

Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022

Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable Steven Miles MP

Title of the Bill

Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Bill 2022.

Objectives of the Amendments

On 28 March 2023, the Premier and Minister for the Olympic and Paralympic Games announced the Queensland Government would reduce the frequency of rent increases to once a year to stabilise rents in the private rental market. The amendments to the Bill will amend the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act) and Residential Tenancies and Rooming Accommodation Regulation 2009 (RTRA Regulation) to deliver this commitment for all existing tenancies and new tenancies entered from 1 July 2023.

The amendments to the Bill also correct a drafting error identified in section 277 of the RTRA Act to address an unintended consequence of a drafting change made by the *Housing Legislation Amendment Act 2021* (HLA Act). The intent of the HLA Act amendment was to improve the clarity of the section and it was not intended to change its operation or the obligations of parties. The amendment to the Bill to correct the drafting error in section 277 will reduce confusion and better achieve the intended policy objective.

Achievement of the objectives

The amendments to the Bill will:

- amend sections 91, 93, and 105 of the RTRA Act and insert a new section 105B to limit rent increase frequency to once a year for all residential tenancy agreements and rooming accommodation agreements.
- amend section 277 of the RTRA Act to correct the drafting error by replacing the word “before” with “after” to clarify interpretation and achieve the policy objective that no change was intended to the operation of the section or the obligations of parties.
- provide appropriate transitional provisions to remove any doubt about the application of the rent increase frequency limit and effect of the drafting error correction on actions already taken by parties to tenancy agreements.
- make consequential amendments to the RTRA Act and to the RTRA Regulation necessary to align with the amendments made by the Bill to limit rent increase frequency and correct the drafting error in section 277 of the RTRA Act.

Alternative ways of achieving policy objectives

Legislative amendment was determined to be the most appropriate option to achieve the policy objective. Rent increase frequency is currently contained in the RTRA Act and the only way to limit rent increase frequency is to amend the RTRA Act. There are no alternative ways for achieving the objective of the amendment to address minor drafting errors.

Estimated cost for government implementation

The amendments to the Bill will not add to the cost of government. The Residential Tenancies Authority administers the RTRA Act and RTRA Regulation and provides a range of services to the residential rental sector in Queensland, including advisory and dispute resolution services.

Consistency with fundamental legislative principles

The proposed amendments have been drafted with regard to the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992*. Potential breaches of fundamental legislative principles are discussed below.

Amendments to the Residential Tenancies and Rooming Accommodation Act 2008 (RTRA Act) to limit the frequency of rent increases by lessors and rooming accommodation providers

The Bill will increase the minimum period before rent may be increased in a residential tenancy agreement by a lessor from six months to 12 months and will impose a new minimum period of 12 months before rent may be increased by a provider in a rooming accommodation agreement. These restrictions may impact on the rights and liberties of individuals as they interfere with the property rights of lessors and rooming accommodation providers by restricting how they may derive profits from their properties. However, the amendments are considered justified to help stabilise rents in the private rental market and to provide renters with more certainty in their tenancy and rooming accommodation agreements.

Transitional provision for Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2023

Clause 58H (transitional provisions)

The Bill will apply the new 12-month minimum period before rent may be increased to all residential tenancy and rooming accommodation agreements in effect after 30 June 2023, regardless of when the agreement commenced. The consequence will be that an inconsistent term in an existing agreement will be void to the extent of the inconsistency. These amendments may alter the terms of existing agreements and thereby retrospectively affect the existing rights and obligations of parties. However, the amendments are considered justified to achieve the general aims of the Bill, being to stabilise the rental market and provide greater certainty in tenancy and rooming accommodation agreements.

RTRA Act amendments to correct drafting error

Clauses 58G and 58H (amendments to section 277 of the RTRA Act)

The Bill will clarify that a residential tenancy agreement ends if a tenant hands over vacant possession ‘on or after’ handover day for the notice ending the tenancy agreement, rather than ‘on or before’ the handover day. By the transitional provision, the amendment will retrospectively affect existing rights and obligations of parties to residential tenancy agreements which have been prepared in accordance with the current drafting of section 277 of the RTRA. However, the amendments are considered justified to more accurately reflect the intention of how the section is to operate and to clarify the obligations of parties following amendments made by the *Housing Legislation Amendment Act 2021*. This promotes the fundamental legislative principle that legislation is to be unambiguous and drafted in a sufficiently clear and precise way.

