

Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment 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) Amendment Regulation 2020* (the amendment 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* (the RTRA Act).

In my opinion, the Regulation amendment 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) Amendment Regulation 2020* (the amendment Regulation) clarifies the application and end dates of temporary emergency response measures following the expiry of the eviction moratorium for COVID-19 rent arrears on 29 September 2020 and provides for transitional arrangements for ongoing matters.

Unless amended, identified provisions in the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* (the Regulation) will continue to operate to prevent lessors and providers from seeking, and the Tribunal from making, orders to terminate residential tenancy and rooming accommodation agreements for unremedied COVID-19 rent arrears after the eviction moratorium expires on 29 September 2020 in accordance with sections 8 and 47 of the Regulation. Other measures implemented to support the eviction moratorium will also continue after the moratorium ends on 29 September 2020 unless amended and would be contrary to the cessation of the eviction moratorium.

Sections 11, 12, 13, and 15 of the Regulation established temporary processes for managing COVID-19 rent arrears during the eviction moratorium, including issuing a ‘show cause’ notice, entering into a tenancy variation agreement, requiring mandatory conciliation of disputes, and limiting the tribunal from terminating residential tenancy agreements for an unremedied breach for rent arrears arising from COVID-19 hardship. Sections 49, 50, 51 and 53 mirror those provisions for residents in rooming accommodation. These sections will be omitted from 30 September 2020 and RTRA Act processes will apply.

Sections 14 and 16 adjusted rent increase restrictions and maximum rental bond requirements under the RTRA Act to support the parties to agree to temporary rent reductions through

tenancy variation agreements that form part of their residential tenancy agreements. Sections 52 and 54 mirror those provisions for residents in rooming accommodation. These sections will be omitted from 30 September 2020 and RTRA Act provisions will apply.

Sections 35, 36 and 37 introduced new grounds for a lessor to end a tenancy agreement for sale of the rental property, a state government program or if the owner or their immediate family need to move into the rental property. Section 38 temporarily prevented lessors from issuing tenants who suffer excessive hardship because of the COVID-19 emergency with a notice to leave without grounds. Sections 73 and 74 mirror those provisions for residents in rooming accommodation. These sections will be omitted from 30 September 2020 and the RTRA Act grounds for ending tenancies and residential agreements will apply.

Section 41 introduced a new ground for tenants to end a tenancy agreement within seven days due to the poor condition of the rental premises. Section 76 mirrors the provision for residents in rooming accommodation. These sections will be omitted from 30 September 2020.

Sections 42 and 45 introduced a requirement for tenants to undertake mandatory conciliation before applying to the Tribunal for a termination order on the grounds of excessive hardship. Sections 77 and 80 mirror those provisions for residents in rooming accommodation. These sections will be omitted from 30 September 2020 to allow tenants and residents to make an urgent application directly to the Tribunal for a termination order for excessive hardship without requiring conciliation in line with RTRA Act provisions.

The amendment Regulation introduces new sections 90 to 98 to provide for transitional arrangements for the continuation of matters under repealed provisions. The transitional provisions clarify that matters underway before 30 September 2020 continue to apply for that matter. Section 91 outlines requirements for continuing notices, sections 92 and 93 refer to continuing processes for unpaid rent, section 94 outlines requirements for tenancy variation agreements, section 95 outlines requirements for residency variation agreements, section 96 re-introduces the operation of rental bonds provisions under the RTRA Act, section 97 clarifies how notices to leave without grounds will operate from 30 September 2020 and section 98 outlines how terminations for excessive hardship will apply.

Human Rights Issues

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

This Human Rights Certificate considers the obligations and protections under the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020* (the amendment Regulation) to clarify the application and end dates of some temporary emergency response measures following the expiry of the eviction moratorium for COVID-19 rent arrears on 29 September 2020 and provides for transitional arrangements for ongoing matters.

It also considers the remaining protections under the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* and the *Residential Tenancies and Rooming Accommodation Act 2008*.

The amendment Regulation seeks to ensure measures supporting the eviction moratorium cease on 29 September 2020 to align with the moratorium expiry, including the additional grounds to end agreements and adjusted rent, bond and dispute resolution processes. These changes will remove limitations on freedom of movement, freedom of expression, property rights and privacy and reputation arising from these regulatory provisions and restore respective rights and obligations of parties to residential tenancy and rooming accommodation agreements.

The limitations described in the human rights certificate for the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* arising from entry restrictions and requirements, relaxed repair and maintenance obligations, domestic violence provisions and protection from tenancy database listings will continue to apply.

The amendment Regulation will continue to promote the following rights:

- Right to life (section 16) through continued entry restrictions and requirements that support social distancing measures and reduce unnecessary interactions between persons related to residential tenancy and rooming accommodation agreements.
- Retrospective criminal laws (section 35) as section 86 of the Regulation prevents a person from being prosecuted for an act or omission done or omitted to be done in relation to the eviction moratorium before the Regulation commenced.

