

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

Explanatory notes for Subordinate Legislation 2020 No. 235

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) Amendment 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 Queensland Government legislated its COVID-19 response for the residential tenancy and rooming accommodation sectors through the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* (the Regulation). The Regulation provides for several time-limited COVID-19 response measures, including the six-month eviction moratorium for COVID-19 rent arrears in residential tenancies and rooming accommodation agreements between 29 March 2020 and 29 September 2020.

The eviction moratorium expires on 29 September 2020 in accordance with sections 8 and 47 of the Regulation. Provisions in the Regulation have been identified that will prevent lessors and providers from seeking, and the Queensland Civil and Administrative Tribunal (Tribunal) from making, orders to terminate residential tenancy and rooming accommodation agreements for unremedied COVID-19 rent arrears after the moratorium ceases. Other measures implemented to support the eviction moratorium will also continue to apply after the moratorium ends on 29 September 2020.

Amendments to the Regulation are required to:

- cease the operation of identified sections of the Regulation that will prevent lessors and providers from seeking, and the Tribunal from making, orders terminating residential tenancy and rooming accommodation agreements for unremedied COVID-19 rent arrears after the eviction moratorium expires on 29 September 2020
- clarify that temporary measures implemented to support the eviction moratorium will also cease to apply after the eviction moratorium ends on 29 September 2020, and
- provide transitional provisions for matters that are ongoing as at 30 September 2020.

The amendments will help the residential tenancy and rooming accommodation sectors transition tenancy arrangements back to normal RTRA Act processes, rights and protections when the eviction moratorium ends on 29 September 2020.

Achievement of policy objectives

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

- omit identified provisions that will operate to prevent termination of residential tenancy and rooming accommodation agreements for unremedied COVID-19 rent arrears after the eviction moratorium expires on 29 September 2020
- omit provisions that:
 - establish temporary processes for managing COVID-19 rent arrears during the eviction moratorium
 - adjust rent increase restrictions and maximum rental bond requirements under the RTRA Act to support parties to agree temporary rent reductions through tenancy variation agreements
 - prevent lessors and providers ending agreements with tenants who suffer excessive hardship because of COVID-19 without grounds and provide additional grounds for parties to end agreements
- provide transitional provisions for the continuation of matters commenced under the repealed provisions, and
- clarify that a notice to leave without grounds issued by a lessor or provider in contravention of section 38(1) and 74(1) of the Regulation is of no effect and notice must be given under sections 291 and 372 of the *Residential Tenancies and Rooming Accommodation Act 2008* from 30 September 2020.

The Amendment Regulation amends sections 40 and 75 of the Regulation to clarify that the offence for misuse of notice to leave applies if a residential tenancy or rooming accommodation agreement ends because the lessor or provider gave the tenant or resident a notice to leave under the proposed to be repealed sections 35, 37 or 75 before 30 September 2020. These offence provisions will be retained as an offence may need to be prosecuted after sections 35, 37 and 75 are repealed and some conduct relevant to the offence may occur after these sections are repealed.

Several temporary regulatory response measures will continue to apply until the Regulation expires on 31 December 2020, including:

- provisions allowing tenants experiencing domestic and family violence to end their interest in a tenancy quickly
- protections for tenants from being listed on a tenancy database for COVID-19 rent arrears
- limited reletting costs for eligible tenants who end their fixed term agreement early
- entry requirements and restrictions that support social distancing requirements, and
- relaxed repair and maintenance obligations while maintaining tenant safety in the rental property.

The changes in the Amendment Regulation will commence on 30 September 2020 and provides for transitional arrangements for the continuation of matters underway.

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 *Residential Tenancies and Rooming Accommodation Act 2009* (RTRA Act) 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 Amendment Regulation is consistent with the purposes described in section 24(1) and the range of matters described in section 24(2) of the Act, and with the policy objectives of the authorising Act. The amendments will help the residential tenancy and rooming accommodation sectors transition tenancy arrangements back to normal RTRA Act processes, rights and protections when the eviction moratorium ends on 29 September 2020.

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*. 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 Amendment Regulation will provide clarity and certainty about the rights, obligations and processes that apply after the eviction moratorium ends on 29 September 2020 while continuing to support safety in the residential tenancy and rooming accommodation sectors.

There may be increased pressure on the resourcing of decision-making and other services provided by the Tribunal, and the Queensland Magistrates Courts, as a result of removing mandatory conciliation for some COVID-19 matters.

Consistency with fundamental legislative principles

The fundamental legislative principles that are potentially engaged by the Amendment Regulation are set out below. The Amendment 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.

Interference with property rights: The Amendment Regulation removes temporary COVID-19 regulatory measures and restores the respective property rights of lessors/providers and tenants/residents to the rental property under the RTRA Act.

Consultation

Ministerial Housing Council COVID-19 Housing Security Sub-Committee members have considered exit and transition matters in detail and Sub-Committee members have reviewed the Amendment Regulation.

Sub-Committee members include the Real Estate Institute of Queensland, Tenants Queensland, Residential Tenancies Authority, QShelter and Queensland Council of Social Services.

Issues raised by the Sub-Committee have been addressed to the extent possible in the Amendment Regulation and through further direct engagement with stakeholders.

The following agency assessed exclusion categories under the *Queensland Government Guide to Better Regulation* have been applied to these amendments:

- Category (e) regulatory proposals that are of a transitional nature
- Category (g) regulatory proposals that are of a machinery nature.