Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Meaghan Scanlon MP, Minister for Housing, Local Government and Planning and Minister for Public Works

Title of the Bill

Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024.

Objectives of the Amendments

The objectives of the amendments to the Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024 (Bill) are to:

- address comments made by the Housing, Big Build and Manufacturing Committee (the Committee) outlined in its Report No. 7 (57th Parliament) (Committee Report)
- address issues raised in submissions made to the Committee during the Committee's inquiry into the Bill
- address some minor or technical drafting issues to ensure the policy intent of the Bill is achieved, and
- to amend the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) to validate impacted adjudication applications, subsequent decisions and actions, and clarify matters for future adjudication applications.

The BIF Act prescribes the adjudication framework for disputed payment claims within the Queensland building and construction industry.

Section 79 of the BIF Act governs an application to the Adjudication Registrar (the Registrar) about the adjudication of a payment claim where there has been a failure to pay the amount owed or there is a dispute about the amount payable as indicated in the payment schedule.

Section 79(2) provides that an application for adjudication of a disputed payment claim must be made in the approved form.

Section 79(3) of the BIF Act provides that in making an adjudication application, a copy of the application must be given to the respondent.

It is understood that for an application lodged electronically with the Adjudication Registry (the Registry), via an online portal, a summary document was automatically issued to the applicant. The summary document contained information, which was submitted by an applicant via the portal, but it did not include all of the information which was available on the online process.

In *Iris Broadbeach Business Pty Ltd v Descon Group Australia Pty Ltd & Anor [2023] QSC 290* (Iris Broadbeach case), the Supreme Court found that the summary document provided by the Registry did not meet the requirements of section 79(3) of the BIF Act because it was not an exact copy of the online adjudication application form.

The Iris Broadbeach case leads to an uncertain position about the validity of adjudication applications lodged electronically where the summary document was provided by the Registry, as well as decisions and any appeals and enforcement actions relating to those applications. This has the potential to erode public confidence in the effectiveness of the adjudication process.

The Iris Broadbeach case casts doubt over the way in which online adjudication applications are processed by the Registry. It is possible that claims could be made that the summary documents given to respondents in purported compliance with section 79(3) were defective and potential assertions that the subsequent adjudication decisions are also void and liable to be set aside.

Since the Supreme Court delivered judgment in the Iris Broadbeach case, the Registry has made changes to the way in which it processes adjudication applications.

Achievement of the Objectives

Residential Tenancies and Rooming Accommodation Act 2008

The amendments achieve the objectives of the Bill, as set out above, by:

- limiting the amount of rent in advance that can be offered or accepted when a tenancy is advertised or otherwise offered for rent, but not during the tenancy
- introducing a new term ‘exempt provider’ for rooming accommodation, which is similar to ‘exempt provider’ for residential tenancy agreements
- clarifying the application of ‘exempt lessor’ and ‘exempt provider’ to ensure they are not required to include the day of the last rent increase in a tenancy agreement or written notice of a rent increase; or to provide evidence of the day of the last rent increase upon a tenants request

- including a transitional provision to remove the obligation for a lessor to provide evidence where the property has been purchased within 12 months of the day of commencement, and the lessor does not hold information about the day of the last rent increase for the property
- allowing an invoice to be issued to a tenant based on water usage and supply authority consumption charges outside of a supply authority's billing period to align with the start or end of a tenancy
- clarifying that, if attaching a fixture or making a structural change requires approval of a body corporate, the attaching of the fixture or making of the structural change must be in accordance with any conditions of a body corporate approval
- clarifying that reletting fees apply only where the tenant has not ended the agreement in accordance with the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act)
- changing 'the premises' to 'the agreement' in relation to collection of personal information to ensure alignment with the objects of the RTRA Act
- increasing the timeframe that a renter's personal information must be destroyed after a tenancy ends, from 3 to 7 years
- allowing a prospective renter's personal information to be stored for a period longer than 3 months if the applicant agrees
- including a transitional provision to provide that any rental property owner where a new agreement is entered with the same renter for the same premises and the bond continues, is not in breach of the new maximum bond limit
- allowing renters with a continuing bond to request a refund from the Residential Tenancies Authority (RTA) for any bond amount above the new maximum bond limit, requiring that the RTA must refund the amount regardless of other provisions in the RTRA Act, and clarifying that rental property owners and their agents are not in breach of the new maximum bond amounts for continuing bonds under renewal agreements.
- making minor clarifying and structural amendments that assist navigation of the legislation.

Note: amendments included in the Bill 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 both tenants in general residential tenancies and moveable dwelling premises, and residents in rooming accommodation. 'Property owner' is used to refer to both lessors and providers. Where the reform relates to a specific agreement type, the more specific terms 'tenant', 'resident', 'lessor' and 'provider' are used.

