

# Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2013

## Explanatory Notes

### Short title

This short title of the Bill is the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2013*.

### Policy objectives and the reasons for them

The objectives of the Bill are to amend the:

- *Residential Tenancies and Rooming Accommodation Act 2008* to:
  - allow for a smooth transition of tenancies from direct Government management to management by a Community Housing Provider (CHP);
  - achieve greater consistency between public housing and community housing; and
  - support the implementation of the Government's new Anti-Social Behaviour policy.
- *Queensland Building and Construction Commission Act 1991* to facilitate commercial development, by amending the licensing requirements and removing restrictions regarding retention moneys for Public Private Partnerships (PPP) and an amendment to facilitate earlier resolution of building disputes
- *Guide, Hearing and Assistance Dogs Act 2009* to provide rights of access to places of accommodation for people with a disability who rely on guide, hearing and assistance dogs, and make it an offence for a person to refuse accommodation to a person with a disability who relies on a certified guide, hearing or assistance dog.

#### *Residential Tenancies and Rooming Accommodation Act 2008 (RTRAA)*

The Department of Housing and Public Works (Department) is strengthening the role of the not-for-profit sector by progressively transferring the management of department-owned and managed properties to the non-government sector. The Logan Renewal Initiative is the first of these transfers.

As part of the Logan Renewal Initiative, a CHP will become the property and tenancy manager of about 4,700 department owned properties which have State Tenancy Agreements (STA) in place. While very similar to general tenancy agreements used in the private rental market, the STA has key differences which allow the Department to:

- increase rents (for example, as a result of an increase in household income) without needing to give two months' notice for a rent review for those on periodic leases;
- review and increase rents during the term of a fixed term tenancy; and
- require household information to be provided (in order to assess eligibility and rental amount).

A number of issues have been identified in relation to the transfer of existing tenancies from the Department to a CHP. These issues include that a CHP will not be able to access Commonwealth Rent Assistance (CRA), a CHP will not be able to seek a rental bond, or levy service charges such as for excess water usage and a CHP will not be able to compel tenants to provide household information.

On 4 April 2013, the new Anti-Social Behaviour (ASB) policy and strikes-based process was announced. While the ASB policy was implemented on 1 July 2013, the Department continues to have difficulty in obtaining termination orders from the Queensland Civil and Administrative Tribunal (QCAT) and subsequently regaining timely possession of public housing dwellings in cases where serious antisocial behaviour has occurred.

#### *Queensland Building and Construction Commission Act 1991*

On 29 May 2013, the Minister for Housing and Public Works tabled the final Queensland Government response to the report by the Transport, Housing and Local Government Committee of the Queensland Parliament on the 'Inquiry into the Operation and Performance of the Queensland Building Services Authority' (Parliamentary Committee report).

On 29 August 2013, the Governor's assent was given to the Queensland Building Services Authority Amendment Act 2013 (QBSA Amendment Act) to implement the first stage of the Queensland Government's response to the Parliamentary Committee report. The QBSA Amendment Act amends the *Queensland Building Services Authority Act 1991* to establish the Queensland Building and Construction Commission (QBCC) in place of the Queensland Building Services Authority (QBSA), establish a professional governing board, and allow for the appointment of a commissioner by the board. On commencement of the QBSA Amendment Act the *Queensland Building Services Authority Act 1991* will be known as the *Queensland Building and Construction Commission Act 1991* (QBCC Act). These explanatory notes will refer to the QBCC Act, as the Bill has been drafted on the basis that the QBCC Act has commenced.

While the majority of issues identified in the Queensland Government response will be considered by the QBSA/QBCC or an Implementation Committee, some issues have been identified as needing to be progressed for implementation as soon as practicable. This includes addressing the licensing requirements of section 42 of the QBCC Act to facilitate commercial development and removing restrictions regarding retention moneys for Public Private Partnerships (PPP) to remove impediments to the use of special purpose vehicles for PPPs. Also, an amendment is proposed to be made to section 83 of the QBCC Act, to enable the QBSA/QBCC to apply to QCAT for an order that it can continue to act in a building dispute while QCAT proceedings are on foot. This is expected to facilitate earlier resolution of building disputes.

#### *Guide, Hearing and Assistance Dogs Act 2009*

The policy objective is to ensure that people who rely on guide hearing and assistance dogs have the same rights as others to access places of accommodation.

## **Achievement of policy objectives**

#### *Residential Tenancies and Rooming Accommodation Act 2008*

The Bill amends the RTRAA to facilitate a smooth transfer of tenancies to a CHP by replacing the standard and special terms of existing STAs with a new set of standard and special terms when a CHP becomes the lessor under the tenancy agreement. These legislative amendments will enable a CHP to access CRA in the rent charged to a tenant, levy a bond or other service charges and require household information to be provided by the tenant.

The provisions of the Bill will apply to existing public housing tenancies, which are transferred to a CHP as part of the Government's strategy to transfer 90 percent of the management of all social housing dwellings to the non-government sector by 2020. The provisions of the Bill relating to bonds and service charges will also be used by the Department for existing public housing tenants. This is consistent with existing tenants in community housing who usually pay a bond and service charges. Legislative amendments are not necessary to require new tenants to pay a bond or service charges.

The Bill will also allow the Department and CHPs to act more swiftly and directly when serious and/or persistent antisocial behaviour is occurring in public and community housing. The Bill extends the new antisocial behaviour provisions to all CHPs, so that existing CHPs can respond to antisocial behaviour consistently. This approach will also ensure the coverage of the ASB behaviour policy is not inadvertently reduced as large-scale transfers take place.

