

Residential Tenancies (COVID-19 Response) Bill 2020

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Western Australia

LEGISLATIVE ASSEMBLY

**Residential Tenancies (COVID-19 Response)
Bill 2020**

A Bill for

An Act —

- **to regulate, in response to the COVID-19 pandemic, certain residential tenancy agreements, long-stay agreements and accommodation agreements; and**
- **to modify, in response to the COVID-19 pandemic, the operation of the *Residential Parks (Long-stay Tenants) Act 2006* and the *Residential Tenancies Act 1987*; and**
- **to provide for the manner in which disputes arising under the Act are to be dealt with; and**
- **to amend the *Residential Tenancies Act 1987*; and**
- **for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Residential Tenancies (COVID-19 Response) Act 2020*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 come into operation on the day on which this Act receives the Royal Assent (*assent day*);
- (b) sections 25 and 42 come into operation on the day after assent day;
- (c) sections 14(3)(b) and (4) to (7) and 26(3)(b) and (4) to (7) and Part 4 Divisions 3, 4 and 5 come into operation on a day fixed by proclamation;
- (d) the rest of the Act is deemed to have come into operation on 30 March 2020.

3. Terms used

(1) In this Act —

accommodation agreement means an agreement, whether or not in writing and whether express or implied —

- (a) that grants, for valuable consideration, a right to occupy, whether exclusively or otherwise, residential premises, or part of residential premises, to a boarder or lodger for the purpose of residence; or
- (b) that is of a class of agreement that —
 - (i) grants, for valuable consideration, a right to occupy, whether exclusively or otherwise, residential premises, or part of residential premises, to a person for the purpose of residence; and

-
- 1 (ii) is prescribed by regulations for the purposes of
2 this paragraph;
- 3 **assent day** has the meaning given in section 2(a);
- 4 **boarder** means a boarder as referred to in the *Residential*
5 *Tenancies Act 1987* section 5(2)(d);
- 6 **Commissioner** means the person for the time being designated
7 as the Commissioner under the *Fair Trading Act 2010*
8 section 55;
- 9 **emergency period** has the meaning given in section 4;
- 10 **landlord** —
- 11 (a) means a person who grants a right of occupancy under
12 an accommodation agreement; and
- 13 (b) includes —
- 14 (i) a personal representative, successor or assignee
15 of a landlord; and
- 16 (ii) if the context requires — a prospective or former
17 landlord;
- 18 **lodger** means a lodger as referred to in the *Residential*
19 *Tenancies Act 1987* section 5(2)(d);
- 20 **long-stay agreement** means a long-stay agreement to which the
21 *Residential Parks (Long-stay Tenants) Act 2006* applies;
- 22 **owner** means —
- 23 (a) in relation to a long-stay agreement — a park operator;
24 or
- 25 (b) in relation to a residential tenancy agreement — a
26 lessor;
- 27 **resident** —
- 28 (a) means a person, including a boarder or lodger, who is
29 granted a right of occupancy under an accommodation
30 agreement; and
- 31 (b) includes, if the context requires, a prospective or former
32 resident;

s. 4

1 **residential tenancy agreement** means a residential tenancy
2 agreement to which the *Residential Tenancies Act 1987* applies;

3 **tenancy** means —

- 4 (a) a tenancy under a long-stay agreement; or
5 (b) a right of occupancy under a residential tenancy
6 agreement;

7 **tenancy Act** means —

- 8 (a) the *Residential Parks (Long-stay Tenants) Act 2006*; or
9 (b) the *Residential Tenancies Act 1987*;

10 **tenancy agreement** means a long-stay agreement or residential
11 tenancy agreement;

12 **tenant** means —

- 13 (a) a long-stay tenant within the meaning of the *Residential*
14 *Parks (Long-stay Tenants) Act 2006* Glossary clause 1;
15 or
16 (b) a tenant within the meaning of the *Residential Tenancies*
17 *Act 1987* section 3.

18 (2) Terms used in this Act (other than to the extent to which this
19 Act relates solely to the *Residential Parks (Long-stay Tenants)*
20 *Act 2006*) and also in the *Residential Tenancies Act 1987* have
21 the same meaning in this Act as they have in that Act unless the
22 contrary intention appears.

23 (3) Terms used in this Act (other than to the extent to which this
24 Act relates solely to the *Residential Tenancies Act 1987*) and
25 also in the *Residential Parks (Long-stay Tenants) Act 2006* have
26 the same meaning in this Act as they have in that Act unless the
27 contrary intention appears.

28 **4. Term used: emergency period**

29 In this Act, the **emergency period** is the period —

- 30 (a) beginning on 30 March 2020; and

- 1 (b) ending on —
2 (i) a day prescribed by regulations for the purposes
3 of this paragraph; or
4 (ii) if a day has not been prescribed for the purposes
5 of this paragraph before 29 September 2020 —
6 29 September 2020.