Restrictions on amount of rent in advance that can be charged or accepted

During the Committee inquiry, some submitters expressed concerns that amendments to sections 87 and 101, which require that a person must not accept rent in advance, are not limited to the rental application stage. Some submitters raised concerns that some renters prefer to pay rent in advance during their tenancy as a means of managing their finances. Others were concerned that a rental property owner or manager may incur an additional burden to refund these advanced payment amounts to renters or be in breach of the RTRA Act if a renter pays an amount more than four weeks ahead on their rent.

Amendment 1 inserts new section 57AA to require that at the time the premises are advertised or offered for rent, a person must not solicit, invite, or accept an offer of rent in advance above

the maximum limit allowed under section 87(1).

Amendment 4 replicates those provisions for rooming accommodation so that at the time the premises are advertised or offered for rent, a person must not solicit, invite, or accept an offer of rent in advance above the amount maximum limit allowed under section 101(1).

Amendment 8 omits Clause 13 of the Bill as Amendment 1 requires that a person must not accept more than the maximum amount of rent in advance. This amendment addresses concerns raised by submitters during the Committee inquiry that the drafting of Clause 13 restricts accepting rent in advance during a tenancy.

Amendment 12 omits Clause 18 of the Bill, as Amendment 5 requires that a person must not accept more than the maximum amount of rent in advance. This amendment addresses concerns raised by submitters during the Committee inquiry that the drafting of Clause 18 restricts accepting rent in advance during a rooming accommodation agreement.

Clarifying the application of 'exempt lessor'

Submissions to the Committee's inquiry highlighted the need for clarity and consistency in requirements exempt lessors are exempt from. Some submitters noted that 'exempt lessors' were exempt from certain requirements to disclose the day of the last rent increase but were not clearly exempt from all.

Amendments 2 and 3 clarify that a written agreement is not required to include information about the day of the last rent increase if the lessor for the residential premises is an exempt lessor.

Amendment 7 clarifies that exempt lessors are not exempt from the whole division.

Amendment 9 clarifies that an exempt lessor is not required to include information about the day of the last rent increase in a written notice about a rent increase for the residential premises.

Amendment 10 clarifies that an exempt lessor is not required to provide evidence to a tenant of the day of the last rent increase for the residential premises.

Exempt provider

Some submissions to the Committee's inquiry, raised concerns about consistency and noted that the Bill did not provide exemptions for rooming accommodation providers, similar to the exemptions provided for lessors of rental premises who are exempt lessors.

Amendment 11 inserts a new definition of 'exempt provider'. It establishes that a provider of a rental premises qualifies as an exempt provider if (1) the provider receives funding for the rooming accommodation under the *Housing Act 2003* if the amount of rent payable is determined on the basis of household income; (2) the provider receives funding for the rooming accommodation under the *Community Services Act 2007* if the amount of rent payable is determined on the basis of household income; (3) the provider is the chief executive of the housing department, acting on behalf of the State; or (4) the provider is prescribed by regulation to be an exempt provider. This amendment will enable community housing and specialist homelessness service providers to offer rooming accommodation and continue to apply the

community housing rent policy.

Amendments 6, 11, 13, 14, and 15 replicate the exemptions for exempt lessors in rooming accommodation to ensure requirements to disclose the day of the last rent increase do not apply to exempt providers.

Amendment 18 inserts a reference to section 97A in Schedule 2 (Dictionary).

Providing evidence of the day of the last rent increase

Amendment 16 inserts additional transitional provisions. These provisions provide that, if a property has been purchased within 12 months of the commencement date of new sections 93A and 105C, and the property owner does not hold information of the day of the last rent increase, the property owner will not be in breach of sections 93A or 105C for not providing evidence of the day of the last rent increase to the renter. A property owner holds information if the property owner or their agent is in possession or control of the information.

Amendments 19 to 21 change the reference from ‘exempt’ lessor to ‘relevant’ lessor to distinguish between lessors who are exempt from the rent increase frequency limit, and those who are exempt from using the required application form.

Allowing an invoice to be issued to a tenant based on water usage at the end of the tenancy

Some submissions to the Committee inquiry raised that the Bill does not provide for lessors passing on water charges to tenants outside of a water supply authority’s billing cycle. This may occur in the circumstances that a supply authority’s billing period does not align with the commencement and end dates of a tenancy.

Amendments 22 to 24 amend clause 57 to allow a lessor to issue an invoice to a tenant for water consumption based on the tenant’s water usage during a partial billing period. Amendment 22 states that section 166 which allows water service charges for premises is subject to new section 166A.