#### *Queensland Building and Construction Commission Act 1991*

Section 42 of the QBCC Act provides that a person must not carry out, or undertake to carry out building work unless that person holds a contractor's licence of the appropriate class under the Act.

Submissions were made to the Parliamentary Committee inquiry raising concerns about what was perceived as the unintended consequences of section 42. The Parliamentary Committee, at Recommendation 33 of its report, recommended that section 42 be revised to make it clear that there is no breach of the QBCC Act if an appropriately licensed builder carries out the building work.

The Department of State Development, Infrastructure and Planning (DSDIP) has advised that section 42 of the QBCC Act has a potential adverse impact on delivery of the Commonwealth Games Village, which is being facilitated within DSDIP by Economic Development Queensland (EDQ). EDQ has advised that the most prospective development partner entities for the project will not hold a builder's licence, being development entities (not contractors) and/or special purpose vehicles. Projects Queensland, Queensland Treasury and Trade has raised similar concerns with respect to PPP projects.

It is proposed that section 42 be amended to provide that a contractor's licence is not required for a person who agrees with a principal under a building contract (any contract which includes building work) to cause commercial building work to be carried out by an appropriately licensed building contractor and the licensed building contractor carries out the commercial building work.

The amendment (other than for PPPs and prescribed government projects) will not apply to contracts for domestic building work as this may result in substantive detriment to consumers, who would be unable to access cover under the Queensland Home Warranty Scheme for incomplete work associated with insolvency of an unlicensed contractor.

The amendment will remove a regulatory impediment for commercial development in Queensland, including for businesses seeking to tender for public infrastructure projects to be carried out under a PPP or similar arrangement. The main benefit of the amendment is that it removes a regulatory impediment for businesses seeking to tender for public infrastructure projects to be carried out under a PPP or similar arrangement. Significantly, the amendment will reduce administrative burden, contractual costs and contractual complexity in PPP projects.

Projects undertaken under a PPP arrangement often involve a building work component which is contractually agreed to be carried out by a special purpose entity, typically referred to as a "special purpose vehicle" (SPV). Currently, a contract between an SPV and a building contractor is treated as a subcontract arrangement under the QBCC Act. Accordingly, the SPV is not able to enter into a building contract for work to be carried out for the purposes of a PPP whereby the retentions or securities held are more than 5 percent. This causes significant difficulties in PPP arrangements as financiers commonly require SPVs to hold retentions and securities for an amount in excess of 5 percent. To address this issue it is proposed to amend the QBCC Act to treat SPVs on the same basis as if they were a principal. This would have the consequence that section 67K of the QBCC Act would apply. This would allow the SPV to enter into a building contract whereby the parties may agree that the retentions and securities under their contract can exceed 5 percent.

Section 83 of the QBCC Act has the effect that the QBSA (or QBCC when the QBSA Amendment Act 2013 commences) is unable to act in relation to a complaint about defective building work if one of the parties prior to or after receipt of the complaint commences a proceeding in the QCAT. Once a proceeding for a dispute has been lodged with the QCAT, the QBSA/QBCC cannot for example issue a direction for work to be rectified or pay an insurance claim under the Queensland Home Warranty Scheme.

Section 83 has been the source of significant criticism, including by witnesses appearing at the Parliamentary Committee Inquiry. The basis for this criticism is that some contractors are believed to be using the provision to prevent or delay the QBSA from assisting consumers in relation to a dispute.

To address these concerns, it is proposed to amend section 83 of the QBCC Act to allow the QBSA/QBCC to make application to the QCAT to seek leave to act in relation to a building dispute where QCAT has management of the building dispute. The need to seek leave is important to ensure that the management of the dispute by the QCAT and the involvement of the regulator is not inconsistent and is coordinated in a way that resolves the dispute as expeditiously as possible, including in appropriate circumstances by the payment of a claim under the Queensland Home Warranty Scheme.

#### *Guide, Hearing and Assistance Dogs Act 2009*

The policy objective will be achieved through a legislative amendment to the Act to provide explicit access rights to places of accommodation for people with a disability who rely on a guide hearing or assistance dog, and to make it an offence where accommodation is denied because a person is accompanied by their certified guide, hearing or assistance dog or an approved trainer, employee trainer or puppy carer is accompanied by a guide, hearing, assistance or trainee support dog.

## **Alternative ways of achieving policy objectives**

#### *Residential Tenancies and Rooming Accommodation Act 2008*

There are no other viable alternatives to amending the RTRAA that will achieve the policy objective.

Alternative policy options were considered by the Department in relation to the transfer of tenancy and property management but were considered to be administratively complex and expensive to implement and/or do not address the issues.

Legislative amendments to the RTRAA is the only option which addresses all of the issues identified with transferring large numbers of households from direct Government management to a CHP. Legislative amendments are required to strengthen the Government's ability to implement its new ASB policy.

Queensland Building and Construction Commission Act 1991

Legislative amendment is the only way to amend the QBCC Act to achieve the policy objective of the amendments.

Guide, Hearing and Assistance Dogs Act 2009

Amending legislation is the only way of providing these additional rights and redress for people with a disability who rely on guide, hearing and assistance dogs.

## **Estimated cost for government implementation**

Residential Tenancies and Rooming Accommodation Act 2008

It is possible that the new provisions concerning antisocial behaviour could increase the number of applications to QCAT. The Department will first discuss with QCAT what current QCAT resources are applied to the Department cases and what might be expected once the new antisocial behaviour provisions are implemented. Any additional resourcing needs that are agreed between the department and QCAT will form the basis of a memorandum of understanding.