Consultation

Consultation was not undertaken on the amendments to the Bill as immediate action is needed to stabilise rents in the private rental market due to the housing crisis and challenges being experienced across housing markets nationally.

Consistency with legislation of other jurisdictions

The RTRA Act and RTRA Regulation are specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state. However, New South Wales, Australian Capital Territory, South Australia, Victoria, and Tasmania have similar annual limits on rent increase frequency and the amendments to the Bill will align Queensland’s rental laws with the approach taken on this issue in most Australian jurisdictions

Notes on provisions

Clause 1 Commencement

Clause 1 states that the commencement day of the Act is to be on a day fixed by proclamation, other than Parts 4A and 4B. Parts 4A and 4B are to commence on 1 July 2023 and amend the *Residential Tenancies and Rooming Accommodation Act 2008*.

Clause 2 Part 4A Amendment of *Residential Tenancies and Rooming Accommodation Act 2008*

Clause 58A states that the Bill is introducing Part 4A which will amend the *Residential Tenancies and Rooming Accommodation Act 2008*.

Clause 58B states that section 91 (Rent increases) of the *Residential Tenancies and Rooming Accommodation Act 2008* is amended to clarify that rent cannot be increased unless certain criteria have been met.

Existing section 91(4) requires the stated date of rent increase to be 2 months after the day notice is given. This subsection is amended to retain the minimum 2 months written notice and include a reference to the minimum period between rent increases under section 93 (Minimum period before rent can be increased). The day of the rent increase is the later date of the 2 months notice and not before the end of the minimum period between rent increases provided in section 93.

Section 91(6) lists the conditions for the tenant to be required to pay increased rent. Section 91(6)(aa) will be added to state increased rent is not payable before the end of the minimum period for increases under section 93. Sections 91(6)(aa) and (b) will be renumbered to become 91(6)(b) and (c).

These amendments do not change the existing obligation for lessors and agents to provide two months written notice of a rent increase and do not introduce any additional obligations. Consequential amendments renumber sections.

Clause 58C states that Section 93 (Minimum period before rent can be increased) subsections (1) to (5) are amended to change the minimum period between rent increases from six to 12 months.

Section 93 defines what the minimum period is before rent can be increased, and where this minimum is applicable. Current obligations under section 93 are retained and the subsections re-organised to be clearer about its application.

Section 93(1) states that the lessor or lessor's agent must not increase the rent for a tenant under a residential tenancy agreement less than 12 months after the day of the last rent increase or, if there has not been a rent increase for the agreement, then 12 months since the first day the tenant was required to pay the amount of rent under the residential tenancy agreement. A maximum penalty of 20 penalty units applies. This is an existing penalty provision.

Section 93(2) clarifies that if at least one tenant's right to occupy the same premises is continued across two or more residential tenancy agreements, then the 12 month limit on increasing rent applies as if the two or more residential tenancy agreements were a single residential tenancy agreement.

Section 93(3) states that the 12 month minimum period limitation on rent increases applies whether or not there has been a change in lessors or agents who last increased the rent.

Section 93(4) allows a lessor or agent to give a tenant a notice of a rent increase within a 12 month period, as long as the rent increase does not take effect until after the 12 month period has ended.

Section 93(6) is renumbered to become section 96(5), and a new section 96(6) is inserted to state that any reference to 'increase' in this section includes 'purportedly increase'.

The amended section 93 changes the minimum period between rent increases from six to 12 months but otherwise has the same effect as the existing section 93 in interpretation and application, including that it applies to residential tenancy agreements which include general tenancy agreements and moveable dwelling agreements.

The existing exemptions under section 93(6) are retained under new section 93(5), that is where the lessor is the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State, or the lessor is the State and the tenant is an officer or employee of the State.

Clause 58D states that section 105 (Rent increases) which applies to rent increases for rooming accommodation agreements is amended. It introduces a new requirement that rent increases cannot be more frequent than 12 months. Consequential amendments include rewording for clarity and renumbering new subsections by removing existing section 105(2)(b) and including the existing requirement for a four week notice of rent increase in new section 105(2A).

