

Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Regulation 2025

Explanatory notes for Subordinate Legislation 2025 No. 14

Made under the

Residential Tenancies and Rooming Accommodation Act 2008
State Penalties Enforcement Act 1999

General Outline

Short title

Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Regulation 2025 (Amendment Regulation).

Authorising law

Section 520 of the *Residential Tenancies and Rooming Accommodation Act 2008*
Section 165 of *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2024* (RTRAOLA Act) received assent on 6 June 2024 and amends the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act) to strengthen the rights of renters, support private investment, provide better pathways to resolve tenancy issues and stabilise rents.

Note: The Amendment Regulation and the RTRAOLA Act cover all agreement types (general residential tenancy agreements, moveable dwelling agreements and rooming accommodation agreements) in most instances. For ease of reference, the term 'renters' is used to describe tenants in general residential tenancies and moveable dwelling premises, and residents in rooming accommodation. 'Property owners' is used to describe lessors in general residential tenancy and moveable dwelling agreements and providers in rooming accommodation agreements. Where an amendment relates to a specific agreement type, the more specific terms 'tenant', 'resident', 'lessor' and 'provider' are used.

Some reforms commencing 1 May 2025 will strengthen privacy protections for renters and make the rental application process fairer and easier by:

- requiring an approved rental application form to be used and limiting the supporting documentation that can be requested of prospective renters (required application form)
- requiring that prospective renters be provided with at least two ways in which a rental application can be submitted, one of which must not be a restricted way, which is a way that involves a prospective renter giving information to a person other than the property owner or agent, or a way prescribed by regulation
- establishing the information that can and cannot be requested about a prospective renter
- allowing identifying documents to be sighted, with copies kept only if consent is given
- requiring that renters' personal information is securely stored and disposed of within three months of an unsuccessful rental application or within seven years after a tenancy ends.

Other reforms commencing 1 May 2025 include requiring property owners and property managers to disclose financial benefits received from any rent payment methods; and clarifying the process for renters and property owners to agree to attaching fixtures and making structural changes to a rental property.

The Amendment Regulation supports provisions of the RTRAOLA Act that commence on 1 May, by:

- allowing additional information to be requested of a prospective renter by the required application form to ensure property owners can collect information to assess suitability and make an informed decision
- requiring that prospective renters are given a fee-free way to submit an application
- updating the standard terms of agreements.

Amendments to the *State Penalties Enforcement Regulation 2014* (SPE Regulation) are also required to enable the Residential Tenancies Authority (RTA) to issue penalty infringement notices for:

- failing to use the required application form
- requesting information and documents additional to the information prescribed
- requesting prohibited information or documents
- keeping a copy of original identity documents sighted.

Achievement of policy objectives

The Amendment Regulation amends the *Residential Tenancies and Rooming Accommodation Regulation 2009* (RTRA Regulation) to:

- prescribe the following additional information for the required application form: the applicant's date of birth, the total number of occupants and the number of occupants under the age of 18, the number and type of pets, the number and type of vehicles and financial ability to pay rent if the applicant cannot provide details about their current employment or income
- prescribe that a restricted way for submitting an application is a way that requires the prospective renter to pay an amount associated with the application

- update and align standard terms for tenancy agreements with rental law reforms implemented by the RTRAOLA Act. Amendments are made across the following RTRA Regulation schedules:
 - Schedule 1 (General tenancy agreements)
 - Schedule 2 (Moveable dwelling agreements)
 - Schedule 3 (State tenancy agreements)
 - Schedule 3A (Community housing provider tenancy agreements)
 - Schedule 4 (Rooming accommodation agreements)

The Amendment Regulation amends Schedule 1 (Infringement notice offences and fines for nominated laws) of the SPE Regulation to allow the RTA to issue penalty infringement notices for provisions related to the prescribed application form and application process for general tenancies and rooming accommodation agreements.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with, and gives effect to, the policy objectives of the RTRA Act and the RTRAOLA Act.

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.

The additional penalty infringement notices included in the SPE Regulation have been assessed in accordance with the guidelines and endorsed by the Department of Justice for inclusion. The new penalties do not apply retrospectively and a person will not be subject to new penalties for conduct they have already engaged in.

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

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

The Amendment Regulation will provide clarity, uniformity and alignment to the residential rental sector and support them to transition their systems and agreements to rental law reforms commencing on 1 May 2025.

Prescribing additional information for the required application form is not expected to increase costs to the sector. It will create efficiencies and reduce costs for property managers and owners by allowing additional information to be available to determine prospective renter suitability. Any costs associated with prescribing that a restricted way for submitting an application is a way that requires the prospective renter to pay

an amount associated with the application will be offset by the benefits to prospective renters who will not have to pay costs for conducting searches that a rental property owner or manager has determined are required and which may already be factored into the property management services costs agreed between the rental property owner and property manager.

No additional costs are expected.

Consistency with fundamental legislative principles

Section 4(3) of the *Legislative Standards Act 1992* (LS Act) states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties.

Some departures from fundamental legislative principles relating to the rights and liberties of individuals may occur in the unavoidable trade-offs to balance the competing interests of parties in the rental relationship. Potential fundamental legislative principle issues have been identified relating to legislation having sufficient regard to the rights and liberties of individuals including property, privacy and freedom of expression.