Amendment 24 inserts new section 166A to provide that if a tenant is required to pay for water consumption charges under section 166, the premises is individually metered and water efficient, and the tenancy agreement is in effect for only part of a water supply authority’s billing period, the tenant is required to pay for water consumption charges where—

- a meter reading for the premises is taken at the start or end of a tenancy (as relevant) and recorded in a condition report,
- the amount of water the tenant is being charged for is based on a reasonable estimate of the volume of water supplied to the premises, and
- the rate used to calculate the amount the tenant is being charged is consistent with the water supply authority’s most recent bill.

The amendments do not provide a timeframe by which a lessor or lessor’s agent must pass on an invoice to a tenant for a partial billing period, as in most cases, the partial billing period will occur at the end of a tenancy. It is in both the tenant’s and lessor’s interests to resolve matters promptly at the end of a tenancy, and therefore a specific timeframe is not stipulated.

Modifications must be in accordance with any conditions of a body corporate approval

Submissions to the Committee's inquiry raised that the Bill does not require that attaching a fixture or making a structural change in a common area of a rental property is subject to any conditions included in the approval provided by the body corporate.

Amendments 25 and 26 insert an additional requirement in sections 207(6) and 254(6) to require the attachment of a fixture or making of a structural change to be subject to any conditions on the agreement given by the body corporate.

Application of reletting fees

Under the RTRA Act, existing sections 357A and 396A have a qualifying element that provides that a renter is made liable for reletting costs only if the renter ends the agreement other than in a way permitted under the RTRA Act.

Amendments 27 and 28 amend clauses 72 and 73 to reinstate the qualifying element, 'ends the agreement other than in a way permitted under this Act', in sections 357A and 396A. This is a minor drafting change to re-establish existing obligations.

Collection of personal information

This change is in response to submissions to the Committee inquiry that the use of the term 'management of the premises' is unclear and may inadvertently restrict the information that a property owner or agent can collect as part of managing the tenancy agreement.

Amendments 29 and 30 amend clause 80 to replace reference to 'the premises' in sections 457D(2)(b) and (3) with 'the agreement' to better align the new section with the objects of the RTRA Act.

Destroying prospective renters' personal information

Submissions to the Committee inquiry noted that the requirement to securely destroy rental applicants' personal information within 3 months after the tenancy commences would prevent them remaining on waitlists for community housing, specialist disability accommodation and purpose-built student accommodation.

Amendment 31 allows rental applicants to agree to their personal information being retained for a longer period than 3 months. This will enable prospective renters to be placed on a waitlist for specialist accommodation types without needing to re-apply, which may affect their place on the waitlist.

Timeframe that personal information must be destroyed after a tenancy has ended

Some submitters to the Committee inquiry raised that the requirement to destroy personal information 3 years after a tenancy ends is inconsistent with obligations under other legislation, such as *Property Occupations Act 2014,* Agents Financial Administration Regulation 2014 and ss. 10, 25 and 13 of the *Limitations of Actions Act 1974*.

Some submitters also raised that the proposed 3 year timeframe may hinder agents' ability to provide information to:

- insurance companies should a property owner or renter later make a claim of professional negligence, breach of contract or breach of the law
- the Australian Taxation Office for taxation purposes.

Amendment 32 amends clause 80 to replace the reference to ‘3 years’ in section 457E(2)(c) with ‘7 years’. This change will ensure consistency with obligations for property owners and agents under other Queensland and Commonwealth legislation.

Transitional provision for the maximum weekly rent limits

Amendment 33 inserts a new transitional provision in relation to the maximum amount of rental bond that can be taken. The purpose of the amendment is to allow renters to access any bond money held by the RTA that is above the new maximum bond limit, in a timely manner.

It applies if a renter, who before commencement of the relevant provisions, paid a rental bond that exceeds the new limit and continues to occupy the premises under a renewal agreement, and the bond continues under section 122. The renter can request the RTA to refund the amount of the rental bond held that is above the new maximum amount. The renter must apply using an approved form. The RTA may pay the amount to the contributor or to each contributor if there is more than one contributor. For these requests, the bond refund processes under Chapter 2, part 3, division 3 do not apply.

Amendment 33 also clarifies that rental property owners and their agents do not commit an offence under section 146(1) if agreements are renewed and the rental bond held by the RTA continues and exceeds the new maximum limit.

Building Industry Fairness (Security of Payment) Act 2017

Curative amendments to the BIF Act address the process issue related to adjudication applications and achieve the objective set out above.

The amendments clarify the requirements for making an adjudication application, including that an adjudication application may be accompanied by submissions, and that the respondent must be given a copy of the adjudication application (which can include a document generated by the Registrar for this purpose) and any submissions accompanying the application within 4 business days after making the application. This will apply to all adjudication applications made after commencement.