The Department will offer a guarantee to the CHP for the value of the bonds for a period of up to two years commencing from the start of the Logan Renewal Initiative. The proposed guarantee for the value of the bonds will be met within existing resources of the department.

Queensland Building and Construction Commission Act 1991

The proposed amendments to the QBCC Act are not anticipated to have any significant implementation costs for government. The amendments will reduce the regulatory burden for commercial building projects (including PPPs) in Queensland.

Guide, Hearing and Assistance Dogs Act 2009

The costs associated with the implementation of these amendments will be met within existing resources.

## **Consistency with fundamental legislative principles**

Residential Tenancies and Rooming Accommodation Act 2008

Transferring tenancies

While the provisions of the Bill are consistent generally with the standards required to be met under the *Legislative Standards Act 1992*, issues concerning conformity with fundamental legislative principles may be raised in relation to the following provisions.

Tenants currently managed by CHPs are normally required to pay a bond and service charges. As tenants move from direct management by the State to a CHP, the proposed legislative changes better align the transferred tenancies with tenancy agreements currently managed by CHPs.

It could be argued that if a CHP chooses to levy a bond or other service charges, then the tenant's interests may be adversely affected. To mitigate against these possible impacts to a tenant, if a CHP decides to charge a bond, the Department will offer a guarantee to the CHP for the value of the bonds for a period of up to two years commencing from the start of the Logan Renewal Initiative. This means that a CHP gets the benefit of a bond without tenants being required to pay it. After the expiration of the two year bond guarantee period, CHPs will have a further 12 months to transition tenants to ensure all transferred tenants lodge the required bond. A CHP will not be able to levy service charges for existing public housing tenants transferred to the CHP during the two year bond guarantee period. After the expiration of the two year bond guarantee period, CHPs will have a further 12 months to transition tenants to ensure all transferred tenants commence paying service charges, where payable.

The ability to levy a bond and service charges on existing tenants has also been extended to the Department's public housing tenants however, existing public housing tenants will not be required to have bonds in place or pay service charges for two years from when a CHP starts operations in Logan, to give tenants adequate notice. In the third year existing public housing tenants will be required to lodge a bond and commence paying service charges, where payable. This ensures consistency across the social housing sector.

What this means is that within three years of a CHP commencing operation in Logan, all social housing tenants, regardless of whether they are managed by the Department or a CHP, will be treated consistently.

While the impacts on existing public housing tenants and transferred tenants, will be mitigated as described above, it should also be noted that:

- social housing tenants usually pay a subsidised rent – on average, about half the market rent;
- any bonds will be calculated on a tenant's subsidised rent;
- existing community housing tenants are usually charged a bond and other service charges; and
- private tenants usually pay bonds and service charges.

### Antisocial behaviour

One of the proposed amendments is to provide that the notice period for giving a notice to leave for ending of housing assistance will be shortened from a minimum of two months to a minimum of one month. It is also proposed that a notice to leave for ending of housing assistance may be used in public and community housing where a tenant has engaged in antisocial behaviour and exceeded the permitted number of strikes under the ASB policy.

It may be thought that the giving of a notice to leave for ending of housing assistance may end a tenancy without giving a tenant the opportunity to be heard about the antisocial behavioural issues, which could be considered contrary to natural justice principles. However it is also proposed that section 340 of the Act be amended to specifically list the notice to leave for ending of housing assistance, with the other listed notices in order to make that section applicable so that a tenant could have the matter heard by QCAT if they wish. The tenant may also seek a review under part 6 of the *Housing Act 2003* where a decision is made about a person's eligibility for public housing. In addition, the Department has well-established processes and practices to ensure that a tenant is afforded natural justice and has a right of reply before notices are issued.

The new section 290A of the RTRAA will allow the chief executive of the Department in which the *Housing Act 2003* is administered, and CHPs, to give a notice to leave to tenants in circumstances where there is a reasonable belief that premises have been used for illegal activity. Section 290A provides that a lessor may form a reasonable belief that premises are being used for an illegal activity whether or not the tenant has been convicted or found guilty of an offence in relation to the activity. This may be considered to impact on the rights of tenants where eviction action could be taken before any conviction has occurred. However the section is considered to be justified. Strong action is needed to deal with illegal behaviour in social housing properties. Reasons include:

- A lot of illegal activities in social housing relate to drug offences. The cost to the State of drug laboratories being operated is significant; typically \$75,000 is required to rectify damage and bring the dwelling back to a habitable condition. There are currently 20 known examples of rectification under way in public housing as a result of drug laboratories operating in public housing.
- Drug laboratories also produce hazardous chemicals which are a risk to health and safety of those entering or using the property, including children, as well as posing a risk to neighbouring properties and people if a drug laboratory explodes or catches fire.
- Waiting for a criminal charge and conviction can take many months to occur, and in the meantime repeated illegal and possibly dangerous activities may be continuing in the rental properties. In some cases police have reported having to attend properties repeatedly where criminal behaviour is occurring on a regular basis.
- If the tenant is served with a notice to leave under the section they can either choose to leave or not leave the premises. If they do not leave the premises the

matter would have to be determined by QCAT and the tenant would have the right to be heard in QCAT, which is bound by the rules of natural justice. It is still possible that QCAT could adjourn or stay any eviction proceedings until the conclusion of a criminal hearing. As noted above, the Department has well-established processes and practices to ensure that a tenant is afforded natural justice and has a right of reply before notices are issued.

The new section 557 is a transitional regulation-making power that enables a regulation to be made to make provision about a matter which is necessary for a CHP to become lessor under an existing State tenancy agreement and the Act does not make provision or sufficient provision. A provision of an Act which enables an Act to be amended by regulation raises fundamental legislative principle issues. This regulation would enable the Department to make further changes by regulation if they were not adequately dealt with under the Bill. It is considered that this is a reasonable regulation-making power given its limited application to affect a transitional matter. As this is a transitional regulation, it expires after 1 year.

