

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

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, The Honourable Michael de Brenni MP, Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport, provide this human rights certificate with respect to the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* (the Regulation) made under section 24 of the *COVID-19 Emergency Response Act 2020* and section 520 of the *Residential Tenancies and Rooming Accommodation Act 2008*.

In my opinion, the Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* (the Regulation) provides for a number of time-limited COVID-19 response measures, including the following:

- to 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.
- to require that lessors and rooming accommodation providers must, before the term of the agreement ends, offer to extend fixed term residential tenancy agreements and rooming accommodation agreements to 30 September 2020 or an earlier date requested by the resident or tenant;
- to 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;
- to 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;
- to 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;

- to 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;
- to 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;
- 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.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights that are relevant to the amendments to the *Residential Tenancies and Rooming Accommodation Act 2008* are as follows:

- Freedom of movement (section 19)
- Freedom of expression (section 21)
- Property rights (section 24)
- Privacy and reputation (section 25)

Human rights which are not limited but are upheld or furthered through the Regulation include the following:

- Right to Life (section 16)

Section 16 of the *Human Rights Act 2019* provides that every person has the right to life and has the right not to be arbitrarily deprived of life. The Regulation promotes the right to life by supporting social distancing measures through avoiding homelessness and reducing unnecessary interactions between persons related to residential tenancies and rooming accommodation agreements. This will support the community health objective of reducing contagion risk and protect the right to life.

- Protection of families and children (section 26)

Section 26 of the *Human Rights Act 2019* provides that families are the fundamental group unit of society and are entitled to be protected by society and the State and that every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child. The Regulation will have the effect of reducing the incidence of families being required to exit their homes

during the pandemic, either to move into alternative accommodation or to become homeless and protect families and children.

- Retrospective criminal laws (section 35)

Section 35(1) of the Human Rights Act 2019 provides that a person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in. This reflects the principle, long recognised in criminal law, that there can be no crime and no punishment, other than as established by the law. The moratorium on eviction provisions in section 8 and 47 of the Regulation apply retrospectively to 29 March 2020. However, section 86 of the Regulation confirms that persons cannot be prosecuted under section 8 or 47 for an act or omission done or omitted to be done before the Regulation commences.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Freedom of movement and property rights (sections 19 and 24 of the *Human Rights Act 2019*)

(a) the nature of the rights

Freedom of movement

Under section 19 of the *Human Rights Act 2019*, every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The underlying value of the right is freedom, which is a necessary precondition for a free and democratic society. The right serves to protect individuals' liberty to choose where they live and travel within the State.

The Regulation may impose some minor and indirect limitations on freedom of movement and choice about where to live as follows:

- There are limitations on physical inspections which 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, under sections 17 and 55. This is balanced by an obligation for a tenant to facilitate a virtual inspection or inspection by other means if physical entry is refused, under section 18.
- The Regulation may restrict lessor and provider rights to decide who else may live in the premises by imposing the moratorium and providing for the extension of tenancies, under sections 8, 9, 47 and 48. The lessor retains a right to end tenancies if the lessor or their immediate family wishes to move into the property under section 37. The only limitation on the freedom of movement is the minor limitation on the freedom of unrelated third parties to move into the property.

Property Rights

Section 24 of the *Human Rights Act 2019* provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom.

The right includes the protection from the deprivation of property. Deprivation in this sense has been held to include the substantial restriction on a person's use or enjoyment of their property. Property is likely to include all real and personal property interests recognised under general law (for example, interests in land, contractual rights and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude). The right does not provide a right to compensation.

Various provisions of the Regulation may limit property rights:

- The provisions for the moratorium on evictions and extensions of agreements under sections 8, 9, 47 and 48 alter the parties rights in relation to the rental property. 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.
- There is a limit on recovery by the lessor of reletting costs under a residential tenancy agreement where there has been a 75% or more loss of income and the tenant has less than \$5000 in savings, under section 44.
- There are limitations on physical inspections under sections 17 and 55.
- There are releases of the lessor from repair obligations under sections 19 and 57. These apply 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.
- A tenant or resident may end the agreement or their interest in it for domestic violence or if within seven 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, under section 41 and 75.
- A lessor or provider may end a periodic or fixed term tenancy if they are preparing to sell the premises and the preparation requires the rental premises to be vacant or if they have entered into a contract to sell the premises with vacant possession, under section 35 and 73.
- The lessor may give a notice to leave the premises to a tenant if the lessor, or a member of the lessor's immediate family, needs to occupy the premises, under section 37.
- The Regulation will allow a tenant or resident who cannot safely continue to occupy premises due to their experience of domestic and family violence to give a notice to end their interest in a residential tenancy agreement or rooming accommodation agreement, under sections 21 and 59. Conferring additional rights on the tenant or resident has the effect of limiting lessors and providers rights under residential tenancy and rooming accommodation agreements.