The amendments also ensure the validity of adjudication decisions made prior to the commencement of the amendments. This validation is only to the extent the decision was affected by the fact a copy of the adjudication application was not given to the respondent as required by s 79(3) of the BIF Act (as in force before the commencement of the amendments – the former s 79(3)) but instead the claimant gave the respondent a Registry summary of the adjudication application. Specifically, these amendments provide that the former s79(3) is taken to have been complied with and in the following circumstances:

a) if the adjudicator made an adjudication decision but did not have jurisdiction to make the decision only because former s 79(3) had not been complied with — the adjudication decision, and anything done, or purported to be done, in reliance on the adjudication decision are taken always to have been as valid as they would be if the adjudicator had jurisdiction;

b) if the adjudication application has been made but not yet decided — the former s 79(3) is taken to have been complied with and the adjudicator can decide the adjudication application under part 4;

c) if the adjudicator decided they did not have jurisdiction only because former s 79(3) was not complied with — the decision of the adjudicator is void and of no effect and the Registrar is taken to have referred the decision to the adjudicator for decision. If the adjudicator accepts the referral, they must notify the claimant and respondent and proceed to decide the application. If the adjudicator refuses the referral, the Registrar must refer the application to a new adjudicator;

d) if a court has, before the commencement, decided an adjudication decision is invalid, void or otherwise of no effect only because former s 79(3) was not complied with and the adjudicator did not have jurisdiction to make the decision — the adjudication decision, and anything done or purportedly done in reliance on it, are as valid as they would have been if former s 79(3) had been complied with and the adjudicator had had jurisdiction.

Finally, the amendments provide that no liability attaches to the Queensland Building and Construction Commission (QBCC), the Registrar, a public service employee or the State, and no compensation is payable by them, in relation to giving the Registry summary of the adjudication application to the claimant or anything done or purportedly done as a result of, or in reliance on, the giving of the Registry summary to the claimant.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than by legislative amendment.

Estimated cost for government implementation

There are no anticipated costs for Government in implementing the amendments, including for the QBCC.

Consistency with fundamental legislative principles

The amendments are generally consistent with fundamental legislative principles.

Residential Tenancies and Rooming Accommodation Act 2008

A potential departure of fundamental legislative principles was identified in relation to property rights. Amendments 1 and 5 of the Bill which insert new sections 57AA and 76AB respectively, prevent a person from soliciting, inviting, or accepting an offer of an amount of rent in advance for a premises that is more than the amount allowed under the RTRA Act. Restricting the amount of rent in advance limits the amount a property owner can receive in exchange for renting premises, which is potentially inconsistent with the property rights of individuals. However, the restriction applies to the amount of payment that can be required or accepted when the premises is advertised for rent, but not during a tenancy.

To the extent the amendments are a departure from fundamental legislative principles, this is justified as it is necessary to prevent rent bidding, which distorts the market, to ensure

prospective renters whose financial means are lesser than those of other prospective renters have a fair opportunity to secure housing.

Building Industry Fairness (Security of Payment) Act 2017

The amendments have been drafted having regard to the fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992* (LSA). The principles require legislation has sufficient regard to—

- rights and liberties of individuals; and
- the institution of Parliament.

The BIF Act amendments may be inconsistent with the following principles, however, justification for this is outlined below:

- institutional integrity of courts and judicial independence
- does not adversely affect rights and liberties or impose obligations retrospectively
- does not confer immunity from proceeding or prosecution without adequate justification

Institutional integrity of courts and judicial independence

This principle relates to legislation that offends Chapter 3 of the Commonwealth constitution by interfering with the judicial process in a way that undermines the institutional integrity of a State court invested with federal judicial power. Such legislation may be invalid, for example, where it directs a court to rely on particular information to reach a particular conclusion or to make a particular order.

The validating amendments may be seen as inconsistent with this principle, however, are justified in the circumstances for a number of reasons. Firstly, the amendments have a technical and extremely limited scope, as the validation relates solely to non-compliance with former section 79(3) of the BIF Act concerning the manner in which a copy of an adjudication application was provided to the respondent. In any other circumstances, the validation will not apply and does not affect the ability of an adjudicator or court to determine no jurisdiction for an application.

It is necessary to make this minor curative amendment for the efficiency and effectiveness of the adjudication system. As a quicker, more cost-effective alternative to court processes, it is important that there is continued confidence in the adjudication system. Further, the amendments do not have any serious or significant negative impacts on the rights of any party as the validation only confirms the Registry summary achieves sufficient compliance. There is no indication the receipt of the Registry summary document placed respondents at a disadvantage in responding to an adjudication claim or that the adjudication process was not procedurally fair.

Finally, while the amendments make certain decisions of a court of no effect, the provisions also provide for the parties to apply to the court to vary previous orders, for example, in relation to costs. The court is able to make any orders it considers appropriate, having regard to the operation of chapter 8D.