#### *Queensland Building and Construction Commission Act 1991*

It is not considered that the proposed amendments to the QBCC Act raise any fundamental legislative principles.

#### *Guide, Hearing and Assistance Dogs Act 2009*

The amendments introduce a new offence where a person in control of a place of accommodation refuses to rent accommodation (such as residential or holiday accommodation) to an accompanied handler because they are a person with a disability accompanied by a certified guide, hearing or assistance dog or an approved trainer, employee trainer or puppy carer with a guide, hearing, assistance or trainee support dog.

The amendments will also make it an offence where a person exercising control of a place of accommodation imposes a term that would result in an accompanied handler paying an extra charge; or a person with a disability being separated from their guide, hearing or assistance dog while in the place of accommodation; or being refused entry to part of the place because the person is accompanied by their guide, hearing or assistance dog.

The introduction of these new offences may breach the fundamental legislative principle in section 4(2)(a) of the *Legislative Standards Act 1992* that requires legislation to have sufficient regard to the rights and liberties of individuals. However, these new offences do not impose new obligations on accommodation providers. It is already unlawful under the *Anti-Discrimination Act 1991* (Qld) for an accommodation provider to refuse accommodation because a person relies on a guide, hearing or assistance dog. Therefore, it is unlikely these new offences would have a significant impact on the rights and liberties of accommodation providers. Further, the amendments support the rights of people who rely on guide, hearing and assistance dogs to access places of accommodation on an equal basis with others.

The maximum penalty for breaching these offences is 100 penalty units. This is considered appropriate as it is the same penalty imposed under the Act where a person denies access to a public place or public passenger vehicle.

## **Consultation**

### *Residential Tenancies and Rooming Accommodation Act 2008*

Consultation occurred with the Department of the Premier and Cabinet, Queensland Treasury and Trade, the Department of State Development, Infrastructure and Planning (DSDIP), the Department of Justice and Attorney-General (DJAG), the Department of Local Government, Community Recovery and Resilience, the Department of Communities, Child Safety and Disability Services and the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs.

No external consultation was undertaken.

Similarly, the ASB policy has been announced and partially implemented. The provisions in the Bill will enhance the Department's ability to fully implement the Government's intent to send a clear message that antisocial behaviour and illegal activity will not be tolerated. Extending the provisions to CHPs will ensure consistency across the social housing sector.

### *Queensland Building and Construction Commission Act 1991*

Consultation on the amendment to s. 83 of the QBCC Act has been undertaken with DJAG which has raised no issues. Consultation on amendments to s. 42 and s. 67K of the QBCC Act has been undertaken with Projects Queensland, Queensland Treasury and Trade, which has also consulted with the Infrastructure Association of Queensland (IAQ). The issues raised by QTT and IAQ on the QBCC Act have been addressed in the draft Bill. Consultation on s. 42 of the QBCC Act has been carried out with DSDIP, which has indicated its support for the amendments. Consultation has been conducted with Master Builders Queensland in relation to amendments to s. 42 and 67K of the QBCC Act, which has indicated its support for the amendments.

### *Guide, Hearing and Assistance Dogs Act 2009*

Consultation on the amendments to the *Guide, Hearing and Assistance Dogs Act 2009* has been undertaken with the Department of Housing and Public Works, and the Department of Tourism, Major Events, Small Business and Commonwealth Games. There is support for these amendments from guide, hearing and assistance dogs users, Vision Australia and Guide Dogs Queensland. The changes to the Act will be communicated to accommodation providers, guide, hearing and assistance dog users and other stakeholders.

## **Consultation with legislation of other jurisdictions**

### *Residential Tenancies and Rooming Accommodation Act 2008*

The Bill is specific to the State of Queensland and does not introduce uniform or complementary legislation. It is understood that no large-scale transfers of this sort

have occurred in other jurisdictions. However, some of the proposed amendments to the RTRAA in relation to the implementation of the ASB policy are similar to the provisions of the New South Wales *Residential Tenancies Act 2010*.

## Notes on provisions

### Part 1 Preliminary

Clause 1 provides that the short title of the Act is the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2013*.

Clause 2 provides that the Act (other than the listed sections) commences on a day to be fixed by proclamation.

### Part 2 Amendment of Residential Tenancies and Rooming Accommodation Act 2008

Clause 3 provides that part 2 amends the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRAA).

Clause 4 amends section 91 of the RTRAA to insert section 91(9)(c). Section 91 does not apply where the lessor is a replacement lessor under a community housing provider tenancy agreement.

Clause 5 amends section 92 of the RTRAA to insert section 92(6)(c). Section 92 does not apply where the lessor is a replacement lessor under a community housing provider tenancy agreement.

Clause 6 amends section 93 of the RTRAA to insert section 93(6)(c). Section 93 does not apply where the lessor is a replacement lessor under a community housing provider tenancy agreement.

Clause 7 amends section 185 of the RTRAA to replace section 185(4)(a). Section 185 does not apply where the lessor is the State or a replacement lessor under a community housing provider tenancy agreement.

Clause 8 amends section 290 of the RTRAA to insert the word ‘ends’ after ‘scheme’ in the heading to better reflect the content of the section.

