

Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Regulation 2024

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* (HR Act), I, Meaghan Scanlon MP, Minister for Housing, Local Government and Planning and Minister Public Works, provide this human rights certificate with respect to the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Regulation 2024* (Amendment Regulation) made under the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act) and *State Penalties Enforcement Act 1999*.

In my opinion, the Amendment Regulation is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2024* (RTRAOLA Act) amended the RTRA Act and received Assent on 6 June 2024. The amendments address community concerns about the impact of current housing market conditions and cost of living pressures on Queensland's renting households and strengthen renters' rights. The amendments commence as follows:

- **from assent:** priority reforms that respond to current housing market conditions, including applying the 12-month limit on rent increases to the property instead of the tenancy, banning all forms of rent bidding and introducing heads of power to establish a rental sector code of conduct, modifications framework and portable bond scheme.
- **by proclamation:** staged commencement dates to give the sector time to prepare for implementation, including:
 - from **30 September 2024**, priority reforms to support cost of living challenges for renters such as access to fee free methods of paying rent, limiting the maximum rental bond to four times the weekly rent for all rooming accommodation and residential tenancy agreements except moveable dwelling agreements, requiring utility charges to be passed on promptly, limiting re-letting costs based on the time remaining on a fixed-term lease, requiring rental property owners to provide evidence to support a claim they make on a rental bond; and measures to support the Residential Tenancies Authority compliance role.
 - from **1 May 2025**, the remainder of the reforms, including using an approved rental application form, limiting what information can be requested of prospective renters, extending entry notice periods and strengthened privacy obligations.

The Amendment Regulation amends the standard terms of tenancy and rooming accommodation agreements set out in the following schedules of the *Residential Tenancies and Rooming Accommodation Regulation 2009* (RTRA Regulation) to reflect changes made to the RTRA Act by the RTRAOLA Act that are commencing by Proclamation on 30 September 2024:

- 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 standard terms of those agreements reflect provisions in the RTRA Act. Therefore, as a consequence of the changes to the RTRA Act that will commence on 30 September 2024, it is necessary to amend the standard terms to ensure that they reflect the amended provisions of the RTRA Act.

A provision of the RTRAOLA Act that commences on 30 September 2024 provides tenants and residents with certainty about the maximum bond that can be required for a rental property. The Amendment Regulation omits section 21 of the RTRA Regulation to make the RTRA Regulation consistent with this amended provision of the RTRA Act.

The Amendment Regulation also amends the State Penalties Enforcement Regulation 2014 (SPE Regulation) to correct a referencing error and support compliance with the RTRAOLA Act by inserting infringement notice offences and corresponding infringement notice fines, for two offences which commenced on assent.

Human Rights Issues

Human rights relevant to the Amendment Regulation (Part 2, Divisions 2 and 3 of the *Human Rights Act 2019*)

The Amendment Regulation amends the standard terms in schedules 1 to 4 of the RTRA Regulation and omits a section about payments above the maximum bond amount to reflect amendments made by the RTRAOLA Act that commence 30 September 2024. The Amendment Regulation also amends the SPE Regulation for two offences which commenced on assent of the RTRAOLA Act.

The human rights relevant to the amendments under the Amendment Regulation are:

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

Limits on the frequency of rent increases

Sections 8 and 11 of the RTRAOLA Act amended sections 61(2) and 77(2) of the RTRA Act to require the written agreement for a residential tenancy or rooming accommodation to include the date the rent was last increased. To facilitate implementation of this reform, Schedule 1 Part 1, Schedule 2 Part 1, and Schedule 4 Part 1 of the RTRA Regulation need to be amended

to allow for information about the date of the last rent increase to be included as a field on each type of agreement (residential tenancy, rooming accommodation and moveable dwelling).

Section 15 of the RTRAOLA Act amended section 93 of the RTRA Act to specify that the 12-month rent increase frequency period applies even if the last rent increase for the residential premises related to a different tenancy agreement. The section applies the rent increase limit to the premises or, in relation to a moveable dwelling, either the dwelling or its site. Section 19 of the RTRAOLA Act amended section 105B of the RTRA Act to make a similar provision in relation to rent increases for rooming accommodation agreements. The Amendment Regulation updates Schedules 1, 2 and 4 of the RTRA Regulation to ensure consistency and avoid confusion in the sector around requirements.

