

# **Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020**

## **Explanatory Notes for SL 2020 No. 57**

made under the

*COVID-19 Emergency Response Act 2020*

*Residential Tenancies and Rooming Accommodation Act 2008*

## **General Outline**

### **Short title**

*Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020.*

### **Authorising law**

Section 24 of the *COVID-19 Emergency Response Act 2020*

Section 520 of the *Residential Tenancies and Rooming Accommodation Act 2008*.

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

The COVID-19 public health emergency has had a significant impact on Queenslanders, including those in the residential tenancy and rooming accommodation sectors. Many tenants and rooming accommodation residents face major financial pressures, which may impact their ability to maintain rent payments and stay in their homes. Community health restrictions have also been implemented to reduce social contact and minimise time spent outside the home.

The policy objectives of this regulation are to:

- ensure the stability of residential tenancies and rooming accommodation in Queensland during the COVID-19 pandemic
- minimise the impact of obligations under the *Residential Tenancies and Rooming Accommodation Act 2008* that may conflict with COVID-19 community health directives
- improve transparency and certainty regarding how residential tenancies and rooming accommodation agreements end during the COVID-19 emergency period
- improve protections for persons in residential tenancies or rooming accommodation who are escaping domestic and family violence during the COVID-19 emergency period

## Achievement of policy objectives

To achieve its objectives, the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* will:

- implement a moratorium on evictions for tenants under residential tenancy agreements and residents under rooming accommodation agreements in which the tenant or resident suffers excessive hardship because of the COVID-19 pandemic and fail to pay rent under the respective agreements;
- require that lessors and rooming accommodation providers must, before the term of the agreement ends, extend fixed term residential tenancy agreements and rooming accommodation agreements to 30 September 2020 or an earlier date requested by the resident or tenant;
- provide that where a fixed term tenancy agreement or rooming accommodation agreement includes a term requiring the tenant or resident to pay reletting costs, then the reletting costs are limited, if the tenant or resident terminates the agreement other than in a way permitted under the Act. The limit applies where a tenant or resident suffers loss of income of 75% or more and has less than \$5,000 in savings;
- release lessors and providers from particular obligations in relation to routine repairs and inspections if the obligation is inconsistent with public health direction or social distancing;
- restrict lessors, lessor agents, providers and provider agents from entering premises where a tenant or resident refuses entry because the person or another person staying at the premises is subject to quarantine or is a vulnerable person balanced by an obligation for a tenant to facilitate a virtual inspection or inspection by other means if physical entry is refused;
- prevent a person who has been informed that a tenant suffers excessive hardship because of COVID-19 or is complying with a public health direction, from listing personal information on a tenancy database about that tenant's failure to pay rent or ending a residential tenancy agreement during the COVID-19 emergency period;
- enable tenants and residents experiencing domestic violence to leave a tenancy and cap their liability for end of lease costs to enact plans to end the violence;
- to extend notice periods or timeframes within which to exercise or enforce a right under the Act;
- to allow a tenant to terminate an agreement within seven days after occupying the premises, on the grounds that the premises are not in good repair or do not meet a prescribed minimum housing standard;
- provide additional reasons for lessors/providers and tenants/residents to end a tenancy during the COVID-19 emergency period, including to allow a lessor or their immediate family member to occupy the property or end a fixed term tenancy if the premises are being sold with vacant possession or to prepare the property for sale; and
- provide that parties are required to undertake conciliation to resolve disputes about COVID-19 impacted tenancies before applying to the Queensland Civil and Administrative Tribunal.

The Regulation will also ensure during the COVID-19 response period that lessor or provider-initiated terminations can only occur where there are transparent and stated grounds and that tenants and residents experiencing domestic and family violence can leave a tenancy safely and with capped liability.

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

The *COVID-19 Emergency Response Act 2020* (the Act) protects the health, safety and welfare of persons affected by the COVID-19 emergency, including to provide for matters related to residential leases affected by the COVID-19 emergency.

Section 24 of the Act provides for a regulation to be made under the Act or the *Residential Tenancies and Rooming Accommodation Act 2008* to make provision for any matter necessary for responding to the COVID-19 emergency, including:

- to ensure rights, obligations and processes under the RTRA Act operate appropriately having regard to COVID-19 response measures;
- assist in achieving the objectives of the COVID-19 response measures; and
- support the Queensland residential rental sector during the COVID-19 emergency period.