Clause 9 inserts a new section 290A (Notice to leave because of serious breach). Section 290A provides that a lessor can give a tenant a notice to leave for serious breach if the lessor reasonably believes the tenant, an occupant, a guest of the tenant or a person allowed on the premises by the tenant has used the premises for an illegal activity. Section 290A also allows such a notice to be given in other circumstances including where the tenant, an occupant, guest of the tenant or a person allowed on the premises by the tenant has destroyed or seriously damaged part of the premises or endangered other persons. The lessor who may give the notice is the chief executive of the department in which the Housing Act 2003 is administered, acting on behalf of the State, or a community housing provider. This means that the notice may be given in respect of public housing tenancies and tenancies where the lessor is a community housing provider. However the application of provisions to community housing providers in the Act will not occur until proclamation (refer new section 553).

Section 290A is intended to allow action to be taken to end tenancies quickly where public housing or community housing properties are being used for illegal activity or where there are other serious breaches. The use of such properties for illegal activities is a serious problem that will no longer be tolerated. For example properties are being used more frequently as clandestine drug laboratories or for other drug related activities. The section is intended to allow eviction where such activities occur but it is not limited to drug related activities. It has been drafted widely to apply to illegal activities generally.

A notice under s. 290A may be given even if there has been no charge or conviction for an offence because s. 290A(3) provides that a lessor may form a reasonable belief that premises or property has been used for an illegal activity whether or not the tenant has been convicted or found guilty of an offence in relation to the activity. This intentionally lowers the standard of proof and will allow the lessor to take prompt action to issue a notice to leave for serious breach rather than having to await the outcome of criminal proceedings.

Clause 10 amends section 296 of the RTRAA to insert subsection (5) which states that the lessor does not include the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State or a community housing provider. The reason for this is that s. 296A will apply to public and community housing properties instead of s. 296.

Clause 11 inserts a new section 296A (Application for termination for damage or injury in public or community housing). Section 296A allows a lessor, here the State or a community housing provider, to apply to a tribunal for a termination order on the grounds the tenant, an occupant, a guest of the tenant or a person allowed on the premises by the tenant has intentionally or recklessly caused, or is likely to intentionally or recklessly cause serious damage to the premises, or injury to other persons including the lessor or a person occupying premises nearby. Section 296A is intended to be wider than s. 296 because the Department of Housing and Public Works has encountered many cases of damage caused to public housing properties. S. 296A allows an application for termination to be made where the tenant, an occupant, a guest of the tenant or a person allowed on the premises by the tenant has caused the damage or injury. It is considered that the tenant must take responsibility for damage caused to the property leased to them where the damage is caused by persons referred to in s. 296A.

Clause 12 amends section 297 of the RTRAA to provide that in the section lessor does not include the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State or a community housing provider. The reason for this is that s. 297A will apply to public or community housing properties instead of s. 297.

Clause 13 inserts a new section 297A (Application for termination for objectionable behaviour in public or community housing). Section 297A is wider than s. 297 because s. 297A allows the lessor, here the State or a community housing provider to apply to QCAT for a termination order where objectionable behaviour as defined in the section is engaged in by the tenant, an occupant, guest or a person the tenant allows on the premises.

Section 297A also broadens the scope of objectionable behaviour to include situations where the tenant, an occupant or a guest or a person allowed on the premises by the tenant:

- (a) has harassed, intimidated or verbally abused the lessor or lessor's agent or a person occupying, or allowed on, premises nearby;
- (b) is causing or has caused, a serious nuisance to persons occupying premises nearby; or
- (c) has intentionally or recklessly endangered another person at the premises or interfered with the reasonable peace, comfort or privacy of a person occupying a premises nearby.

In this section a lessor means the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State or a community housing provider. Section 297A is intended to be wider than s. 297 because the Department of Housing and Public Works has encountered many cases of antisocial behaviour in public housing properties. It is considered that the tenant must take responsibility for the behaviour referred to in s. 297A.

Clause 14 amends section 329 (2)(i) of the RTRAA by omitting the words '2 months' and inserting '1 month'. Section 329(2)(i) provides the handover day for notice to leave premises because of the ending of housing assistance. A notice to leave for ending of housing assistance can be given under s. 290 if the tenant occupies premises under an affordable housing scheme (which includes public housing and community housing) and the tenant ceases to be eligible under the scheme. The period of notice has been shortened to 1 month to allow properties to be recovered more promptly where housing assistance is ended.

A new section 329(2)(ia) provides that if the notice to leave is given because of serious breach the handover day must not be earlier than 7 days after the notice is given. This will enable prompt action to be taken to end a public housing or community housing tenancy where the rental premises are being used for illegal activity.

Clause 15 amends section 340 to provide that where a notice to leave was given for ending of housing assistance or for serious breach the tribunal may make an order to terminate a tenancy under that section. The insertion of the reference to notice to leave for ending of housing assistance has been made to correct an oversight in the legislation as it was not previously referred to in the sections of the Act concerning tribunal powers to terminate a tenancy.

Clause 16 amends section 345 of the RTRAA to insert after the word 'behaviour' 'other than in public or community housing'. The reason for this is that s. 345A will apply to public and community housing properties instead of s. 345.

A new section 345(4) provides in this section "applicant" does not include the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State or a community housing provider. The reason for this is that s. 345A will apply to public and community housing properties instead of s. 345.

Clause 17 inserts a new section 345A (Objectionable behaviour in public or community housing) setting out the matters a tribunal must have regard to in relation to an application for a termination order because of objectionable behaviour. The section reflects the wording of the new section 297A and adds additional matters that the tribunal must have regard to in deciding whether behaviour justifies terminating a tenancy agreement. In this section an applicant means the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State or a community housing provider.

