales, the right to property for owners is important. By exercising their property rights, people are able to enjoy other human rights and lead dignified lives. However, in assessing the size of the impact on the right to property, it should be noted that the amendments do not place any monetary cap on rental increases. Further, when it comes to residential tenancy agreements, owners are already subject to 6-month minimum periods for rent increases.

On the other side of the scales, the importance of stabilising the rental market and ensuring certainty for tenants and residents is also very important. With stability, tenants and residents are more likely to have a secure place to live. In this way, the amendments promote the human rights of tenants and residents, including the freedom to choose where to live and the right to non-interference with their home.

Ultimately, the importance of the amendments outweighs the impact on the right to property of owners.

As the impacts on property are proportionate, the amendments do not deprive owners of their property in a manner that is arbitrary. Therefore, the right not to have one's property arbitrarily deprived in section 24(2) of the HR Act is not limited. Any other limits on the right to property in s 24 of the HR Act are justified.

- (f) any other relevant factors

Not applicable.

Correction to drafting error in section 277 of the RTRA Act (Ending of residential tenancy agreements)

Clause 58G will amend section 277 of the RTRA Act to clarify when a residential tenancy agreement ends by changing 'on or before' to 'on or after' the handover day for the notice. The Bill will also enact consequential amendments to the RTRA Regulations (clauses 58K, 58M, 58N and 58). This is a minor correction to provide clarification and does not engage any human rights considerations.

Transitional Provisions

Clause 58H of the Bill provides that the amendments to sections 91, 93 and 105 and new section 105A of the RTRA Act will apply to all residential tenancy or rooming accommodation agreements in effect after 30 June 2023 regardless of when the agreement began. The consequence will be that an inconsistent term in an agreement will be void to the extent of the inconsistency. These amendments may alter the terms of existing agreements and thereby retrospectively affect the existing rights and obligations of parties. In a human rights context, it is particularly relevant that sections 93 and 105A will prescribe a penalty if a lessor, rooming accommodation provider, or their agent, increases rent within the 12-month minimum period before rent can be increased.

Section 35 of the HR Act sets out protections against retrospective criminal laws. In particular, section 35(1) provides that a person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in. However, I consider that the right in section 35(1) is not engaged because the penalty provisions will apply prospectively. Although the parties to the agreement will be subject to new rules that did not apply when they first entered into the agreement, the penalties will only apply to future conduct engaged in after 30 June 2023.

Conclusion

In my opinion, the amendments to be moved to the Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022 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 a free and democratic society based on human dignity, equality and freedom.

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