In my opinion, the human rights that are limited by the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020* are as follows:

- Freedom of movement (section 19)
- Property rights (section 24)

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 amendment Regulation may impose some minor and indirect limitations on freedom of movement and choice about where to live. The amendment Regulation allows the property owner to take steps to end tenancies where the tenant or resident is in rent arrears, including if the tenant or resident has been COVID-19 impacted, however due process must have been followed. The Tribunal will be allowed to make an order to terminate the agreement, including for unremedied breach due to rent arrears in consideration of the facts including any applicable tenancy or residency variation agreement.

The amendment Regulation may limit the ability for tenants and residents to move by removing the temporary new grounds for a tenant or resident to end the agreement due to the poor

condition of the rental property within the first seven days of occupation. This does not prevent the tenant or resident from taking other steps to end the agreement or negotiate new terms such as reduced rent or repairs and maintenance to be undertaken. Tenants and residents are also supported to apply directly to the Tribunal for a termination order due to excessive hardship by removing the requirement to participate in mandatory conciliation before this application can be made.

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 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.

Property rights that owners enjoy include the freedom to rent or sell their property, alter its use, or improve its value. The Amendment Regulation may interfere with the property owner's property rights by removing the temporary additional grounds for property owners to end a tenancy agreement on the basis of sale of property, owner occupation or use for State Government program, however it reinstates the ability for a property owner to issue a notice to leave 'without grounds'.

The amendment Regulation restores the respective rights and obligations of property owners or providers and tenants or residents in respect of the rental property to those under the RTRA Act and removes temporary adjustments to these rights implemented in response to the COVID-19 emergency through the Regulation. The adjustments may have benefited one party over the other during the COVID-19 emergency. The adjustments were only intended to be temporary and is considered appropriate to reinstate the usual operation of the RTRA Act as the impact of the pandemic has been curtailed.

(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

Supporting the residential tenancy and rooming accommodation sectors to transition back to rights, protections and processes under the RTRA Act will ensure an appropriate balance between lessor/provider and tenant/resident interests.

The additional grounds for property owners to end a tenancy were introduced to provide options for property owners who may have been impacted by COVID-19 to access their rental properties either to sell the property with vacant possession or if they or their immediate family needed to move into the property to live. This was necessary as the Regulation had temporarily suspended the ability for property owners or providers to issue tenants or residents with notices

to leave ‘without grounds’ which had limited their ability to end agreements during the emergency period.

Tenants and residents may be deprived of property rights or benefits that were temporarily conferred through the evictions moratorium for rent arrears which was to take effect from 29 March to 29 September 2020. The removal of that benefit, and reinstatement of the ability for property owners or providers to end tenancies for rent arrears under the usual operation of the RTRA Act is considered justifiable as it requires processes to be followed, including allowing tenants and residents to address the breach.

The Regulation aimed to reduce unnecessary movement within the rental sector during the emergency period by limiting how tenancy agreements could be ended. This included requiring tenants and residents who wanted to end agreements on the grounds of excessive hardship to undertake additional steps including mandatory conciliation. Removal of mandatory conciliation will support tenants and residents in excessive hardship to end their tenancy agreement through a tribunal order to support the freedom to choose where to live. The tribunal can consider the impacts on both the tenant or resident and property owner or provider when making a determination.

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

The amendment Regulation will restore the property rights and obligations of parties to residential tenancy and rooming accommodation agreements to those under the RTRA Act and remove any limitations or adjustments to these rights introduced by the temporary response measures implemented through the Regulation. This will support the residential tenancies and rooming accommodation sectors to return to normalised renting arrangements. The Residential Tenancies Authority’s free dispute resolution services will continue to be available to lessors/providers and tenants/residents on a voluntary basis to provide additional support where needed. The transitional provisions will ensure processes commenced prior to 29 September 2020 will continue until conclusion to achieve the original policy intent around rent arrears and prohibiting evictions during the moratorium.

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

The amendment Regulation removes the temporary measures introduced in response to the impacts of the COVID-19 pandemic and the associated community health measures. The removal of the temporary measures to support the evictions moratorium will ensure the provisions of the RTRA Act will be reinstated.

I believe that the return to the respective rights and obligations of lessors and tenants in respect of the rental property under the RTRA Act through the amendment Regulation to remove the temporary measures is the least restrictive and reasonably available way 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 measures implemented in response to COVID-19 impacts and risks through the Regulation were reviewed in the context of current public health risks and considerations. It is appropriate to align temporary response measures implemented under the Regulation with the eased COVID-19 public health risks and activity restrictions in Queensland. The Queensland Government can re-establish temporary response measures if COVID-19 health risks and restrictions change in Queensland, informed by Chief Health Officer advice and directions.

- (f) any other relevant factors

The limitations on freedom of movement and property rights are also mitigated by the time-limited operation of the Regulation and other restrictions, as well as the existing conciliation mechanism. Changes to the Regulation will be supported through education and information for the sector.

Conclusion

I consider that the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because where it may limit, restrict or interfere with certain human rights, 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
MINISTER FOR SPORT