Clause 18 inserts a new section 349A (How tribunal must deal with public or community housing tenant). This section applies if an application is made to a tribunal for a termination order by the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State or a community housing provider. The State has experienced difficulty in obtaining orders from the tribunal to terminate public housing tenancies. The purpose of this amendment is to make it clear that the tribunal must not in any application refuse to terminate the tenancy merely because the tenant is a tenant of the chief executive or a community housing provider.

Clause 19 amends section 415 (Meaning of urgent application) of the RTRAA by defining that applications to the tribunal for a termination order due to failure to enter into acceptable behaviour agreement or serious or persistent breach of an acceptable behaviour agreement are considered urgent applications in general tenancies, moveable dwelling tenancies and rooming accommodation tenancies.

Clause 20 inserts new chapter 13A (Matters relating to particular leases by the State and community housing providers).

A new section 527A provides definitions for chapter 13A.

A new section 527B defines what a community housing provider is for the purposes of the various provisions where that term is used. An entity is a community housing provider for a particular tenancy only if the entity has received, or is receiving, funding under the *Housing Act 2003* to provide a community housing service for that tenancy and is providing a community housing service for that tenancy. The reason for defining a community housing provider in this way is to ensure that the provisions of the Act which apply to community housing providers only apply to tenancies where the provider has received or is receiving funding under the *Housing Act 2003* to provide a community housing service for that tenancy. The provisions are not to apply to other tenancies where a community housing provider is the lessor but is not receiving funding under the *Housing Act 2003* for that tenancy.

A new section 527C provides that this section applies if under a residential tenancy agreement the lessor is the State, and the State enters into a concurrent lease with an entity and because of the concurrent lease the entity becomes the lessor under the existing State tenancy agreement. The standard and special terms applying to the existing State tenancy agreement are taken to be replaced by the terms prescribed under a regulation, with application from the time the entity becomes the replacement lessor. The replacement terms may also change a part of the agreement other than the standard and special terms. The existing State tenancy agreement may be changed in the way stated in the replacement terms so that the replacement lessor has a right to

require the tenant to pay a rental bond, state the way in which the bond must be paid by the tenant, require the tenant to pay stated service charges, state the apportionment of the cost of the service charges payable by the tenant where the premises are not individually metered for a service and state the way in which services must be paid by the tenant. As changed by the replacement terms, the existing State tenancy agreement continues in force. As soon as practicable after an entity becomes lessor under a tenancy agreement, the entity must give to the tenant a written notice. The requirements of written notices are outlined.

A new section 527D establishes the meaning and operation of acceptable behaviour agreements where the tenant is in public housing or the lessor is a community housing provider. The provision is similar to s138 of the *Residential Tenancies Act 2010* (NSW) and is intended to deal with antisocial behaviour occurring in tenancies. The lessor may by written notice given to the tenant, require the tenant to enter into an acceptable behaviour agreement in the circumstances set out in the section.

A new section 527E allows a lessor for public or community housing to apply to the tribunal to terminate a tenancy if the tenant fails or refuses to enter into an acceptable behaviour agreement as required or the tenant, after entering into an acceptable behaviour agreement, seriously or persistently breaches the terms of the agreement.

A new section 527F provides that the State may amend a residential tenancy agreement for which the State is lessor to charge bonds and service charges under existing State tenancy agreements.

Clause 21 amends new chapter 14, part 2 heading after 'provisions' inserts 'for Act No.73 of 2008'.

Clause 22 inserts new chapter 14, part 3 (Savings and transitional provisions for Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2013).

A new section 553 (1) provides that the sections as set out, do not apply to a lessor that is a community housing provider until the commencement of subsection (2).

A new section 553(2) provides that this section expires on the day after the commencement of this subsection. On the day that this section is commenced by proclamation all the sections listed in subsection (1) start to apply to community housing providers.

A new section 554 (Notices given, and proceedings started, by the State) provides that the section applies if the State gives a tenant a notice or starts a proceeding under this Act in relation to an existing State tenancy agreement, and an entity becomes the replacement lessor under section 527C and at the time the entity becomes the replacement lessor, action is pending under the notice or proceeding. The replacement lessor is taken to have given the notice or started the proceeding and may continue action under the RTRAA against the tenant in relation to the notice or proceeding in place of the State.

For matters that arise where an action has not been taken by the State, before an entity becomes the replacement lessor, the replacement lessor being the community housing provider has the same rights against the tenant as the State under section 117 of the *Property Law Act 1974*.

A new section 555 (Notices given, and proceedings started, by the tenant) provides that the section applies if a tenant gives a notice or starts a proceeding under this Act in relation to an existing State tenancy agreement, and an entity becomes the replacement lessor under section 527C and at the time the entity becomes the replacement lessor, action is pending under the notice or proceeding. The replacement lessor is taken to have received the notice or to be a party to the proceeding in place of the State. The tenant may continue action under this Act against the replacement lessor in relation to the notice or proceeding.

For matters that arise where an action has not been taken by the tenant, before an entity becomes the replacement lessor, the replacement lessor being the tenant has the same rights against the community housing provider as the State under section 118 of the *Property Law Act 1974*.

A new section 556 (Applications by the State or community housing providers for particular termination orders) provides that where the State applies to a tribunal for a termination order because of objectionable behaviour under section 345, before the commencement of section 345(4), the application must be decided under section 345 despite section 345(4). Where a community housing provider applies to a tribunal for a termination order because of objectionable behaviour under section 345, before section 345(4) applies to a community housing provider, the application must be decided under section 345 despite section 345(4).

A new section 557 (Transitional regulation-making power) provides that a regulation may make provision about a matter for which it is necessary to make provision to allow or facilitate anything relating to an entity becoming replacement lessor under an existing State tenancy agreement and the Act does not make provision or sufficient provision. This section and any transitional regulation expire 1 year after the commencement of this section.