The changes do not arbitrarily deprive a person of their property. The changes adjust the respective rights and obligations of lessors/providers and tenants/residents in respect of the rental property.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Over a third of the estimated 1.65 million households in Queensland rent. A stable home enables people to achieve positive life outcomes such as good health, quality education and secure employment. The limitations under the Regulation are intended to provide tenants with more certainty about the continuation of their tenancy during the COVID-19 pandemic.

The purpose of the potential limitations on the freedom of movement and property rights is to reduce the incidence of dislocation and homelessness resulting from evictions related to the impacts of the COVID-19 pandemic. This is consistent with a free and democratic society based on human dignity, equality and freedom. It is also consistent with the protection of the right to life under section 16 and the protection of families and children under section 26 of the *Human Rights Act 2019*.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the freedom of movement and property rights helps to achieve the purpose of reducing the incidence of dislocation and homelessness resulting from evictions and this helps to protect life and families and children.

Limiting lessor and provider rights to end the tenancy is necessary to achieve the purpose of providing tenants and residents with more certainty about the duration of their tenancy during the COVID-19 pandemic.

The rights to end a tenancy or rooming accommodation agreement will help to achieve the purpose of supporting tenants or residents experiencing domestic and family violence to enact plans to end the violence safely by providing more options to manage their tenancy interest.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

As a result of the speed and severity of the impacts of the COVID-19 pandemic and the associated community health measures, there are no practicable alternatives to the Regulation to achieve this objective. A voluntary measure or an awareness-raising program, for example, would be too slow and inconsistent in application.

I believe that the adjustments to the respective rights and obligations of lessors and tenants in respect of the rental property under the provisions of the Regulation are the least restrictive and reasonably available ways to achieve the purpose of the Regulation.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The COVID-19 pandemic has been declared a public health emergency. The benefits of applying a moratorium on pandemic related evictions will be significant in that it will reduce dislocation and homelessness. This will in turn reduce the risk of contagion for affected persons as well as limiting unnecessary community spread and therefore protecting life and families and children.

(f) any other relevant factors

The limitation on freedom of movement is also mitigated by the time-limited operation of the moratorium and the other restrictions.

Freedom of expression (section 21)

(a) the nature of the right

Section 21 of the *Human Rights Act 2019* provides that every person has the right to hold an opinion without interference and that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether orally, in writing, in print, by way of art or in another medium chosen by the person.

Various provisions of the Regulation may limit freedom of expression:

- The Regulation restricts a person from listing another person on a tenancy database that applies where the failure to pay rent or ending of the agreement was due to excessive hardship due to COVID-19 or compliance with a public health direction, under s 46.
- The Regulation will allow a tenant or resident to give a notice to end their interest in a residential tenancy agreement or rooming accommodation agreement if they cannot safely continue to occupy premises because they are experiencing domestic and family violence, under sections 21 and 59. The tenant or resident is required to provide evidence supporting their notice under sections 22 and 60. Sections 31 and 69 require the lessor or provider and their agent and employees not to disclose that evidence.
- The regulation makes it an offence to provide false or misleading documents about excessive hardship because of COVID-19 emergency, under s 82.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Restricting inclusion on a tenancy database is intended to ensure that the tenant's excessive hardship or restriction under a direction is not worsened. Where a breach of a residential tenancy agreement or rooming accommodation agreement is a consequence of COVID-19 rather than the tenant's own fault, it is fair and consistent with human dignity that the tenant should not be listed in a database, with potential ongoing adverse consequences for the tenant.

Restricting disclosure of evidence of domestic and family violence is intended to ensure that information is used for the purpose for which it was obtained and to protect the privacy and reputation of people who are experiencing domestic and family violence. Supporting people who are experiencing domestic and family violence to end their interest in a tenancy or rooming accommodation agreement and enact plans to end the violence is consistent with a free and democratic society based on human dignity, equality and freedom. It is also consistent with the protection of the right to life under section 16; the protection of families and children under section 26; and rights to liberty and security under section 29 of the *Human Rights Act 2019*.

Restricting the provision of false or misleading documents is to ensure that a tenant or resident may only fairly claim the benefit of protections under the Regulation and this is consistent with dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The restriction on listing in a tenancy database where the failure to pay rent or ending of the agreement was due to excessive hardship due to COVID-19 or compliance with a public health direction helps to achieve the purpose of ensuring that tenants are fairly treated with dignity.