New section 105(2A) is inserted to require that rent cannot be increased in a rooming accommodation agreement unless four weeks written notice has been given to the resident and cannot take effect until the end of the minimum period between rent increases. Four weeks written notice is an existing obligation and remains unchanged.

The minimum period before rent can be increased is a new obligation for rooming accommodation agreements and is introduced through new section 105B.

Section 105(4) is amended to include (aa) to state increased rent is not payable before the end of the minimum period before rent can be increased as provided for in new section 105B. Sections are renumbered to reflect changes.

Clause 58E states that new section 105B (Minimum period before rent can be increased) is inserted to establish a minimum period of 12 months before rent can be increased for rooming accommodation agreements. This is a new obligation for rooming accommodation agreements. It is the same minimum period before rent can be increased that the amended section 93 provides for residential tenancy agreements.

Section 105B has similar wording as the amended section 93, however refers to residents and providers and rooming accommodation agreements.

Section 105B(1) states that a rooming accommodation provider or an agent of the provider must not increase the rent payable by a resident under a rooming accommodation agreement less than 12 months after the day of the last increase for the agreement, or, if there has not been an increase for the agreement, the first day the resident was required to pay rent under the agreement. A maximum penalty of 20 penalty units applies. This is a new penalty provision that replicates the existing offence that applies for residential tenancy agreements for rooming accommodation agreements.

Section 105B(2) clarifies that the 12 months limit applies if at least one resident's right to occupy the same room is continued across two or more rooming accommodation agreements as the agreements are considered to be a single rooming accommodation agreement.

Section 105B(3) states that the 12 months minimum period required before rent can be increased applies whether or not there has been a change in providers who have increased the rent.

Section 105B(4) states that a provider can give a resident a notice of a rent increase within a 12 month period, however the increase cannot take effect until after the end of the 12 month period.

Section 105B(5) is inserted to state that any reference to 'increase' in this section includes 'purportedly increase'.

Clause 58F states that section 154 (Increase in rental bond) is amended to include a note to also refer to sections 91 and 105 about requirements for how rent can be increased when considering increases in rental bonds.

This provides additional clarity about obligations which must be met before rental bonds can be increased if rent has been increased and does not introduce any new obligations or change the meaning of the section.

Clause 58G states that section 277 (Ending of residential tenancy agreements) (b) and (c) are amended to change wording from 'on or before' to "on or after". There is no change to the intention, meaning or application of section 277 and the amendments are intended to reduce confusion and better achieve the intended policy objective.

The *Residential Tenancies and Rooming Accommodation Act 2008* wording "on or after" was changed to "on or before" by the *Housing Legislation Amendment Act 2021* in line with drafting style preferences at that time. It was not intended to change the interpretation of the *Residential Tenancies and Rooming Accommodation Act 2008*, however may be unclear and potentially ambiguous in interpreting tenant obligations.

It states that a tenant's obligations under a residential tenancy agreement end on the later date of the date given in a notice by either party to end the agreement or when the tenant hands over the premises. In practice, tenants may vacate the premises before, on, or after the handover date.

The change in wording from ‘after’ to ‘before’ through the 2021 amendments made this less clear, rather than supporting clearer interpretation of obligations. Transitional provisions in *Clause 58H* state that the changes in wording have no material effect.

Clause 58H states that a new Chapter 14 Part 7 Transitional provisions for *Local Government Electoral and Other Legislation (Expenditure Caps) Amendment Act 2023* is inserted after section 574.

New section 575 (Limit on frequency of rental increases applies to all agreements from 1 July 2023) is inserted to clarify the 12 month limit on rental increases will apply to all residential tenancy agreements and rooming accommodation agreements in effect after 30 June 2023, regardless of when the agreements started.

Section 575 states that the amended sections 91, 93 and 105 and new section 105A in relation to limiting the minimum period before rent can be increased to 12 months will apply to all residential tenancy agreements and rooming accommodation agreements from 1 July 2023, regardless of when the agreement started.

It includes a note in section 575(1) and (2) stating that any terms of a residential tenancy agreement or rooming accommodation agreement that are inconsistent with the amended sections will be void to the extent of the inconsistency, as provided for in section 54 of the *Residential Tenancies and Rooming Accommodation Act 2008*.