The Regulation implements response measures to support the residential rental sector to manage COVID-19 impacts on residential leases, including:

- to impose a moratorium on evictions of tenants and residents during the COVID-19 emergency period;
- alter the grounds on which notices to leave may be given;
- enable particular disputes about unpaid rent to be conciliated by the Residential Tenancies Authority;
- suspend a right or obligation under the RTRA Act in particular circumstances
- provide for applications to be made to and decided by a different entity provided for under the RTRA Act;
- prohibit the inclusion of particular matters in a tenancy database within the meaning of section 57 of the RTRA Act;
- amend residential tenancy or rooming accommodation agreements including to extend the term or terminate the agreement or where there are more than one tenant or resident for an agreement, end the interest of a tenant or resident in the agreement; and
- extend the application of particular provisions of the RTRA Act to additional persons.

A Regulation made under section 24 of the Act may be inconsistent with an Act or law other than the *Human Rights Act 2019* to the extent necessary to achieve a purpose of the regulation and the Act, have retrospective application to a date not earlier than 19 March 2020 and impose a penalty that is not more than 100 penalty units for a contravention of the Regulation.

The Regulation implements measures to:

- protect tenants from eviction and tenancy database listings due to rent arrears caused by COVID-19 impacts;
- extend fixed term tenancies due to expire during the COVID-19 emergency to at least 30 September 2020 unless the tenant requests a shorter term;
- require lessors to only end COVID-19 impacted leases with approved reasons and required notice periods;
- provide new approved reasons for lessors, providers, tenants and residents to end their lease if they need to during the COVID-19 emergency, including if

they are experiencing domestic and family violence with protections in place to limit their liability for end of lease costs;

- cap break lease costs for eligible tenants if their income has reduced by at least 75% and they have savings less than \$5,000;
- relax owner obligations for routine repairs and inspections while maintaining regulatory obligations that ensure tenant safety in the rental property continue to apply;
- allow vulnerable tenants to refuse physical entry for non-essential reasons balanced by an obligation for tenants to facilitate virtual inspections if a physical one cannot take place; and
- require the parties to undertake conciliation to resolve disputes about COVID-19 impacts on their lease.

These measures are consistent with the purposes described in section 24(1) and the range of matters described in section 24(2) of the Act.

Sections 8 and 47 of the Regulation apply retrospectively to 29 March 2020 to align with the National Cabinet agreed moratorium on evictions for residential tenancies in financial distress due to the impacts of COVID-19. Penalties imposed under the Regulation do not exceed 100 penalty units. This is consistent with the limitations on the regulation making power outlined in section 24(3) of the Act.

The Regulation is consistent with the policy objectives of the authorising Act.

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

No inconsistencies with the policy objectives of other legislation have been identified.

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

The COVID-19 pandemic has been declared a public health emergency under section 319(2) of the *Public Health Act 2005*. Owing to the urgency and severity of the COVID-19 outbreak, it is necessary that the response be rapid, flexible, and broad-based. Time-limited emergency regulations are the most efficient means available to respond to this emergency. There are no viable alternative ways of achieving the policy objectives.

### **Benefits and costs of implementation**

The Regulation will provide clarity and certainty to the residential rental sector to manage COVID-19 impacts on residential tenancy and rooming accommodation agreements. The measures strike an appropriate balance to protect both tenant and property owner interests during the COVID-19 emergency period. There may be increased pressure on the resourcing of conciliation, decision-making and other services provided by the Residential Tenancies Authority, the Queensland Civil and Administrative Tribunal, and the Queensland Magistrates Courts, as a result of the COVID-19 response measures in this regulation.

## Consistency with fundamental legislative principles

Measures in the regulation have potential to infringe several fundamental legislative principles relating to the rights and liberties of individuals, including that legislation should not abrogate rights without sufficient justification and proportion and relevance.

The fundamental legislative principles that are potentially engaged by the regulation are set out below. The regulation seeks to reflect community expectations in achieving a fair balance between the rights of the parties in the circumstances arising from the COVID-19 emergency. Where measures in the regulation are inconsistent with principles, this has been done to balance the interests of different individuals or to match individuals' rights and obligations with community expectations in the circumstances arising from the COVID-19 emergency.

**Retrospective operation:** The six-month moratorium on evictions takes effect retrospectively from when the National Cabinet's decision on the moratorium was announced on 29 March 2020. The rapid development of the COVID-19 emergency and response meant that moratorium was decided and announced before changes to laws to provide for the moratorium could be introduced.