Human rights potentially limited (part 2, divisions 2 and 3 HR Act)

These amendments may potentially limit the right to property (section 24 of the HR Act) by restricting the manner in which a person may deal with, and benefit from, their investment property. In Europe, rental control measures have been found to engage the right to property. While restricting the frequency with which rents may be increased is not a rent control measure, one of the normal incidents of property is that an owner is entitled to determine the amount of rent charged in exchange for granting possession of the property, and to periodically change the amount of rent charged when entering into new agreements. To the extent the amendments restrict an owner's ability to enjoy these incidents of property ownership, there is a risk that the owner's property rights will be limited.

The requirement to disclose the last rent increase may also potentially limit the right to privacy in section 25(a) of the HR Act, and the freedom of expression in section 21 (which may include the right to say nothing or the right not to say certain things).

However, the right to property will only be limited if the property is deprived arbitrarily. The right to privacy will only be limited where the interference is unlawful or arbitrary. Because the RTRAOLA Act authorises interference to achieve an important policy goal, such an interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 HR Act)

Any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one's property free from interference and the ability to keep information to oneself.
- Purpose – The purpose of the amendments is to enhance protections for renters to ensure a more transparent and fair rental market, by giving them certainty as to when their rent can be next increased. This also serves to protect and promote human rights related to access to housing in sections 16, 19, 24, 25, 26 and 29 of the HR Act. These are proper purposes that are consistent with a free and democratic society based on human dignity, equality and freedom.

- Relationship between limitation and its purpose – The amendments ensure the rent increase frequency limit operates effectively, increasing protections for renters.
- Less restrictive alternatives – The amendments are necessary to achieve the objective of a more transparent and fair rental market. The limits operate flexibly in allowing an application to be made to the Queensland Civil and Administrative Tribunal to increase rent within the 12-month period on the basis of undue hardship. The alternative of applying the rent increase frequency limit to the tenancy existed before the RTRAOLA Act amendment commenced and was found to be insufficient to achieve the intended policy objectives of stabilising rents and tenancies across the rental market.
- Fair balance – Ensuring the rent increase frequency limit operates effectively ensures a stable, transparent and fair private rental market. The limitation on privacy rights of lessors and providers and former tenants and residents is minor, as is the limitation on lessors' and providers right of freedom of expression. There is nothing inherently sensitive or confidential about the date of the previous rental increase which is unlikely in most (if any) cases to disclose the identity of previous tenants or residents. The limitation on the property rights of lessors and providers is more significant but, particularly in a period of unprecedented housing stress, the provisions strike a fair balance between those rights and the rights of renters to stability, transparency and fairness in the private rental market.

As the interference with property and privacy is proportionate and not arbitrary, those rights are not limited by these amendments. Any limits on the freedom of expression are proportionate and therefore justified. Accordingly, these provisions are compatible with human rights.

Payment of rent

Section 52 of the RTRAOLA Act replaces sections 83 and 84 of the RTRA Act and inserts new sections 84A and 84B into the RTRA Act to amend the ways that rent is to be paid under a residential tenancy agreement, the processes for changing the way rent is to be paid when there is and is not agreement, and that tenants must be advised of the associated costs of a rent payment method. Section 53 of the RTRAOLA Act replaces sections 98 and 99 of the RTRA Act and inserts new sections 99A and 99B to amend the ways that rent is to be paid under a rooming accommodation agreement, the processes for changing the way rent is to be paid when there is and is not agreement, and that residents must be advised of the associated costs of a rent payment method. The Amendment Regulation updates Schedules 1, 2, 3, 3A and 4 of the RTRA Regulation to ensure consistency with these new requirements.

Human rights potentially limited (part 2, divisions 2 and 3 HR Act)

Giving renters more options about how to pay rent results in an equivalent loss of control by rental property owners and their agents over how they receive rent. Arguably, that may engage the right to property in section 24 of the HR Act, on the basis that a normal incident of property is that an owner is entitled to receive payment in the way they wish in exchange for granting possession of the property.