7 **5. Relationship of Act to other Acts**

8 (1) This Act (other than to the extent to which it relates solely to the
9 *Residential Parks (Long-stay Tenants) Act 2006*) is to be read
10 with the *Residential Tenancies Act 1987* as if they were a single
11 Act.

12 (2) This Act (other than to the extent to which it relates solely to the
13 *Residential Tenancies Act 1987*) is to be read with the
14 *Residential Parks (Long-stay Tenants) Act 2006* as if they were
15 a single Act.

16 **6. Act binds Crown**

17 This Act binds the Crown in right of Western Australia and, so
18 far as the legislative power of the Parliament permits, the Crown
19 in all its other capacities.

20 **7. Act prevails over agreements and particular Acts**

21 The provisions of this Act prevail, to the extent of any
22 inconsistency, over —

- 23 (a) the provisions of the *Residential Parks (Long-stay*
24 *Tenants) Act 2006* and the *Residential Tenancies*
25 *Act 1987*; and
26 (b) except for the provisions of Part 2 — the terms of an
27 accommodation agreement; and
28 (c) except for the provisions of Part 3 — the terms of a
29 tenancy agreement.

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Part 2 — Tenancy agreements

Division 1 — Provisions affecting tenancy agreements (other than in relation to termination)

8. Rent cannot increase during emergency period

(1) In this section —

notice of increase of rent, in relation to a tenancy agreement, means —

- (a) for a residential tenancy agreement — a notice of increase of rent given under the *Residential Tenancies Act 1987* section 30; or
- (b) for a long-stay agreement —
 - (i) a notice of increase of rent given under the *Residential Parks (Long-stay Tenants) Act 2006* section 30; or
 - (ii) a notice setting out that rent has increased under an on-site home agreement that excludes or limits the right to increase rent under the *Residential Parks (Long-stay Tenants) Act 2006* section 30 as referred to in Schedule 1 clause 3 of that Act; or
 - (iii) a notice setting out that rent has increased under a provision of a site-only agreement referred to in the *Residential Parks (Long-stay Tenants) Act 2006* Schedule 1 clause 4.

(2) Rent payable under a tenancy agreement cannot be increased during the emergency period.

(3) An increase of rent payable under a tenancy agreement in contravention of subsection (2) has no effect.

(4) If a notice of increase of rent (whether given before, on or after 30 March 2020) in relation to a tenancy agreement specifies a

- 1 day during the emergency period as the day from which the
2 increased rent becomes payable —
- 3 (a) the notice is taken to specify the day after the end of the
4 emergency period; and
- 5 (b) the tenant cannot be required to pay the increased rent
6 until the day taken to be specified under paragraph (a).
- 7 (5) Despite subsections (2) to (4), if the parties to a tenancy
8 agreement agree (whether before, on or after 30 March 2020) to
9 reduce the rent payable due to financial hardship caused by the
10 economic effects of the COVID-19 pandemic, the rent may be
11 increased during or after the emergency period if —
- 12 (a) the parties agree to the increase; and
- 13 (b) the increased rent is not greater than the amount of rent
14 payable before the agreement to reduce the rent.
- 15 (6) Rent may be increased under subsection (5) without a notice of
16 increase of rent being given despite —
- 17 (a) the *Residential Parks (Long-stay Tenants) Act 2006*
18 section 30; and
- 19 (b) a provision of an on-site home agreement or site-only
20 agreement; and
- 21 (c) the *Residential Tenancies Act 1987* section 30.
- 22 **9. Delayed effect of variation of rent calculated by reference to**
23 **tenant's income under *Residential Tenancies Act 1987* s. 31A**
- 24 (1) This section applies if —
- 25 (a) a notice of a change to the method of calculating rent is
26 given under the *Residential Tenancies Act 1987*
27 section 31A; and
- 28 (b) the notice specifies a day during the emergency period
29 as the day from which the change is to take effect; and
- 30 (c) the change to the method would, if it took effect, result
31 in an increase in the rent payable under a residential
32 tenancy agreement.

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Part 2 Tenancy agreements

Division 1 Provisions affecting tenancy agreements (other than in relation to termination)

s. 10

1 (2) The notice is taken to specify the day after the end of the
2 emergency period and the tenant cannot be required to pay rent
3 in accordance with the new method of calculating rent until the
4 day that is taken to be specified.

5 **10. Rent cannot increase after renegotiation of lease during**
6 **emergency period**

7 (1) This section applies if —

- 8 (a) a tenancy agreement (the *former agreement*) creates a
9 tenancy for a fixed term; and
10 (b) the term of the former agreement ends during the
11 emergency period; and
12 (c) the parties to the former agreement enter into a new
13 tenancy agreement (the *new agreement*) in relation to
14 the same premises commencing immediately after the
15 end of the term of the former agreement.

