

# **Residential Tenancies and Rooming Accommodation Amendment Regulation (No. 1) 2016**

Explanatory notes for SL No. 53

made under the

*Residential Tenancies and Rooming Accommodation Act 2008*

## **General Outline**

### **Short title**

*Residential Tenancies and Rooming Accommodation Amendment Regulation (No. 1) 2016*

### **Authorising law**

Sections 459(1)(c) and 520 of the *Residential Tenancies and Rooming Accommodation Act 2008* (the RTRA Act).

### **Policy objectives and the reasons for them**

Tenancy databases are legitimate tools that help property owners protect their property investments. However, unfair listings can occur and this can result in tenants not being able to access housing. Existing Queensland laws about tenancy database listings set out who, when and under what circumstances a person can be listed.

The amendments to the RTRA Act are to implement the national minimum standards for tenancy database listings that were contained in the Plumbing and Drainage and Other Legislation Amendment Bill 2015. The national standards were based on Queensland's existing provisions which had been in the RTRA Act since 2003. However, some changes were required to introduce measures not already in force in Queensland.

The Plumbing Drainage and Other Legislation Amendment Bill 2015 was introduced into Parliament on 1 December 2015, and was referred to the Utilities, Science and Innovation Committee (now the Transportation and Utilities Committee) (the Committee). The Committee called for written submissions and held a public hearing, before submitting its report on 1 March 2016.

The Committee made three recommendations in relation to the tenancy database amendments, and included under Recommendation 2 *“that the Minister for Housing and Public Works investigate legislative mechanisms to ensure that a person cannot be listed on a tenancy database if the amount owing is an unreasonably small amount, for example \$20”*.

On 16 March 2016, the Government's response to the Committee's report was tabled in Parliament. The Government response to Recommendation 2 was that it could be achieved by amending the *Residential Tenancies and Rooming Accommodation Regulation 2009* (the Regulation) to establish that a person could not be listed on a tenancy database unless the amount owed was more than the equivalent of one week's rent if no rental bond had been paid.

The approved reasons for listing a tenant on a tenancy database are contained in section 14 "Approved reasons for listing on a tenancy database" of the Regulation. These include that, for a monetary amount, the tenant cannot be listed unless the amount owing is more than any rental bond held for the premises, or more than any rental bond plus tenancy guarantee for the property. There is currently no limit to prevent a listing if no rental bond has been charged.

The Government Response indicated that amendments would be made to the Regulation to prevent a database listing unless:

- the amount owing is more than any rental bond being held and tenancy guarantee given, or
- if there is no rental bond being held or tenancy guarantee given, the amount owing is more than an amount prescribed by the Regulation.

The *Plumbing and Drainage and Other Legislation Amendment Act 2016* received Royal Assent on 24 March 2016.

## **Achievement of policy objectives**

The policy objective is achieved by the Regulation being amended to prevent tenants from being listed on tenancy databases where no rental bond and/or tenancy guarantee is in place, and the amount owed is not more than one week's rent. Subsequent, minor amendments are required to amend the wording of the Regulation to match wording in the RTRA Act, which refers to "*listing personal information about the relevant tenant*" rather than "*listing the relevant tenant*".

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the policy objectives of the authorising law, the RTRA Act, to regulate tenancy database listings.

## **Inconsistency with policy objectives of other legislation**

The Regulation is not inconsistent with any policy objectives of any other legislation.

## **Alternative ways of achieving policy objectives**

The policy objectives can only be achieved by making the Regulation, as the Regulation establishes the approved reasons for tenancy database listings.

## **Benefits and costs of implementation**

The costs associated with the implementation of these amendments to the Regulation are negligible, as they refine existing obligations around listing reasons for tenancy databases. Informing the residential rental sector of these changes to tenancy database listings will be incorporated into the education and information activities arising to the changes to other tenancy database provisions under the RTRA Act arising from the *Plumbing and Drainage and Other Legislation Amendment Act 2016*.

The amendments will benefit tenants by ensuring that listings on databases are not made for relatively small amounts. The impact of tenancy database listings on tenants is substantial as they may limit their access to private rental housing.

The purpose of regulating tenancy database listings is to ensure that the listings are linked to a quantifiable loss or risk to potential lessors. The Parliamentary Committee heard that tenants could be listed for small amounts, such as owing \$20. While the current provisions of the Regulation prevent listings for amounts that are less than any rental bond paid by the tenant and/or tenancy guarantee provided, there were no minimum limits to prevent a listing if no rental bond had been charged.

These changes establish a minimum prescribed amount where no rental bond has been paid by a tenant and/or a tenancy guarantee has been provided. Rental bonds are not compulsory, and it is up to the lessor/agent to decide whether or not to charge a tenant a rental bond to provide a measure of financial protection.

The restriction on listing tenants on tenancy databases for small amounts will not unduly affect lessors, as it does not remove the obligation of the tenant to pay any outstanding amounts to the lessor.

Tenants owing small amounts of money are also not a great risk to future lessors. Checking tenant applicants against tenancy databases is only one strategy used by lessors and agents when assessing prospective tenants. Other options include lessors and agents doing reference checks, confirming the tenant's ability to pay rent, and checking their previous rental history.

## **Consistency with fundamental legislative principles**

The proposed changes are consistent with fundamental legislative principles.

## **Consultation**

The amendments have resulted from public consultation undertaken by the Transportation and Utilities Committee, and are in line with the recommendations of that Parliamentary Committee.

The Committee recommended that an amount be set to prevent tenants being listed for relatively minor amounts. The minimum amount of one week's rent was established after considering other provisions of the RTRA Act. For example, section 192(2)(d) indicates a monetary amount for a significant breach would be the equivalent of one week's rent for the premises. This allows the amount to be set in relation to the cost and value of the property to rent, and is not a nominated figure which would need to be reviewed and amended regularly in future.