**Interference with property rights:** The regulation interferes with property rights of lessors and tenants and providers and residents by adjusting their respective rights and obligations relating to rental properties. The interferences are limited in several ways, including, for all of the changes, the expiry of the regulation on 31 December 2020. Other limitations include the following:

- The provisions for the moratorium on evictions and extensions of fixed term agreements only apply where the tenant or resident suffers excessive hardship because of the COVID-19 emergency, as defined in section 6 of the regulation. This includes criteria that the tenant or resident must have suffered a loss of income of 25% or more or if their rent is 30% or more of their income. There are safeguards against tenants or residents incorrectly claiming excessive hardship, including provisions confirming that the lessor or provider may require evidence from the tenant and a penalty for providing false or misleading documents.
- The restriction on listing on a tenancy database only applies where the failure to pay rent or ending of the agreement was due to excessive hardship or compliance with a public health direction.
- The limit on reletting costs only applies where there has been a 75% or more loss of income and the tenant has less than \$5000 in savings.
- The limitations on physical inspections only apply if a person at the premises or the lessor is subject to a quarantine direction, if the entry would contravene a public health direction or if the tenant or another person at the premises is a vulnerable person.
- The release of the lessor from repair obligations applies only to the extent that the obligation is inconsistent with public health direction, social distancing, the limitations on physical inspections or because tradespersons or suppliers are unavailable. The lessor is not released from obligations to make emergency repairs.

The criteria for some provisions to apply do not include excessive hardship. These provisions allow a tenant or resident to end the agreement or their interest in it for domestic violence or if within 7 days after a tenant or residence occupies premises, on the grounds that the premises are not in good repair or do not meet a prescribed minimum housing standard. They also allow a lessor to end a periodic or fixed term tenancy if they are being sold or if the owner or their family needs to occupy the premises. These provisions do not include the excessive hardship criteria but are introduced as part of the COVID-19 emergency response and will cease to apply under the regulation on its expiry on 31 December 2020.

**Privacy:** The Regulation provides that the lessor or provider may require evidence from the tenant or resident to support their claim that they are suffering excessive hardship because of the COVID-19 emergency. The Regulation would also require a person experiencing domestic and family violence to disclose potentially sensitive information to an agent or lessor for an additional ability to end, alter or leave a tenancy agreement. Requiring the use or disclosure of information may impact on an individual's right to privacy. This is considered a reasonable and necessary requirement to safeguard rental property owners from abuse or misuse of the protections for tenants and residents. Penalties are proposed to apply to any party that inappropriately discloses or stores the potentially sensitive evidence provided by persons experiencing domestic and family violence.

**Natural Justice:** The Regulation will require changes to administrative processes under the *Residential Tenancies and Rooming Accommodation Act 2008*. Amendments to allow people experiencing domestic and family violence to access any rental bond contributions they have made when they vacate a tenancy do not require the Residential Tenancies Authority to assess any liability of the vacating tenant for potential claims against the bond. This has the potential to make the remaining tenants responsible for all costs without the opportunity to challenge any costs caused by the vacating tenant's actions. Claims against the bond contribution of the vacating tenant can be made through existing processes, including through Residential Tenancies Authority and Queensland Civil and Administrative Tribunal dispute resolution. The drafting of these processes preserves natural justice for those individuals affected by the outcomes.

**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 Regulation introduces new penalties for several actions under the regulation, including evicting the tenant for failure to pay rent during the moratorium period, failing to extend a fixed term agreement and providing false or misleading documents. The new penalty provisions are considered proportionate and appropriate responses to encourage parties to comply with the regulations or avoid misusing protections and safeguards. A transitional provision is included in the Regulation to confirm that persons cannot be prosecuted for an act or omission done or omitted to be done before the Regulation commences, in relation to the moratorium on evictions provisions.

## **Consultation**

Tenants Queensland Incorporated (TQ), the Real Estate Institute of Queensland (REIQ), and the Residential Tenancies Authority (RTA) were consulted about the proposed approach to implement the National Cabinet agreed moratorium on evictions and Queensland's response to manage COVID-19 impacts on residential tenancy and rooming accommodation arrangements.

Issues raised by the sector have been addressed to the extent possible in the regulation and through further direct engagement with stakeholders. A draft Residential Tenancies Practice Guide based on the Regulation has been finalised in consultation with these stakeholders to assist parties in managing the impacts of COVID-19 on tenancies.