Clause 23 amends Schedule 2, the dictionary.

### **Part 3      Amendment of Queensland Building and Construction Commission Act 1991**

Clause 24 provides that Part 3 amends the *Queensland Building and Construction Commission Act 1991* (QBCC Act) (as the *Queensland Building Services Authority Act 1991* will be known upon commencement of the Queensland Building Services Authority Amendment Act 2013).

Clause 25 re-enacts section 42 (Unlawful carrying out of building work), QBCC Act, with a new subsection (2) which provides that the grounds for exemption from section 42 are now set out in schedule 1A of the QBCC Act. Subsections 42(5) to (9) are

now re-enacted in items 1 to 7 of schedule 1A to the Act, with minor wording changes to suit the context. Subsection 42(10) is re-enacted as new Part 10, Schedule 1 to the QBCC Act.

Clause 26 amends section 67K (Limits for retention amounts and securities for building contracts other than subcontracts) QBCC Act to provide that the section also applies to a building contract where a contracting party under the contract is a special purpose vehicle. A definition of *special purpose vehicle* is included by clause 8 of the Bill in Schedule 2 (Dictionary) of the QBCC Act.

Clause 27 amends section 67L (Limits for retention amounts and securities for subcontracts) QBCC Act, by inserting subsection 67L(3) to provide that the requirement that a subcontract is subject to restrictions on the percentage of retention amounts and securities does not apply to the subcontract if the contracting party for the building contract is a special purpose vehicle. A definition of *special purpose vehicle* is included by clause 8 of the Bill in Schedule 2 (Dictionary) of the QBCC Act.

Clause 28 amends the heading to section 83, QBCC Act so that it reads “Proceeding in tribunal stops unilateral action by commission”.

Clause 29 amends section 84, QBCC Act to provide that, where QCAT has the management of a building dispute, the QBCC may apply, as provided under the QCAT Act, to QCAT for approval that the QBCC may act in relation to the dispute. QCAT may grant the approval, with or without conditions.

Clause 30 inserts in Schedule 1 of the QBCC Act a new Part 10, which re-enacts subsection 42(10), QBCC Act.

Clause 31 inserts a new Schedule 1A (Exemptions from requirement to hold contractor’s licence) of the QBCC Act. Items 1 to 7 of Schedule 1A re-enact subsections 42(5) to (9) of the QBCC Act, with minor wording changes to suit the context.

New item 8 provides that an unlicensed person who enters into a contract to carry out building work, does not contravene section 42, QBCC Act merely because the person entered into the contract, if the building work is not residential construction work or domestic building work and is to be carried out by an appropriately licensed contractor. Also, the unlicensed person does not contravene section 42 merely because the person directly or indirectly causes the building work to be carried out by an appropriately licensed contractor or enters into a contract with an appropriately licensed contractor to carry out the work. Item 8 will cease to apply to an unlicensed person if they cause or allow any of the building work to be carried out by a person who is not licensed to carry out building work of the relevant class.

New item 9 provides that an unlicensed person who submits a tender or makes an offer to carry out building work, does not contravene section 42(1), QBCC Act merely because the person submits the tender or makes the offer, if the building work is not residential construction work or domestic building work and is to be carried out by an appropriately licensed contractor.

New item 10 applies to a special purpose vehicle (SPV) that undertakes to carry out building work under a public-private partnership (PPP). It provides that an SPV that undertakes to carry out building work under a PPP does not contravene section 42(1), QBCC Act merely because the SPV undertakes to carry out the building work, if the building work is to be carried out by an appropriately licensed contractor. Also, the SPV does not contravene section 42(1) merely because the SPV directly or indirectly causes the building work to be carried out by an appropriately licensed contractor or enters into a contract with an appropriately licensed contractor to carry out the work. Item 10 will cease to apply to an SPV if they cause or allow any of the building work to be carried out by a person who is not licensed to carry out building work of the relevant class.

New item 11 applies to an unlicensed person who undertakes to carry out building work for a prescribed government project and either enters into a contract with, or submits a tender or offer to a government entity to carry out building work for the project. It provides that the unlicensed person does not contravene section 42(1), QBCC Act merely because the person undertakes to carry out the building work, if the building work is of a class prescribed under a regulation for the prescribed government project and to be carried out by an appropriately licensed contractor. Also, the unlicensed person does not contravene section 42(1) merely because the unlicensed person directly or indirectly causes the building work to be carried out by an appropriately licensed contractor or enters into a contract with an appropriately licensed contractor to carry out the work. Item 11 will cease to apply to the unlicensed person if they cause or allow any of the building work to be carried out by a person who is not licensed to carry out building work of the relevant class.

For item 11, *government entity* means the State of Queensland, the Commonwealth, a local government or any of their authorities or agencies. Also for item 11, *prescribed government project* means a project, prescribed under a regulation, involving building work to be carried out for or on behalf of a government entity and by one or more private sector entities.

Clause 32 amends Schedule 2 (Dictionary) of the QBCC Act, by inserting new or amended definitions of *building contract*, *private sector entity*, *public-private partnership* and *special purpose vehicle*.

## **Part 4      Amendment of Guide, Hearing and Assistance Dogs Act 2009**

Clause 33 sets out that Part 4 amends the *Guide, Hearing and Assistance Dogs Act 2009*.

Clause 34 amends section 3 of the Act which describes how the objects of the Act are mainly achieved. Section 3 is amended to provide that the objects of the Act are also mainly achieved by protecting the rights of people with a disability who rely on guide, hearing or assistance dogs, and trainers of these dogs, to be accompanied by the dogs in places of accommodation.

