

Residential Tenancies and Rooming Accommodation Amendment Bill 2011

Explanatory Notes

Title of the Bill

The short title of the Bill is the *Residential Tenancies and Rooming Accommodation Amendment Bill 2014* (the Bill).

Objectives of the Bill

The Bill will amend the *Residential Tenancies and Rooming Accommodation Act 2008* to make provision for statutory minimum standards for rental accommodation and rooming accommodation in Queensland. This will allow the Minister to prescribe minimum standards for private rental accommodation, both standard housing and rooming accommodation, by regulation, in relation to matters including, for example, the following—

- (a) sanitation, drainage, cleanliness and repair of premises;
- (b) ventilation and insulation;
- (c) protection from damp and its effects;
- (d) construction, condition, structures, safety and situation of premises;
- (e) the dimensions, cubical extent and height of rooms in the premises;
- (f) privacy and security;
- (g) provision of water supply, storage and sanitary facilities;
- (h) laundry and cooking facilities;
- (i) lighting;
- (j) freedom from vermin infestation; and
- (k) energy efficiency.

The Bill also makes provision for the settlement of disputes arising between lessors and tenants arising from these minimum standards.

Reasons for the Bill

Access to stable, adequate shelter plays a major role in the health and wellbeing of families, and in particular children, by providing a safe environment, and the security that allows participation in the social, educational, economic, and community aspects of their lives. Housing issues that impact on health can include such things as structural integrity, weatherproofing, lighting, ventilation, cleanliness and hygiene, security, sanitation facilities and cooking facilities.

By imposing minimum housing standards for private rental accommodation, Governments can ensure that, even at the lowest end of the rental market where renters are the most vulnerable, standards are enforceable to provide healthy and safe place for all Queenslanders to live.

Achievement of the objectives

The objectives are achieved by making provision for the Minister to make regulations setting minimum housing standards for residential accommodation in Queensland. The Bill further sets out a mechanism for resolving disputes that may arise between lessors and tenants in relation to these standards.

Alternatives to the Bill

There is no alternative method of achieving the objectives other than by legislative amendment.

Estimated Cost for Government Implementation

The costs associated with implementation of the Bill will be met from the Rental Bond Interest Account, which already meets the cost of performing the functions of the Rental Tenancies Authority under the Act, as well as facilitating the resolution of disputes about agreements by tribunals.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review - *Legislative Standards Act 1992, section 4(3)(a)*

The proposed amendments allow the Minister to prescribe standards by regulation. These may be considered to be a type of 'Henry VIII clause'. A Henry VIII clause is a clause of an Act of Parliament which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action (Scrutiny of Legislation Committee 1997, *The use of "Henry VIII clauses" in Queensland Legislation*, para 5.7). Under the LSA, section 4(4)(c), a Bill should only authorise the amendment of an Act by another Act.

The proposed amendment is justified because the provisions in the Act will set out the parameters for the types of matters that can be prescribed by regulation. The regulations will then specify the exact details of the standards that will apply.

Allowing the specific matters to be determined by regulation provides greater flexibility and allows the Government to respond more effectively to issues that may arise, particularly for vulnerable tenants. Further, the regulations will be of a detailed and possibly technical nature, and more appropriately dealt with by regulation. It is considered that the use of the regulation-making power is justified in the circumstances.

The actual matters for which regulations can be made will still require amendment of the legislation, thereby providing an opportunity for scrutiny by the Parliament.

Transitional regulation-making power

The Bill confers the power to make transitional regulations to allow for the transition from the operation of the Act as it currently operates to the Act as amended by this Bill, including any regulations made thereunder. Any transitional regulations made under the section, as well as the section itself, will expire after one year.

Consultation

Consultation has taken place with the Tenants' Union of Queensland. Further consultation will take place with tenancy groups, property owners, local governments, environmental groups, health experts, community organisations and other stakeholders to ascertain what standards should be included, and what is an appropriate timeframe for phasing in the changes.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 provides for the commencement of the Bill fixed by proclamation.

Act amended

Clause 3 provides that the Act amends the *Residential Tenancies and Rooming Accommodation Act 2008*.

Clause 4 inserts new Chapter 1, Part 3, Division 4, which provides for prescribed minimum housing standards.

This allows a regulation to be made which will prescribe minimum housing standards for residential premises or rental premises in relation to particular matters.

Clause 5 amends section 67 to require the information statement provided by the lessor or the lessor's agent to the tenant to include information as to the prescribed minimum housing standards and associated rights and responsibilities.

Clause 6 inserts new chapter 3, part 2A, which provides that a lessor must ensure that, before residential premises are let under a residential tenancy agreement, the premises comply with the prescribed minimum housing standards.

A tenant will be able to serve notice on a lessor to allege a failure to comply with the standards, and then request that the Residential Tenancies Authority investigate the alleged failure.

This Chapter then sets out the process for resolving disputes between the lessor and the tenant in relation to the prescribed minimum housing standards for residential premises.

Clause 6 inserts new chapter 4, part 1A, which provides that a rental premises provider must ensure that, before rental premises are provided under a rooming accommodation agreement, the premises comply with the prescribed minimum housing standards for rental premises.

A resident will be able to serve notice on a provider to allege a failure to comply with the standards, and then request that the Residential Tenancies Authority investigate the alleged failure.

This Chapter then sets out the process for resolving disputes between the provider and the resident in relation to the prescribed minimum housing standards for residential premises.

Clause 8 amends section 468 to include, in the functions of the Residential Tenancies Authority, the capacity to receive, hold and pay monies from the special rent account. The special rent account is established under clause 5 to receive rental monies for premises which are the subject of a dispute between the lessor and tenant, or provider and resident.

Clause 9 amends section 415 to allow applications to the Tribunal to resolve disputes in relation to the minimum standards to proceed by way of urgent application.

Clause 10 inserts new chapter 14, part 4, which sets out new provisions establishing transitional arrangements for the amendments contained in the Bill.

Clause 11 Amends schedule 2 (Dictionary) by inserting a definition for *prescribed minimum housing standard*.