However, the rights to property will only be limited where the interference is unlawful or arbitrary. Because the RTRAOLA Act authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the HR

Act, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 HR Act)

Any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to control how a person receives rent as consideration for possession of their property.
- Purpose – Through consultation, renters and advocates shared their concerns that some rental property owners and property managers 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. The amendments provided for in the RTRAOLA Act are designed to 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 additional costs when paying rent. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendments are necessary to achieve the objective of a fairer rental market.
- Less restrictive alternatives – The amendments are necessary to achieve a fairer rental market. Renters can only be given greater choice over how they pay rent by reducing the control that rental property owners and their agents have over how they receive rent. Given the impact on the right to property is tailored to what is reasonably necessary, the amendments are the least restrictive way to achieve the objective.
- Fair balance – The amendments adjust the balance of rights in the rental relationship to ensure renters can choose rent payment methods that will not require them to incur additional costs while continuing to ensure rental property owners receive rent as consideration for possession of their property. The minor limitation on the property rights of rental property owners in a period of unprecedented housing stress strike a fair balance between those rights and the rights of renters to stability, transparency and fairness in the private rental market.

As the interference with property rights is proportionate and not arbitrary, the right to property is not limited by these amendments.

Service charges

Sections 56 to 58 of the RTRAOLA Act amend sections 165 to 167 of the RTRA Act to require that tenants be provided with a copy of documents outlining utility charges for general services and water services promptly. Section 59 of the RTRAOLA Act amends section 170 of the RTRA Act to introduce a similar requirement for rooming accommodation residents in relation to utility charges. Amendments to Schedules 1, 2, 3, 3A and 4 of the RTRA Regulation are necessary to reflect changes to the RTRA Act in relevant standard terms of tenancy agreements to ensure both renters and rental property owners are aware of the change in obligations.

Human rights potentially limited (part 2, divisions 2 and 3 HR Act)

Providing that renters are not required to pay service charges if they do not receive the documents in time may deprive rental property owners of property for the purposes of the right to property in section 24 of the HR Act, because they will be required to pay. The definition of 'property' in the *Acts Interpretation Act 1954* includes 'money'.

However, the rights to property will only be limited where the interference is unlawful or arbitrary. Because the RTRAOLA Act authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 HR Act)

Any interference with property is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to retain property in the form of money.
- Purpose – The amendments prescribe a timeframe in which a property owner must pass on service charges to the renter that the renter is responsible for paying under the tenancy agreement, if the timeframe is not met the renter is not required to pay the charge. As identified in the explanatory notes that accompanied the RTRAOLA Bill, during consultation, the timeliness of property owners passing on service charges was identified as an issue by renters and advocacy groups, particularly when accumulated bills were passed onto the renter at the end of the tenancy. This adds to the financial burden on renters as it does not allow them to plan for and budget incoming bills and costs, or to monitor usage. Overall, the purpose of the amendments is to enhance protections for renters to ensure a fairer rental market. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendments provide that the renter is not required to pay the charge if the relevant documents have not been passed on within the required timeframe. This ensures that outstanding accumulated accounts do not place a financial burden on renters.
- Less restrictive alternatives – The amendments to the RTRA Regulation are necessary to achieve the objective of a fairer rental market and provide consistency with the RTRA Act. The alternative of not setting a timeframe for when these charges must be provided to renters for payment existed before the RTRAOLA Act commenced and was found to be ineffective to prevent or sufficiently discourage the practice of providing a renter multiple bills at once, often at the end of their tenancy, representing a large cost they were unable to budget for and preventing them from monitoring and managing their usage.
- Fair balance – The need to ensure renters are promptly informed of service charges they are responsible for paying and to protect them from accumulated bills outweighs the limited impact on the property rights of rental property owners. The inconvenience faced by rental property owners of not passing on service charges promptly are very low compared to the inconvenience and expense faced by renters who are unable to

monitor their usage and can be faced with multiple bills that make it difficult for them to set and maintain a household budget. As the interference with property is proportionate and not arbitrary, the rights to property are not limited by these amendments. Accordingly, these provisions are compatible with human rights.

Reletting costs

Sections 60, 61, 72 and 73, 75 and 76 of the RTRAOLA Act amends sections 173, 178, 357A, 396A, 420 and 421 of the RTRA Act to limit reletting costs that the renter may be liable for in residential tenancies and rooming accommodation. The amount of reletting costs that a renter may be requested to pay are prescribed according to the proportion of the fixed term agreement that has expired. Amendments to Schedules 1, 2, 3, 3A, and 4 of the RTRA Regulation are necessary to reflect changes to the RTRA Act in the relevant standard terms of tenancy agreements to ensure all parties are aware of the change from ‘reasonable costs’ incurred, to the amounts prescribed under section 357A(3) and(4), and section 396A(3) and (4) of the RTRA Act.

