

Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2021

Explanatory notes for SL 2021 No. 38

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 2021

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 2020 Regulation). The 2020 Regulation made several changes to the residential tenancy protections, rights and obligations for the duration of the COVID-19 emergency period on several key renting issues, including ending tenancies, rent, bonds, entry and dispute resolution processes. The measures supported and protected the residential rental sector and delivered improved stability in Queensland's rental market.

Changes to these regulatory measures implemented by the 2020 Regulation are now required to ensure the COVID-19 response for residential tenancies continues to appropriately target and respond to current COVID-19 risks whilst taking into consideration the needs of the residential rental sector in Queensland now and into the future.

Thus, amendments to the 2020 Regulation are required to:

- Repeal adjustments to entry rights and repair obligations; and
- Clarify the misuse of Notices to Leave (sale and owner occupation).

These amendments are specifically required as they will help the residential tenancy and rooming accommodation sectors transition tenancy arrangements back to standard RTRA Act processes, rights and protections, in particular with respect to entry rights and repair obligations that are no longer required if COVID-19 emergency legislation is extended.

The amendments will also provide further certainty and clarity about the intended application of the Misuse of notice to leave offence to minimise potential misinterpretation that is inconsistent with the original policy intent. The provisions will provide appropriate and reasonable limitation on lessor and provider liability for the misuse offence and help to ensure that they are not prevented from reletting the property indefinitely.

The new provisions commence on 1 May 2021.

Achievement of policy objectives

To achieve the intended policy objectives, the amendments to the 2020 Regulation will:

- Omit provisions that adjusted entry rights and repair obligations for tenants, residents, lessors and providers during the COVID-19 emergency.
- Amend the Regulation to clarify the application of the misuse of notice to leave offence by:
 - setting a time period during which lessors are prevented from renting the property under another tenancy agreement; and
 - provide for a reasonable excuse if the lessor was unable to sell the property after taking reasonable efforts to do so.

The misuse offence was created to discourage lessors from using notices to leave for premises being sold or owner occupation to end agreements with tenants between 29 March 2020 and 29 September 2020. There is a risk this offence as currently written could be misinterpreted as preventing lessors from reletting the property under another agreement indefinitely if they do not have a reasonable excuse.

The additional grounds for ending a tenancy (owner occupation or sale of property) expired on 29 September 2020. However, amendments to the misuse offence, outlined in Part 2 Division 8 and Part 3 Division 8 of the Regulation, are required to clarify the operation of the offence to ensure it is not interpreted as preventing lessors from reletting the premises indefinitely, which was not the policy intent. It clarifies that lessors are prevented from reletting the rental property until 30 April 2021. Examples of reasonable excuse are provided to assist with interpretation and application of the offence.

The misuse of notices to leave offence will have no practical effect after 30 April 2021, but the clarifications will aid interpretation for any complaints or investigations into the misuse provisions by the Residential Tenancies Authority. It ensures sufficient time will have passed:

- for tenants to become aware of potential breaches; and
- to provide a disincentive for lessors to use temporary additional grounds (available between 24 April and 29 September 2020) to evict an unwanted tenant.

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 2008* (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.

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 it not more than 100 penalty units for a contravention of the Regulation.

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.

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

The amendments will help the residential tenancy and rooming accommodation sectors transition tenancy and rooming accommodation arrangements back to standard RTRA Act processes, rights and protections, in particular with respect to entry rights and repair obligations that are no longer required if COVID-19 emergency legislation is extended.

In doing so, the Amendment Regulation overall makes provision to support the Queensland residential rental sector to ensure rights, obligations and processes under the RTRA Act operate appropriately having regard to the overall COVID-19 response measures and subsequent transitional arrangements.

The changes in the Amendment Regulation are not retrospective. Section 20 of the *Acts Interpretation Act 1954* provides that processes started prior to the commencement of this Amendment Regulation must follow the requirements which existed at the time the process commenced until it has completed.

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 Amendment 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 (RTA), the Queensland Civil and Administrative Tribunal, and the Queensland Magistrates Courts, as a result of the COVID-19 response measures in this regulation.

Repealing the adjusted entry rights and repair obligations provides benefits in that these issues can be managed between the parties based on public health directions and existing RTRA rights, obligations and processes. This may alleviate pressure on resourcing with respect to the services provided by the RTA and other Government agencies directly responding to and dealing with the adjusted entry rights and repair obligations.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

A COVID-19 Housing Security Sub-Committee (COVID-19 Sub-Committee) of the Ministerial Housing Council was established to monitor the COVID-19 temporary measures and make recommendations about the continuation of any reforms.

The COVID-19 Sub-Committee members include the Real Estate Institute of Queensland, Tenants Queensland, the Residential Tenancies Authority, QShelter and the Queensland Council of Social Services.

COVID-19 Housing Security Sub-Committee members held differing views on the proposal to repeal entry and repairs provisions. Some supported the repeal of entry and repairs provisions to ensure repair and maintenance issues are identified and addressed to avoid increased risk and cost for lessors and safety risks for renters. These stakeholders also noted that regular, supportive inspections conducted in a COVID-19 safe way play an important role in sustaining tenancies with vulnerable renters. Other stakeholders opposed the repeal of entry provisions as they may still be required given the fragile COVID-19 environment to allow renters greater control over their home environment and should be extended in line with COVID-19 emergency legislation. As the entry and repair provisions complement each other, these stakeholders agreed that the same action should be taken for both provisions.

On balance it is considered that parties to residential leases can negotiate entry under existing residential tenancy and rooming accommodation rights and obligations considering any COVID-19 public health risks, advice, and directions in place at the relevant time. When necessary, public health directions and restrictions are implemented by the Chief Health Officer that restrict activities to contain COVID-19 community transmission, including in relation to real estate functions that may be carried out. It is consistent with other Australian state and territory approaches to rely on these public health directions and existing tenancy entry and repair rights and obligations to manage any COVID-19 transmission risks in residential leases.

Most COVID-19 Housing Security Sub-Committee members supported the amendments to clarify the misuse of notice to leave offence to ensure the policy intent is achieved. Some stakeholders suggested drafting improvements to the proposed amendments and where appropriate these have been incorporated.

The Office of Best Practice Regulation has advised that regulatory impact analysis is not required of this amendment as it clarifies drafting to ensure the Queensland Government's policy intent is delivered for the temporary emergency measures.