Does not adversely affect rights and liberties, or impose obligations, retrospectively

The validating amendments may potentially limit certain rights and liberties including the right not to be arbitrarily deprived of property, in this case in relation to claimed amounts. The amendments also intentionally apply retrospectively to validate previous applications, decisions and actions.

The retrospective validating amendments are justified as they will remove uncertainty about the validity of what is likely to be a large number of adjudication decisions made since the Registry introduced the online adjudication application facility which produced a summary document. The amendments will prevent any further disputes about the adjudication claims and the consequences of the Registry giving claimants documents that were not exact copies of adjudication applications the claimants lodged electronically.

Certainty and finality in dispute resolution are important to ensure ongoing confidence in the adjudication system. It is relevant in this context that the deficiency identified in the Iris Broadbeach case is minor and highly technical. Respondents received a summary document which was largely similar, but not an exact copy of the electronic application. There is no indication the receipt of the summary document placed respondents at a disadvantage in responding to the adjudication claim or that the adjudication process was not procedurally fair.

On this basis, the inconsistency with this principle, particularly in relation to the retrospectivity can be justified.

<u>Does not confer immunity from proceeding or prosecution without adequate justification</u>

The BIF Act presently states that the QBCC, the Registrar and staff of the Registry do not incur civil liability for an act done, or omission made, honestly and without negligence under the BIF Act. In this circumstance, liability instead attaches to the State.

In the case of the adjudication applications process matter, the amendments confer immunity from proceeding, however this may be adequately justified.

Specifically, the amendments:

- provide that no liability attaches to the QBCC, the Registrar, a public service employee or the State, and no compensation is payable by them, in relation to the giving of the Registry summary to the claimant, or in connection with any act or decision done or made because of the Registry summary being provided to the claimant.

The removal of liability in considered appropriate in the circumstances due to the very minor and technical nature of the issue, and the fact that there was no material disadvantage to respondents. Further, the validating amendments do not have any serious, practical implications for the rights of any parties. Clarifying the matter of liability will therefore avoid uncertainty and ongoing disputes.

Consultation

Consultation on amendments to the RTRA Act occurred with the Department of Justice and Attorney-General, in relation to the amendment to require renters to comply with any conditions of the body corporate when attaching a fixture or making a structural change that requires body corporate approval.

Most amendments to the RTRA Act respond to submissions made to the Committee's public inquiry on the Bill and consider suggestions made by the Committee in its report on the Bill.

Due to the nature of the issue, broad consultation outside government stakeholders about amendments to the BIF Act did not occur.

Notes on provisions

Amendment clause 1 inserts new section 57AA *Offer of residential tenancy – limitation on rent in advance* after section 57A. This section applies if a residential tenancy for premises is advertised or otherwise offered by a lessor or lessor's agent. Subsection (2) requires that a person must not solicit or otherwise invite an offer, or accept an offer, of an amount of rent in advance for the premises that is more than the amount allowed under section 87(1). A maximum penalty of 50 penalty units may apply.

Amendment clause 2 amends Clause 8 *Amendment of s 61 (Written agreements required)* to simplify references resulting from changes to the numbering of the section.

Amendment clause 3 amends Clause 8 *Amendment of s 61 (Written agreements required)* to insert new subsection (2A) to provide that a written agreement is not required to include the information about the day the rent for the premises was last increased under subsection (2)(c) if the lessor of the premises to which the residential tenancy agreement relates is an exempt lessor.

Amendment clause 4 amends Clause 10 *Insertion of new s 76AA* to include a reference to new section 76AB.

Amendment clause 5 inserts new section 76AB *Offer of rooming accommodation – limitation on rent in advance*. This section applies to rooming accommodation for rental premises which is advertised or otherwise offered by a provider or provider's agent. Section 76AB(2) requires that a person must not solicit or otherwise invite an offer, or accept an offer, of an amount of rent in advance for the rental premises that is more than the amount allowed under section 101(1). A maximum penalty of 50 penalty units may apply.

Amendment clause 6 amends Clause 11 *Amendment of s 77 (Written agreement required)* to insert new subsection (2A) to provide that a written agreement is not required to include information about the day the rent for the premises was last increased under subsection (2)(c) if the provider of the rental premises to which the rooming accommodation agreement relates is an exempt provider.

Amendment clause 7 amends Clause 12 *Insertion of new s 82A* to remove the words 'in this division, a lessor' and replace with 'A lessor'. This change allows the definition of 'exempt lessor' to apply to other parts of the RTRA Act and not be restricted to that division.

Amendment clause 8 omits Clause 13 *Amendment of s 87 (Rent in advance)* as this amendment is no longer required due to Amendment Clause 1.