Prescribing additional information for required application form

While the Amendment Regulation prescribes additional information that may be collected by the required application form, the collection of renter information is still restricted.

As a result, this amendment may infringe upon the right to property for property owners' and the right to privacy and freedom of expression for prospective renters. These potential infringements are relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals as provided for in section 4(2)(a) of the LS Act. The amendments strike an appropriate balance between the freedom of property owners to seek and receive information, on the one hand, and the right of renters to not disclose personal information. To the extent the amendments are a departure from fundamental legislative principles, this is justified because the amendments will achieve an important policy objective to improve renter privacy and protect renters' personal information by collecting only information necessary to the consideration of prospective renters' suitability for the property and ability to pay rent. These amendments outline a fair, transparent and equitable application process and ensure that prospective renters are not disadvantaged in the private rental market, particularly in an environment where there are low vacancy rates, high rental costs and considerable competition for rental properties.

Restricted way for submitting an application

The RTRAOLA Act amends the RTRA Act to require property owners to provide at least two ways for a prospective renter to submit an application, one of which must not be a restricted way. The Amendment Regulation prescribes that a way that requires the prospective renter to pay an amount in relation to submitting the application is a restricted way. This amendment may potentially infringe a property owners' right to property by depriving the owner of the cost for the background check. This potential infringement is relevant to the consideration of whether legislation has sufficient regard

to the rights and liberties of individuals as provided for in section 4(2)(a) of the LS Act. The purpose of the amendment is to ensure prospective renters have a fee-free way to submit an application. To the extent that the amendment may depart from fundamental legislative principles, any departure is justified as it ensures fairness and equitability in the rental application process and within the context of financial barriers to housing, particularly in a competitive rental market where renters may submit multiple applications within a short period.

Consequential amendment to standard terms

Other RTRAOLA Act amendments require consequential amendments to the standard agreement terms contained in Schedules 1–4 of the RTRA Regulation. The first relates to the required declaration of a property owner’s financial benefit where a renter uses a particular way to pay rent. This amendment may infringe upon a property owner’s right to privacy and freedom of expression, which may include the right to say nothing or the right not to say certain things. These potential infringements of rights are relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals as provided for in section 4(2)(a) of the LS Act. Through consultation, renters and advocates shared their concerns that some rental property owners only offer rent payment methods that incur fees, such as rent payment cards, third party platforms, cheque or money order. These fees and penalties on top of rent can create additional financial stress for renters. To the extent that the amendment may depart from fundamental legislative principles, any departure is justified as these amendments create a rental environment where renters are protected from unreasonable fees and charges and give renters a choice in how they pay rent so that they can avoid incurring unnecessary additional costs.

The second consequential amendment updates the standard terms with the process for approval to attach fixtures or make structural changes to the property. This amendment may infringe upon property owners’ right to property by restricting the manner in which a person controls or manages their property. The potential infringement on the right to property is relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals as provided for in section 4(2)(a) of the LS Act. The purpose of the amendment is to clarify the approval process where a renter is requesting to attach a fixture or make a structural change to the property. To the extent that the amendment may depart from fundamental legislative principles, any departure is justified as the amendments ensure there is a process to agree to changes to a rental property that would assist in meeting the renters’ needs. Some of the most vulnerable Queenslanders, rely on the private rental market for sustainable and long-term housing that meets their needs.

Any potential infringement of rights discussed above are justified, proportionate and relevant to meet the stated important policy objectives.

The Amendment Regulation also, as subordinate legislation, is within the power that allows it to be made in the RTRA Act. It is consistent with the policy objectives of the RTRA Act and contains only matters appropriate to that Act.

SPE Regulation amendments

The amendments to the SPE Regulation make new sections 57B, 57C, 57D, 76C, 76D and 76E of the RTRA Act penalty infringement notice offences for residential tenancy

and rooming accommodation agreements. This means that a penalty infringement notice may be issued to a lessor, provider or agent for failing to use the required application form, requesting information and documents additional to that allowed to be collected from a prospective renter and keeping a copy of original identity documents from the prospective renter. To the extent the amendments are a departure from fundamental legislative principles, this is justified as the restrictions protect renters' privacy and personal information, apply only to the application process and not during a tenancy, and are necessary to ensure the rental application process is fair and equitable, which is consistent with a free and democratic society based on human dignity, equality and freedom.

Consultation

On 8 January 2025, a consultation paper was distributed to stakeholders and peak bodies who were invited to provide feedback within a 14-day timeframe.

Stakeholders held diverse views on prescribing additional information for the required application form. Industry representatives generally supported prescribing additional information for the required application form to inform property owner and property manager decision making. Tenancy advocacy groups raised concerns about prescribing additional information, including the potential for discrimination and applicant privacy. The additional information prescribed by the Amendment Regulation strikes an appropriate balance between the views of tenant advocacy groups and industry representatives.

All stakeholders support prescribing that a way of submitting a rental application that requires payment is a restricted way.

In accordance with the *Queensland Government Better Regulation Policy*, an Impact Analysis Statement (IAS) has been prepared and approved by the Director-General, Department of Housing and Public Works and Minister for Housing and Public Works and Minister for Youth.

The IAS considered the costs and benefits of maintaining the status quo, implementing non-mandatory guidance and introducing formal regulatory amendments. The analysis demonstrates that the preferred option, to amend the regulation, has the greatest net benefit to Queensland.