

# Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Regulation 2025

## 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, Sam O'Connor MP, Minister for Housing and Public Works and Minister for Youth provide this human rights certificate with respect to the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Regulation 2025* (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.

*Note: The Amendment Regulation and the RTRA 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.*

## Overview of the Subordinate Legislation

The *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2024* (RTRAOLA Act) amends the RTRA Act to strengthen renters' rights, stabilise rents and provide better pathways to resolve tenancy issues.

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

- requiring a prescribed rental application form to be used by property owners and limiting the supporting documentation that can be requested from 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 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 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 2025, by:

- prescribing additional information that can be requested of a prospective renter including details about the prospective renter's financial ability to pay rent if they cannot provide employment or income details; total number of occupants and number of occupants under 18 years of age intending to reside in the premises; and the number and type of pet/s and vehicle/s intended to be kept at the premises
- 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
- updating the standard terms of agreements to reflect the updated provisions in the RTRA Act, specifically Schedules 1–4 of the RTRA Regulation.

The Amendment Regulation also amends *the State Penalties Enforcement Regulation 2014* (SPE Regulation) to support compliance with the RTRAOLA Act by prescribing offence provisions and corresponding infringement notice fines, for eight offences which commence on 1 May 2025.

## Human Rights Issues

### Human rights relevant to the Amendment Regulation (Part 2, Division 2 and 3 HR Act)

The Amendment Regulation prescribes additional information allowed to be collected under the required application form, prescribes a restricted way for submitting an application, and amends the standard terms in schedules 1–4 of the RTRA Regulation. These amendments support the provisions of the RTRAOLA Act that commence on 1 May 2025.

The human rights relevant to the Amendment Regulation are:

- Right to enjoy human rights without discrimination (section 15(2))
- Freedom of expression (section 21)
- Property rights (section 24)
- Privacy and reputation (section 25)

### Prescribing additional information for required application form

Sections 50 and 51 of the RTRAOLA Act insert new sections 57B and 76C in the RTRA Act to establish a required application form and allow specific renter information to be collected including other information that is prescribed by regulation.

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

The Amendment Regulation prescribes information for the required application form, including financial ability to pay rent if the applicant cannot provide employment or income

details, number of occupants and occupants under the age of 18, number and type of pets and vehicles.

While the Amendment Regulation expands the information that can be collected by the required application form, the collection of renter information is still restricted which may limit the right to property (section 24 of the HR Act) by confining the manner in which a person may deal with, and benefit from, their investment property. One of the normal incidents of property ownership is that a property owner is entitled to determine who will be granted possession of the property, and in so doing, may request all information they deem necessary to determine a prospective renter's suitability. To the extent the amendments limit a property owner's ability to request all necessary information from a prospective renter and restrict a property owner's ability to select an appropriate prospective renter, there is a risk that the property owner's rights will be limited. However, the right to property will only be limited if the property is deprived arbitrarily.

Conversely, prescribing additional information in the application form may potentially limit a prospective renter's 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). The right to privacy and freedom of expression will only be limited where the interference is unlawful or arbitrary. Given the RTRAOLA Act authorises interference to achieve an important policy goal, any such 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, privacy or freedom of expression is arbitrary will be addressed below when considering the factors in section 13.

The option to disclose additional information may also potentially limit a prospective renter's right to enjoy their human rights without discrimination. Due to the desire to secure a rental property, applicants will feel compelled to disclose details of pets, boats, motor vehicles and trailers, which may in some cases provide grounds for refusing the application.

However, discrimination under the HR Act is defined as including discrimination on basis of an attribute mentioned in the *Anti-Discrimination Act 1991* (Anti-Discrimination Act). It is likely that to the extent the definition encompasses other kinds of discrimination, it would be limited to discrimination of a kind analogous to that prescribed by the Anti-Discrimination Act. Ownership of pets (as distinct from service animals), cars, boat etc is not analogous to a protected attribute under the Anti-Discrimination Act.

Accordingly, I am satisfied the Amendment Regulation does not limit the rights stated in s 15 of the HR Act.

#### Consideration of reasonable limitations on human rights (section 13 HR Act)

Any interference with the right to property, privacy or freedom of expression is reasonable and justified as follows:

- Nature of the human right – For the impacts on property, what is at stake in human rights terms is a property owner's right to select an appropriate prospective renter to occupy the rental property. For the impacts on privacy and freedom of expression, what is at

stake in human rights terms is a renter's right to protect their personal information, and limitations on the right to say nothing or not provide information.