Amendment clause 9 amends Clause 14 *Amendment of s 91 (Rent increases)* to insert new subsection (3A) to clarify that the requirement under subsection (3)(c) to provide a notice stating the day the rent was last increased for the premises does not apply to an exempt lessor or an agent of an exempt lessor. It also inserts new subsection (2B) to link the day stated in the notice to subsection (3)(b) to aid in interpretation.

Amendment clause 10 amends Clause 16 *Insertion of new ss 93A and 93B* to insert new subsection (4) to clarify that sections 93A *Evidence of last rent increase* and 93B *Rent decreases* do not apply to an exempt lessor or an agent of an exempt lessor.

Amendment clause 11 inserts new section 97A *Meaning of exempt provider* to provide that a provider of rooming accommodation is an exempt provider if:

- the provider receives funding for the rooming accommodation under the *Housing Act 2003* and if the amount of rent payable for the rooming accommodation is determined by household income such as a community housing provider or a specialist homelessness service, or
- the provider receives funding for the rooming accommodation that is the subject of a funding declaration under the *Community Service Act 2007* if the amount of rent payable for the rooming accommodation is determined by household income, or
- the provider is the chief executive of the Housing Department, acting on behalf of the State, or
- the provider is prescribed by regulation to be an exempt provider.

This amendment provides a term for rooming accommodation providers who are exempt from the rent increase frequency limit, similar to the term 'exempt lessor' for lessors of residential tenancies.

Amendment clause 12 omits Clause 18 *Amendment of s 101 (Rent in advance)* As those amendments are no longer required due to Amendment Clause 5.

Amendment clause 13 inserts new Clause 18A *Amendment of s 105 (Rent increases).* It inserts subsection 105(2)(c) to require the provider to give a resident a written notice of a rent increase stating the amount of the increased rent, and the day from which the increased rent is payable, and the day the rent was last increased for the resident's room. It also inserts subsection (2AA) to state that an exempt provider does not have to include the day the rent was last increased for the resident's room on the written notice. It also inserts 'under subsection (2)(b)' in section 105(2A) for clarification.

Amendment clause 14 amends Clause 19 *Amendment of s 105B (Minimum period before rent can be increased)* to insert new subsection (4A) to clarify that the minimum period before rent can be increased does not apply to an exempt provider or an agent of an exempt provider, or to the extent the rent payable under the rooming accommodation agreement is increased under an order of the tribunal under section 105E (*Tribunal order about rent increase)*. This change is necessary to provide consistent exemptions for lessors of residential tenancies and providers of rooming accommodation.

Amendment clause 15 amends Clause 20 *Insertion of new ss 105C-105E* to insert new subsection (4) to section 105C to clarify that the requirement to provide evidence of the day of the last rent increase does not apply to an exempt provider or an agent of an exempt provider.

This change is necessary to provide consistent exemptions for lessors of residential tenancies and providers of rooming accommodation.

Amendment clause 16 amends Clause 47 *Insertion of new ch 14, pt 8* to insert new section 579A *Requirement for lessor to give evidence of rent increase if premises purchased within 12 months of commencement*. This section applies if a lessor has purchased a premises subject to a residential tenancy within 12 months after commencement of the provision requiring a lessor to give written evidence of the day of the last rent increase. It clarifies that, if the lessor does not hold information about the day of the last rent increase for the premises, then the lessor or lessor's agent is not required to give the tenant the requested evidence. Subsection (3) clarifies that a lessor is considered to hold information if the lessor, or an agent of the lessor, is in possession or control of the information. This is a 12 month transitional arrangement.

It also inserts new section 579B *Requirement for provider to give evidence of rent increase if rental premises purchased within 12 months of commencement*. This section applies if a provider has purchased a rental premises subject to a rooming accommodation agreement within 12 months after commencement of the provision requiring a provider to give written evidence of the day of the last rent increase. It clarifies that, if the provider does not hold information about the day of the last rent increase for the resident's room, then the provider or provider's agent is not required to give the resident the requested evidence. Subsection (3) clarifies that the provider is considered to hold information if the provider, or an agent of the provider, is in possession or control of the information. This is a 12 month transitional arrangement.

Amendment clause 17 amends Clause 49 *Amendment of sch 2 (Dictionary)* to remove the reference to 'for chapter 2, part 2, division 1'. This is a consequential amendment to ensure the definition of 'exempt lessor' is not limited to that chapter, part or division.

Amendment clause 18 amends Clause 49 *Amendment of sch 2 (Dictionary)* to insert a reference for the definition of 'exempt provider' to refer to section 97A.

Amendment clause 19 amends Clause 50 *Insertion of new ss 57B-57D* to change references from 'an exempt lessor' to 'a relevant lessor' to distinguish between different types of exempt lessors in relation to different obligations.

