

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

## 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, Leeanne Enoch, Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts, provide this human rights certificate with respect to the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2021* (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* (RTRA Act).

In my opinion, the Amendment Regulation 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 2021* (Amendment Regulation) clarifies the policy intent of a time-limited COVID-19 response measure for rental property owners to issue a *Notice to Leave* to tenants on the grounds the property owners or their immediate family need to move into the property.

The Amendment Regulation clarifies the application of sections 40 and 75 in relation to a penalty for misuse of a notice to leave for premises being sold or owner occupation. The amendment will remove potential misinterpretation that the misuse offence applies indefinitely. It will clarify that a lessor is prevented from reletting the property under another agreement until 30 April 2021.

The Amendment Regulation repeals the time-limited response measures relating to entry rights and repair obligations under Part 2, Divisions 5 and 6 and Part 3, Divisions 5 and 6. The policy intent has been achieved and these temporary measures are no longer required.

## Human Rights Issues

**Human rights relevant to the subordinate legislation (Part 2, Divisions 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) Regulation 2021* (Amendment Regulation) which affect the operation of sections 40 and 75, Part 2, Divisions 5 and 6 and Part 3, Divisions 5 and 6.

In my opinion, the human rights that are relevant to the Amendment Regulation are as follows:

- Property rights (section 24)
- Privacy and reputation (section 25)

Human rights which are upheld or furthered through the Amendment Regulation include the following:

- Property rights (section 24)

Section 24 of the *Human Rights Act 2019* provides that all persons have the right to own property and that a person must not be arbitrarily deprived of the person's property. The right includes the protection from the deprivation of property, which has been held to include the substantial restriction on a person's use or enjoyment of their property. Property rights that owners enjoy include the freedom to rent or sell their property, alter its use, or improve its value. The Amendment Regulation protects property rights by ensuring a property owner is able to use, transfer and dispose of their property as they see fit. By prescribing an end date for the misuse of notice to leave (sale or owner occupation) penalty, it is made clear that lessors have the right to determine how their property is used.

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

#### (a) the nature of the right

##### *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.

Property rights can relate to the restriction or regulation of established patterns of access to the property. By repealing the time-limited entry rights and repair obligations in the Regulation, entry rights and repair obligations will revert to pre-existing requirements under the RTRA Act. Access requirements impose some restrictions on when a lessor or their representative can access their property, but provide for a lessor to have adequate oversight of their property to ensure it is well maintained and meets regulatory requirements, including safety requirements.

##### *Privacy and reputation*

Section 25 of the *Human Rights Act 2019* protects the privacy, family and home of people in Queensland from unlawful or arbitrary interference. Privacy and reputation rights must be balanced against other rights and competing interests and, like all rights in the *Human Rights Act 2019*, can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

It could be argued that providing a lessor or their representative with access to a property may infringe on the tenant's right to privacy. This is balanced by the need to ensure a lessor's property rights.

- (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 Amendment Regulation repeals the temporary entry rights and repair obligations. Entry rights and repair obligations will then revert to the requirements stipulated in the RTRA Act, which do not place undue limitations on a lessor's access to the property, and do not constitute arbitrary interference in a tenant's privacy, family and home.

On balance, preserving the right of an owner to access and determine the use of their property, whilst providing the tenant with appropriate privacy and notice to vacate, is consistent with a free and democratic society based on human dignity, equality and freedom.

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

By repealing the temporary entry rights and repair obligations in the Regulation and reverting to pre-COVID-19 entry rights and repair obligations under the RTRA Act, limitations on both lessors' property rights and tenants' privacy rights are mitigated. Provisions in the RTRA Act, which regulate when a lessor or their representative can access the property, are necessary to achieve the intent of balancing tenants' privacy with lessors' property rights.

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

I believe that the adjustment to the respective rights and obligations of lessors and tenants in respect of the rental property through the Amendment Regulation is the least restrictive and reasonable 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

As the lessors' property rights may potentially impact on the tenants' privacy rights (and vice versa) there is no reasonable way to prevent limitations on both parties' rights. The Amendment Regulation is the least restrictive and reasonable way to achieve the purpose of the Amendment Regulation and balance the rights of both lessors and tenants.

- (f) any other relevant factors

The limitations on property rights and right to privacy are further mitigated by the conciliation mechanism facilitated through the Residential Tenancies Authority (RTA). Where a tenant or lessor feels their rights have been breached, conciliation through the RTA may assist parties to negotiate an agreement.

## Conclusion

I consider that the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2021* 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.

**Leeanne Enoch**  
MINISTER FOR COMMUNITIES AND HOUSING  
MINISTER FOR DIGITAL ECONOMY  
MINISTER FOR THE ARTS

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