The lessor or provider and their agent and employees would receive the information attesting that the person named in the notice to leave is experiencing domestic and family violence about the domestic violence solely for the purpose of the tenant or resident ending their interest in the residential tenancy agreement or rooming accommodation agreement. The potential limitation on the freedom of expression through the confidentiality provisions is consistent with the purpose for which the information would be collected. It helps to protect the privacy and reputation of the tenant or resident experiencing domestic and family violence by preventing misuse or inappropriate disclosure of the information. Misuse or disclosure of the information contained in the notice could reveal personal and sensitive information the tenant or resident may otherwise not have disclosed and could also put the existing tenant or resident at further risk of violence if their intention to leave or forwarding address is disclosed to the perpetrator of the violence.

Restricting the provision of false or misleading documents helps achieve the purpose of ensuring fairness in the application of the protections under the Regulation.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The Regulation provision restricting listings of COVID-19 effected tenants is the least restrictive and reasonably available way of achieving the purpose of preventing the inappropriate listings.

No less restrictive and reasonably available ways have been identified to achieve the purpose of balancing improved support for people experiencing domestic and family violence to enact plans to end the violence safely and to provide safeguards for lessors and providers from potential misuse of these protections by tenants or residents.

Given the seriousness of providing false or misleading documents and the importance of ensuring claims under the Regulation are properly made, creating an offence for provision of false or misleading documents is considered to be the least restrictive and reasonably available way of ensuring fair access to the protections under the Regulation.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The potential impact of the confidentiality provisions on the right to freedom of expression is minimal.

The importance of ensuring that COVID-19 affected tenants are not inappropriately listed in a tenancy database outweighs the freedom of expression that would be exercised through including a tenant on a tenancy database.

I consider that the importance of protecting people experiencing domestic and family violence, and thus the rights to life, protection of families and children and the liberty and security of the person far outweigh the need to preserve the right to freedom of expression that may be exercised through disclosing sensitive information relating to domestic violence.

The importance of ensuring fair access to protections under the legislation outweighs the freedom of expression that would be exercised through providing false or misleading documents.

Privacy and reputation (section 25)

(a) the nature of the right

Section 25 of the *Human Rights Act 2019* provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked. The right protects privacy in the sense of personal information, data collection and correspondence, as well as also extending to an individual's private life more generally.

Various provisions of the Regulation may limit the right to privacy:

- The tenant or resident is required to provide evidence supporting their notice to leave because they are experiencing domestic and family violence under sections 22 and 60. Sections 31 and 69 require the lessor or provider and their agent and employees not to disclose that evidence.
- Provisions of the Regulation required conciliation of disputes, under sections 12, 42, 50 and 76. This would entail disclosure of information to the conciliator. Conciliators must maintain confidentiality, under section 411 of the *Residential Tenancies and Rooming Accommodation Act 2008*.
- The lessor or provider must provide evidence supporting their notice to leave if the premises is being sold, under sections 35 and 73.
- The lessor or provider may require evidence from the tenant or resident supporting a claim that the suffering excessive hardship because of the COVID-19 emergency, under section 81.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purposes of the limitations on the right to privacy are to ensure that the tenants and residents and lessors and providers provide evidence supporting their exercise of rights under the Regulation. This is a measure to ensure fair access to the protections under the Regulation and prevent improper access to those protections. This assists in ensuring that limits to rights to property under the Regulation are no more than is justified. Ensuring the fair application of the protections in an inherent part reducing the impacts of the COVID 19 pandemic and protection of the right to life and the protection of families and children under sections 16 and 26 of the *Human Rights Act 2019*.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The requirement to provide evidence helps to achieve the purpose of ensuring that protections under the Regulation are only claimed where the entitlement arises.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

No less restrictive and reasonably available ways are available to achieve the purpose of ensuring that protections under the Regulation are fairly claimed.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The COVID-19 pandemic has been declared a public health emergency. The benefits of the protections under the Regulation will be significant in that they will reduce eviction, dislocation and homelessness. This will in turn reduce the risk of contagion for affected persons as well as limiting unnecessary community spread.

(f) any other relevant factors

The limitation on the right to privacy is also mitigated by the time-limited operation of the Regulation, including the conciliation mechanism.

Conclusion

I consider that the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with certain human rights, but those limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

MICHAEL DE BRENNI MP
MINISTER FOR HOUSING AND PUBLIC WORKS
MINISTER FOR DIGITAL TECHNOLOGY
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