Amendment clause 20 amends Clause 50 *Insertion of new ss 57B-57D* to change a reference to 'relevant lessor' to distinguish between lessors who have different obligations.

Amendment clause 21 mends Clause 50 *Insertion of new ss 57B-57D* to change the reference from 'an exempt lessor' to 'a relevant lessor' to distinguish between lessors who have different obligations.

Amendment clause 22 amends Clause 57 *Amendment of s 166 (Water service charges for premises other than moveable dwelling premises).* It inserts new subsection (1A) to include a reference under new subsection (8A) that the section applies subject to new section 166A.

Amendment clause 23 amends Clause 57 *Amendment of s 166 (Water service charges for premises other than moveable dwelling premises).* It amends the reference from (12) to (13).

Amendment clause 24 inserts after Clause 57 new section *166A Water service charges for premises other than moveable dwelling premises – charge for partial billing period.* Subsection (1) states that the section applies if, under section 166, a tenant is required to pay an amount for water consumption charges for premises for a period, and the premises are individually metered for water supply, and the premises are water efficient to the required standard under section 166 for the period, and the period includes part, but not all of, the period (the partial billing period) which is specified or specified in a water consumption charges document.

Examples are provided to demonstrate how a partial billing period would apply.

Subsection (2) states that a tenant may not be required to pay an amount for water consumption charges for the premises for the partial billing period unless a meter reading for the premises is taken and recorded in a condition report required under section 65 or 66. A condition report is completed at the start and end of a tenancy agreement. The amount of water consumption charged is calculated based on the reasonable estimate of the volume of water supplied to the premises during the partial billing period having regard to the meter reading and the rate used to calculate the water consumption charge stated in the most recent water consumption charges document as defined by subsection (4).

Subsection (3) states that subsections 166(6) to (9) do not apply in relation to the water consumption charges document that includes the partial billing period. These subsections refer to the sections as re-numbered under Clause 57 of the Bill.

Subsection (4) refers the definition of water consumption charge to section 166(13) and defines the water consumption charges document as a document issued to the lessor by the relevant water supplier, stating the amount of water consumption charges for the premises that are payable to the supplier.

Amendment clause 25 amends Clause 64 *Replacement of ss 207-209.* It amends section 207(6) by including an additional condition that attaching a fixture or making a structural change to the premises is subject to any conditions of the agreement given by the body corporate. It includes a note to refer to section 209 for additional information about lessor's approval and conditions about making changes to the property.

Amendment clause 26 amends Clause 67 *Replacement of ss 254-256.* It amends section 254(6) by including an additional condition that attaching a fixture or making a structural change to the premises is subject to any conditions of the agreement given by the body corporate. It includes a note to refer to section 255A for additional information about the provider's approval and conditions about making changes to the property.

Amendment clause 27 amends Clause 72 *Amendment of s 357A (Reletting costs)* to reinstate in section 357A(1)(b) 'the tenant is made liable under the term for reletting costs only if the tenant ends the agreement other than in a way permitted under this Act'. This amendment addresses a drafting issue and reverts to the existing wording which is understood by the sector.

Amendment clause 28 amends Clause 73 *Amendment of s 396A (Reletting costs)* to reinstate in section 396A(1)(b) 'the resident is made liable under the term for reletting costs only if the resident ends the agreement other than in a way permitted under this Act'. This amendment addresses a drafting issue and reverts to the existing wording which is understood by the sector.

Amendment clause 29 amends Clause 80 *Insertion of new ch 9, pt 2 and ch 9, pt 3, hdg,* to replace in section 457D(2)(b) ‘management of premises’ with ‘management of agreement’. This amendment is intended to clarify that personal information may be collected where it relates to the management of the agreement, which better aligns with the objects of the RTRA Act.

Amendment clause 30 amends Clause 80 *Insertion of new ch 9, pt 2 and ch 9, pt 3, hdg* to replace in section 457D(3) ‘management of premises’ with ‘management of agreement’. This amendment is intended to clarify that personal information may be collected where it relates to the management of the agreement, which better aligns with the objects of the RTRA Act.

Amendment clause 31 amends Clause 80 *Insertion of new ch 9, pt 2 and ch 9, pt 3, hdg* to amend section 457E(1)(c) to include two subsections (i) and (ii). New subsection (ii) allows personal information about an applicant to be retained for a period longer than 3 months with the applicant’s consent. This will provide flexibility for applicants who wish to have their personal information continue to be held by a lessor, provider or their agent, for example, to remain on a waitlist for a type of specialist accommodation.

Amendment clause 32 amends Clause 80 *Insertion of new ch 9, pt 2 and ch 9, pt 3, hdg* replaces 3 years with 7 years in section 457E(2)(c). This extends the timeframe by which personal information about a renter must be destroyed after a tenancy ends from 3 years to 7 years. This is to align with record keeping obligations under other Queensland and Commonwealth laws.