Clause 35 amends the Part 2 heading ‘Guide, hearing and assistance dogs in public places and public passenger vehicles’ to include a reference to ‘places of accommodation’.

Clause 36 inserts new definitions for the purposes of Part 2 of the Act of an ‘accompanied handler’, ‘certified guide, hearing or assistance dog’, ‘place of accommodation’ and ‘term’ into section 6.

The amendments remove the definition of ‘accompanied handler’ from section 13, and insert it into section 6, as the term now applies to more than one section of the Act. The definition of accompanied handler is also amended to clarify that an accompanied handler is a person with a disability accompanied by their certified guide, hearing and assistance dog or an approved trainer, employee trainer or puppy carer who is accompanied by a guide, hearing, assistance or trainee support dog. This ensures that the offences in the Act only apply where a person with a disability is accompanied by a certified guide, hearing or assistance dog that has passed a public access test and been trained by an approved trainer.

The clause inserts a definition of ‘certified guide, hearing or assistance dog’ which means a dog certified under Part 4 of the Act.

The clause inserts a definition a ‘place of accommodation’. The definition provides that a place of accommodation includes:

- (a) a house or flat;
- (b) a hotel or motel;
- (c) a boarding house or hostel;
- (d) a caravan or caravan site;
- (e) a manufactured home under the *Manufactured Homes (Residential Parks) Act 2003*;
- (f) a site within the meaning of section 13 of the *Manufactured Homes (Residential Parks) Act 2003*;
- (g) a camping site.

This definition of accommodation is an inclusive one. The intent is that it includes types of accommodation that are ordinarily used for personal purposes, such as residential and holiday accommodation.

The clause also provides a definition for ‘term’ which has been moved from section 13 of the Act to provide that a term includes a condition, requirement or practice and to clarify that it need not be in writing.

Clause 37 amends section 8 of the Act to provide that a person with a disability who relies on a guide, hearing or assistance dog to reduce the person’s need for support may be accompanied by the guide, hearing or assistance dog in a place of accommodation, as well as in a public place or public passenger vehicle. The clause also amends section 8 of the Act to provide that a person with a disability who relies on a guide, hearing or assistance dog to reduce the person’s need for support does not commit an offence merely by taking the dog into a place of accommodation.

Clause 38 amends section 9 of the Act to provide that an approved trainer, employee trainer or puppy carer may be accompanied by a guide, hearing, assistance or trainee support dog in a place of accommodation, as well as in a public place or public passenger vehicle. The clause also amends section 9 of the Act to provide that an approved trainer, employee trainer or puppy carer does not commit an offence merely by taking the dog into a place of accommodation.

Clause 39 amends the Part 2, Division 3 heading to include a reference to 'places of accommodation'.

Clause 40 amends the heading of section 11 to include a reference to a 'place of accommodation'. It also amends section 11 to include a reference to person exercising control of a place of accommodation.

Clause 41 amends section 12(2)(a)(ii) to provide that a person who is accompanied by a properly trained guide, hearing or assistance dog or trainee support dog must have their identity card available for inspection by a person in control of a place of accommodation as part of complying with the identification procedure.

Clause 42 inserts a new section 12A in the Act to make it an offence for a person exercising control of a place of accommodation to refuse to rent accommodation at the place to an accompanied handler because the accompanied handler, while in the place, would be accompanied by a certified guide, hearing, assistance or trainee support dog. The offence applies where a place of accommodation is being rented, this is, where a commercial transaction is entered into for the use of the accommodation.

It also makes it an offence if in renting the accommodation the person in control of the accommodation imposes a term that would result in:

- the accompanied handler paying an extra charge because the dog is present at the place; or
- a person with a disability being separated, while in the place, from the guide, hearing or assistance dog that the person relies on to reduce the person's need for support; or
- a person with a disability being refused entry to a part of the place because the person would be accompanied by the guide, hearing or assistance dog that the person relies on to reduce the person's need for support.

These offences have a maximum penalty of 100 penalty units.

The clause also requires an accompanied handler to comply with the identification procedure in section 12 of the Act when the accompanied handler makes a reservation or application for accommodation in person at a place of accommodation or arrives at a place of accommodation to begin residing in the accommodation. This is so it is clear to the person in control of accommodation that the person seeking accommodation is an accompanied handler.

The clause also provides that a person in control of accommodation does not commit an offence if it is proved that the accompanied handler did not comply with the

identification requirements in the circumstances outlined above. It does not preclude an offence being committed if accommodation is refused over the phone, rather than in person at the place of accommodation, to an accompanied handler.

The clause also provides that it is not an offence if a person exercising control of a place of accommodation imposes a term that would result in the person with a disability being refused entry to a part of a place of accommodation where food is ordinarily prepared for consumption by residents of the place or members of the public because the person would be accompanied by their guide, hearing or assistance dog. This ensures that accommodation providers can comply with the food safety standards that apply to their food service environments without committing an offence under the Act.

Clause 43 omits section 13(3) of the Act, as a consequence of the insertion of these definitions into s 6 (Definitions for pt 2) of the Act.

Clause 44 inserts the new definitions into Schedule 4 (Dictionary) of ‘accompanied handler’, ‘certified guide, hearing or assistance dog’, ‘place of accommodation’ and ‘term’.

## **Part 5      Minor Amendments**

Clause 45 states that the schedule amends the legislation it mentions.

## **Schedule      Minor Amendments**

Clauses 1 and 2 of the Schedule update the references to the repealed *Financial Administration and Audit Act 1997* with its replacement, *Financial Accountability Act 2009*.