Human rights potentially limited (part 2, divisions 2 and 3 HR Act)

These amendments may potentially limit the right to property (section 24 of the HR Act) by restricting the amount of costs a rental property owner can recover from a renter in connection with reletting the premises or room. The definition of ‘property’ in the *Acts Interpretation Act 1954* includes ‘money’.

However, the right to property will only be limited if the property is deprived arbitrarily. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 HR Act)

However, any limit on the right to property is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is to not be arbitrarily deprived of property.
- Purpose – The purpose is to adjust the balance of rights in the rental relationship to ensure a fairer rental market. Reletting costs need to be fair and reasonable and not prevent renters from accessing more suitable or affordable housing if they need to end their tenancy agreement early. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendments limit the amount of reletting costs that a rental property owner may request be recovered from a renter that ends their fixed term tenancy early to ensure reletting costs are fair and reasonable.
- Less restrictive alternatives – The amendments to the RTRA Regulation are necessary to achieve the objective of a fairer rental market and provide consistency with the RTRA Act. As was noted in the explanatory notes that accompanied the RTRAOLA Act, consideration was given to an alternative proposal of capping reletting costs at the lesser of the amount of reasonable reletting costs as currently provided for in the RTRA

Act or amount determined by the remaining term of the tenancy. A further alternative considered was consultation and education within the residential rental sector to increase awareness of the costs renters incur as part of tenancies and best practices for transparency and passing on of these costs. However, none of the alternative approaches would have ensured renters could be certain about the total amount they would owe if they broke their lease.

- Fair balance – The benefits of removing renters’ uncertainty about their financial liability in the event they break their lease outweigh the impact on property rights and the limitation is therefore reasonable and demonstrably justifiable. As the interference with property is proportionate and not arbitrary, the right is not limited by these amendments. Accordingly, these provisions are compatible with human rights.

Increased penalties and introduction of new penalties

Human rights potentially limited (part 2, divisions 2 and 3 Human Rights Act 2019)

Increased penalties and the introduction of new penalties may potentially limit the right to property (section 24 of the HR Act). The definition of ‘property’ in the *Acts Interpretation Act 1954* includes ‘money’. The imposition of a fine, will, in principle constitute interference with the right to property as it deprives the person concerned of an item of property, namely the sum that has to be paid.

However, the right to property will only be limited if the property is deprived arbitrarily. Because the RTRAOLA Act authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 HR Act)

Any interference with property is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to retain property in the form of money.
- Purpose – The purpose of introducing greater penalties and introducing new offences is to enhance protections for renters to ensure a fairer rental market. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendments ensure there is sufficient deterrence and appropriate consequences for engaging in prohibited conduct and is an effective measure to increase protections for renters in Queensland.
- Less restrictive alternatives – The amendments are necessary to achieve the objective of a fairer rental market for renters. The amendments do not result in criminal offences that operate retrospectively or result in the imposition of greater penalties retrospectively. Accordingly, the right against retrospective criminal laws in s 35 of the HR Act is protected. There are no less restrictive alternatives that would achieve the objective.
- Fair balance – On the one hand, the impact on property is relatively minor. The penalties are not excessive, and the amendments merely set a maximum penalty that may be

imposed, leaving the court with a sentencing discretion in the individual circumstances of each particular case. On the other hand, there is a compelling public interest in proscribing the conduct through penalties. The amendments are necessary to ensure greater protections for renters in Queensland. The amendments adjust the balance of rights in the rental relationship given that some of the most vulnerable Queenslanders, including people experiencing domestic and family violence and people with disability, rely on the private rental market for sustainable and long-term housing that meets their needs. Ultimately, the need for a stable, transparent and fair private rental market, outweighs the relatively small impacts on property.

As the interference with property is proportionate and not arbitrary, the right to property is not limited by these amendments. Accordingly, the amendments increasing penalties or introducing new penalties are compatible with human rights.

Conclusion

I consider that the Amendment Regulation is compatible with human rights under the HR Act because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

THE HONOURABLE MEAGHAN SCANLON MP
MINISTER FOR HOUSING, LOCAL GOVERNMENT AND PLANNING AND
MINISTER FOR PUBLIC WORKS

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