Amendment clause 33 inserts a new section 585A *Maximum amount of rental bond—provision for existing rental bonds* to establish transitional arrangements for amendments to section 146, which limits the maximum amount of rental bond that can be taken.

Subsection (1) clarifies that the section applies where a rental bond was paid for a residential tenancy agreement or a rooming accommodation agreement before the commencement of the amended maximum bond amount, and the rental bond is a rental bond for a renewal agreement in accordance with existing section 122, and the amount of rental bond is more than the maximum amount allowed once amendments to section 146 commence.

Subsection (2) provides that a renter can apply to the Residential Tenancies Authority for payment of an excess amount, that is the difference between the amount held and the new maximum allowable under amended section 146.

Subsection (3) requires the application to be on an approved form that may only direct the payment of the excess bond amount to a contributor for the bond (a renter).

Subsection (4) allows the Residential Tenancies Authority to pay the excess amount to the contributor (if there is only one contributor) or to each contributor in a way directed in the application form (if more than one contributor).

Subsection (5) requires the Residential Tenancies Authority to advise the lessor, provider or agent of the amount of rental bond held for the renewal agreement after the excess amount has been refunded to the renter.

Subsections (6) and (7) clarify that, for bond refund requests made under this section, the processes under Chapter 2, part 3, division 3 do not apply.

Subsection (8) clarifies that a person has not committed an offence under new section 146(1) if the amount of bond held after commencement of amended section 146 exceeds the maximum amount allowable, to which section 585E applies.

Subsection (9) refers to section 122 for definition of 'renewal agreement'.

Amendment clause 34 inserts a new clause into the Bill to insert a new Division 1A – *Amendment of Building Industry Fairness (Security of Payment) Act 2017*.

Section 95A notes this division amends the *Building Industry Fairness (Security of Payment) Act 2017*.

Section 95B amends section 79 of the BIF Act to clarify the application requirements for adjudication. New subsections clarify that the adjudication application may be accompanied by submissions relevant to the application. They also clarify the documents which the claimant must give to the respondent within 4 business days of making the adjudication application; and that a copy of an adjudication application includes a document given to the claimant by the registrar for the purpose of the claimant complying with the abovementioned obligation.

Section 95C is a consequential amendment to section 83 to reference the documents given under that section.

Section 95D inserts a new Chapter 8D – *Validation provisions for Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2024*. This chapter is inserted into the BIF Act and provides a number of sections which address the adjudication application process issues.

Section 215C inserts two definitions to aid in application of the chapter.

Section 215D validates non-compliance with former section 79(3) and states that where a Registry summary of the adjudication application is provided to the respondent, the claimant is taken to have complied with the former requirement.

Section 215E validates adjudication decisions made before commencement to the extent a Registry summary of the adjudication application was provided to the respondent. This section validates relevant adjudication decisions made before commencement and anything done or purportedly done as a result of, or in reliance on, the relevant decision. This includes any compliance and enforcement action that may have been taken.

Section 215F states that a decision of a court made before commencement, which states that an adjudication application was void due only to a claimant's failure to comply with the former section 79(3) requirement, is of no effect. This section validates the previous adjudication decision, as if the claimant had complied with the former section 79(3) and the adjudicator had jurisdiction to make the decision. The section also outlines certain procedural requirements in these instances, such as when a respondent must pay an adjudicated amount and that a party may seek to vary a court order for costs.

Section 215G states that an adjudication application must be re-decided if an adjudicator decided before commencement that they did not have jurisdiction only based on former section 79(3) non-compliance. The section makes clear that the decision of the original adjudicator, to the extent they decided that they had no jurisdiction, is void and of no effect. Subsections also make clear the process to follow to have the application re-decided, including that the adjudication application is taken to be referred to the original adjudicator, or must be referred to a new adjudicator if the original adjudicator refuses the

application, that a notice must be provided to the parties, and that the application must be decided within a specific timeframe.

Section 215H outlines what must occur for adjudications not completed on commencement. To the extent non-compliance with former section 79(3) exists, the claimant is taken to have complied with the former section and the adjudicator is not to decide no jurisdiction for this reason alone. The adjudication application must be decided under part 4 of the BIF Act, as amended.

Section 215I states that no liability attaches to, nor is any compensation payable by, the QBCC, the Registrar, a public service employee or the State in relation to this matter. Specifically, no liability or compensation applies in relation to the giving of the Registry summary by the Registrar to the claimant, or anything done or purportedly done as a result of, or in reliance on, the summary being given to the claimant.

Amendment clause 35 amends the long title of the Bill to insert the *Building Industry Fairness (Security of Payment) Act 2017*.

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