New section 576 (Amendment of section 277) states that the 2021 and these 2023 amendments to the wording of section 277 (Ending of residential tenancy agreements) are to be taken not to affect how a residential tenancy agreement has ended or ends before 1 July 2023. This applies where the lessor or agent or tenant has given the other party a notice to leave or a notice of intention to leave and the tenant has handed over vacant possession of the premises.

The 2021 amendments to wording were introduced through the *Housing Legislation Amendment Act 2021*. This is a technical amendment to unambiguously clarify that the obligations of the parties remain unchanged and are to be consistently applied despite the wording change.

Part 4B Amendment of *Residential Tenancies and Rooming Accommodation Regulation 2009*

Clause 58I states that Part 4B amends the *Residential Tenancies and Rooming Accommodation Regulation 2009*.

Clause 58J states that Schedule 1, Part 2, clause 10 (Rent increases—ss91 and 93) is amended to change the reference in clause 10(3)(b) to the minimum period between rent increases from six to 12 months in the standard terms for general tenancy agreements.

This makes the standard terms in Schedule 1 consistent with the amended sections 91 and 93 of the *Residential Tenancies and Rooming Accommodation Act 2008* and is a consequential amendment.

Clause 10(5) is amended and renumbered to include new subsection to clarify that the tenant is not required to pay the increased rent before the minimum period for rent increases under section 93.

Clause 58K states that Schedule 1, Part 2, clause 36 (Ending of agreement – s277) is amended to change clause 36(1)(b) and (c) references from “on or before” to “on or after”, to be consistent with amended section 277 of the *Residential Tenancies and Rooming Accommodation Act 2008*. It is a consequential amendment to the standard terms of a general tenancy agreement.

Clause 58L states that Schedule 2, Part 2, clause 10 (Rent increases—ss91 and 93) is amended to change the reference in clause 10(3)(b) to the minimum period before rent can be increased from six to 12 months in the standard terms for moveable dwelling tenancy agreements.

This makes the standard terms in Schedule 2 consistent with the amended sections 91 and 93 of the *Residential Tenancies and Rooming Accommodation Act 2008* and is a consequential amendment.

Clause 10(5) is amended and renumbered to include new subsection to clarify that the tenant is not required to pay the increased rent before the minimum period for rent increases under section 93.

Clause 58M states that Schedule 2, Part 2, clause 42 (Ending of agreement – s277) is amended to change clause 42(1)(b) and (c) references from “on or before” to “on or after”, to be consistent with amended section 277 of the *Residential Tenancies and Rooming Accommodation Act 2008*. It is a consequential amendment to the standard terms for a moveable dwelling tenancy agreement.

Clause 58N states that Schedule 3, Part 2, clause 34 (Ending of agreement – s277) is amended to change clause 34(1)(b) and (c) references from “on or before” to “on or after”, to be consistent with amended section 277 of the *Residential Tenancies and Rooming Accommodation Act 2008*. It is a consequential amendment to the standard terms for a State tenancy agreement.

Clause 58O states that Schedule 3A, Part 2, clause 33 (Ending of agreement – s277) is amended to change clause 33(1)(b) and (c) references from “on or before” to “on or after”, to be consistent with amended section 277 of the *Residential Tenancies and Rooming Accommodation Act 2008*. It is a consequential amendment to the standard terms for a community housing provider tenancy agreement.

Clause 58P states that Schedule 4, Part 2, clause 8 (Rent increases—s105) is amended to refer to sections 105 and new section 105B to reflect the new obligation that rent cannot be increased before the minimum period for rent increases under section 105B.

This makes the standard terms in Schedule 4 consistent with the amended section 105 and new section 105B of the *Residential Tenancies and Rooming Accommodation Act 2008*. It is a consequential amendment to the standard terms for a rooming accommodation agreement.

Clause 8(5) is amended and renumbered as a consequential amendment to the changes.

Clause 3 Long title

Clause 3 states that the long title – “and the *Local Government Electoral Act 2011*” – is amended by including references to the other legislation being amended by the Act. That is, the *Residential Tenancies and Rooming Accommodation Act 2008* and the *Residential Tenancies and Rooming Accommodation Regulation 2009*.

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