- Purpose – The purpose of allowing certain personal information to be collected is to allow property owners to obtain the information they need to decide applications for rental agreements. That serves to promote freedom of expression in section 21 of the HR Act. On the other hand, the purpose of preventing property owners from seeking further information is to protect the privacy of prospective renters. In turn, that serves to protect the right to privacy in section 25(a) of the HR Act. Protecting human rights is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – While the Amendment Regulation extends the type of information that may be collected, prospective renter information remains limited and ensures only enough personal information is collected from renters to allow a property owner to assess prospective renters' ability to pay rent and suitability for the property. A renters' right to freedom of expression is somewhat limited, because although there is no legislative requirement for prospective renters to provide the information prescribed, in the current rental market a prospective renter's application may not be considered as suitable as another applicant's if the requested information is not provided. However, allowing property owners to request the additional information is necessary to ensure that property owners have sufficient information to make an informed decision about the prospective renter.
- Less restrictive alternatives – Alternatives to the prescribed additional information in the Amendment Regulation would be to either prescribe no additional information or prescribe more. To prescribe no additional information would not meet the needs of the property owner in collecting all required information to make an informed decision. Whereas, prescribing more additional information would not achieve the policy intent of the RTRAOLA reforms. The additional information prescribed in the Amendment Regulation allows the policy objective to be achieved; balancing the information needs of the property owner and the privacy needs of the renter. The impacts on freedom of expression and the right to privacy are therefore narrowly tailored to what is reasonably necessary. There are no less restrictive alternatives that would achieve the objective.
- Fair balance – 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 keep personal information to themselves. The impact on property, privacy and freedom of expression are minor and necessary.

As the interference with property, privacy and freedom of expression is proportionate and not arbitrary, these rights are not limited. Accordingly, these provisions are compatible with human rights.

### **Restricted way for submitting an application**

The RTRAOLA Act inserts new sections 57B and 76C in the RTRA Act which provide that a restricted way for submitting an application includes a way prescribed by regulation to be a restricted way.

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

Prescribing that a way that requires the prospective renter to pay an amount in relation to submitting the application is a restricted way may potentially limit a property owners' rights (section 24 of the HR Act). The definition of 'property' in the *Acts Interpretation Act 1954* includes 'money'. By requiring a property owner to provide a way for a prospective renter to submit an application that does not involve paying a fee, the property owner may be required to pay for a due diligence check (for example a background or tenancy check), denying the owner the cost of the due diligence check. 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, 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 reasonable limitations on human rights (section 13 HR Act)

In my opinion, any interference with the right to property is reasonable and justified as follows:

- Nature of the human right – For the impacts on property, what is at stake in human rights terms is the ability to retain property in the form of money.
- Purpose – The purpose of the amendment is to ensure that renters are provided with an option to submit their application in a way that does not carry a cost. This seeks to ensure the rental market is fair and equitable, which is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The Amendment Regulation protects the renter's right to property while potentially limiting the property owner's right. The potential limitation of property owner's rights is necessary to ensure fairness and equality in the rental application process.
- Less restrictive alternatives – Alternatives to prescribing an additional restricted way in the Amendment Regulation would be to retain the status quo and not prescribe an additional restricted way, or to provide non-mandatory guidance to the sector. Neither option would achieve the policy intent of ensuring renters are given a fee-free way to submit a rental application. Prescribing an additional restricted way to submit an application in the Amendment Regulation allows the policy objective to be achieved; balancing the rights of the renter and property owner. There are no less restrictive alternatives that would achieve the objective.
- Fair balance – The impact on property rights is relatively minor and necessary to ensure fairness in the rental application process. 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 fair private rental market, outweighs the impacts on property owner's rights.

As the interference with property rights is proportionate and not arbitrary, these rights are not limited. Accordingly, these provisions are compatible with human rights.

### **Declaration of financial benefit**

The RTRAOLA Act amends sections 84B(3) and 98B(3) of the RTRA Act to require a property owner to declare any financial benefit they may receive if the renter uses a particular way to pay rent. 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 agreements to ensure that all parties are aware of this requirement.

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

Amendments to the standard terms may potentially limit the right to privacy for property owners 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).

The right to privacy will only be limited where the interference is unlawful or arbitrary. Given the RTRAOLA Act authorises interference to achieve an important policy goal, any such 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 privacy is arbitrary will be addressed below when considering the factors in section 13.

### Consideration of reasonable limitations on human rights (section 13 HR Act)

Any interference with the right to privacy or freedom of expression is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is a property owner’s right to protect their personal information, and the right to say nothing or not provide information.
- Purpose – Through consultation, renters and advocates shared their concerns that some 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. These amendments 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 unnecessary additional costs. 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 require property owners to disclose the costs of certain payment methods and the financial benefits they may receive. These measures ensure the objective is achieved.
- 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 property owners and their agents have over how they receive rent. Property owners will not be required to disclose costs that the renter would reasonably be aware of or could reasonably be expected to find out. This ensures that the obligation to disclose costs is not unduly oppressive. Given the impacts on the rights to freedom of expression

and privacy are tailored to what is reasonably necessary, the amendments are the least restrictive way to achieve the objective.

- Fair balance – 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 fair private rental market, outweighs the impacts on freedom of expression and privacy.

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

### **Process for approval to attach fixtures or make structural changes**

The RTRAOLA replaces sections 207–209 and 254–256, to clarify the process for approval to attach fixtures or make structural changes. Amendments to Schedules 1, 2, 3, 3A and 4 of the RTRA Regulation are necessary to reflect changes to the RTRA Act to ensure that all parties are aware of their requirements.

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

Amendments to the standard terms may potentially limit the right to property (section 24 of the HR Act) by restricting the manner in which a person controls or manages their property. In this context, both the property rights of owners and renters are engaged, because ‘property’ is given a broad meaning under the HR Act that may include renters’ rights in relation to their residence.

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 Human Rights Act 2019, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering factors in section 13.

#### Consideration of reasonable limitations on human rights (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 control and manage one’s property free from arbitrary interference.
- Purpose – The amendment to the standard terms seeks to clarify the approval process where a renter is requesting to attach a fixture or make a structural change to the property. The purpose is to adjust the balance of rights in the rental relationship giving both parties set requirements to comply with; the renter must use the approved form and the property owner must respond within a certain timeframe. 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 clarify the process to negotiate a fixture or structural change to rental properties. Any limitation on the property owner’s right to property and to control that property is justified to ensure balance in the rental relationship. The limitation on the renters’ property rights is justified to protect the property owner’s rights.
- Less restrictive alternatives – Under the existing provisions of the RTRA Act, rental property owners are not required to respond to requests to attach fixtures or make structural changes. The new provisions require property owners to give a decision to most requests within 28 days, or a longer time agreed by the parties. Given that some tenancies are of quite short duration, the 28–day timeframe is reasonable to ensure renters receive an answer in a timely fashion. Without these changes, there would be no incentive for property owners to respond to reasonable requests in a timely manner. There are no less restrictive alternatives that would achieve the objective.
- Fair balance – The amendments are necessary to adjust the balance of rights in the rental relationship. The amendments ensure there is a process to agree to a fixture or structural change 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. Achieving a fair balance of rights is consistent with a free and democratic society based on human dignity, equality and freedom.

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.

### **Penalty infringement notices**

The RTRAOLA Act introduces penalties for new provisions of the RTRA Act related to the application process. The Amendment Regulation amends the SPE Regulation to support the Residential Tenancies Authority’s (RTA) compliance activities and prescribes offences and corresponding infringement notice fines, for eight offences which commence on 1 May 2025.

Penalties may apply to both individuals and corporations. However, only individuals hold human rights (section 11 of the HR Act).

These new penalties do not apply retrospectively. That is, a person will not be subject to new penalties for conduct they have already engaged in.

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

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 reasonable limitations on human rights (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 new offences is to enhance protections 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 offences ensure there is sufficient deterrence and appropriate consequences for engaging in prohibited conduct and is an effective measure to increase protections in the rental sector.
- Less restrictive alternatives – The offences are necessary to achieve the objective of a fairer rental market. 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 section 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 in the rental sector. 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 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.

**SAM O'CONNOR MP**  
MINISTER FOR HOUSING AND PUBLIC WORKS  
AND MINISTER FOR YOUTH