16 (2) Despite the new agreement, the tenant cannot be required during
17 the emergency period to pay an amount of rent that is more than
18 the amount that would have been payable under the former
19 agreement if the former agreement had continued to have effect
20 during that period.

21 (3) Subsection (4) applies if —

- 22 (a) the first day of the first 30 days (the *30-day period*) of a
23 new agreement (as defined in the *Residential Tenancies*
24 *Act 1987* section 31B(1)(b)) occurs within the
25 emergency period; and
26 (b) the last day of the 30-day period occurs after the end of
27 the emergency period.

28 (4) The *Residential Tenancies Act 1987* section 31B has effect in
29 relation to the part of the 30-day period that falls after the end of
30 the emergency period.

11. **Owner not required to maintain and repair under tenancy agreement if unable to do so during emergency period**

(1) In this section —

maintenance term, of a tenancy agreement, means —

(a) for a residential tenancy agreement — the term referred to in the *Residential Tenancies Act 1987* section 42(2)(b); or

(b) for a long-stay agreement —

(i) the term referred to in the *Residential Parks (Long-stay Tenants) Act 2006* Schedule 1 clause 7(c); or

(ii) a term in the agreement that otherwise requires that the park operator maintain the agreed premises or shared premises.

(2) During the emergency period, a maintenance term of a tenancy agreement is modified so that an owner does not contravene the term if the owner is unable to maintain the premises, or conduct repairs to the premises, due to —

(a) financial hardship caused by the economic effects of the COVID-19 pandemic; or

(b) an inability to access the premises due to a direction given under the *Emergency Management Act 2005* or *Public Health Act 2016*.

(3) The modification in subsection (2) does not affect the operation of —

(a) for a residential tenancy agreement — the *Residential Tenancies Act 1987* section 43(2)(b) and (3)(b); or

(b) for a long-stay agreement —

(i) the term referred to in the *Residential Parks (Long-stay Tenants) Act 2006* Schedule 1 clause 8; or

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Part 2 Tenancy agreements

Division 1 Provisions affecting tenancy agreements (other than in relation to termination)

s. 12

- 1 (ii) a term in the agreement that imposes obligations
2 on the park operator in relation to urgent repairs
3 to premises if the state of disrepair has arisen
4 otherwise than as a result of a breach of the
5 long-stay agreement by the tenant and is likely to
6 cause injury to a person or property or undue
7 inconvenience to the tenant.

8 **12. Fixed-term tenancy ending during emergency period to**
9 **continue as periodic tenancy**

- 10 (1) This section applies if —
- 11 (a) a tenancy agreement creates a tenancy for a fixed term;
12 and
- 13 (b) the term of the agreement expires during the emergency
14 period; and
- 15 (c) at the end of the day on which the agreement would, but
16 for this section, expire (the *expiry day*) the owner and
17 tenant have not entered into a tenancy agreement in
18 relation to the same premises that creates a tenancy for a
19 fixed term commencing immediately after the expiry
20 day.
- 21 (2) The tenancy agreement continues, subject to subsection (3), as a
22 periodic tenancy after the expiry day on the same terms that
23 applied immediately before the expiry day until —
- 24 (a) the tenancy agreement is terminated —
- 25 (i) during the emergency period — under
26 Division 2; or
- 27 (ii) after the emergency period — under the tenancy
28 Act that applies to the agreement;
- 29 or
- 30 (b) the owner and tenant enter into a tenancy agreement in
31 relation to the same premises that creates a tenancy for
32 another fixed term.

- 1 (3) A party to a tenancy agreement that continues under
2 subsection (2) may apply for a modification of the terms of the
3 tenancy agreement —
- 4 (a) in relation to a residential tenancy agreement — to a
5 competent court under the *Residential Tenancies*
6 *Act 1987* section 76C(3); or
- 7 (b) in relation to a long-stay agreement — to the State
8 Administrative Tribunal under the *Residential Parks*
9 *(Long-stay Tenants) Act 2006* Part 5.
- 10 (4) However, a competent court or the State Administrative
11 Tribunal must not make an order that increases the rent payable
12 under the agreement during the emergency period.
- 13 (5) An order made by a competent court or the State Administrative
14 Tribunal may, if the court or Tribunal orders, apply on and from
15 the day after the expiry day, even if the order is made after the
16 end of the emergency period.
- 17 (6) A notice of termination of a residential tenancy agreement given
18 under the *Residential Tenancies Act 1987* section 70A during
19 the emergency period has no effect.
- 20 (7) The *Residential Tenancies Act 1987* section 76C(2) does not
21 apply to a residential tenancy agreement that continues under
22 subsection (2).
- 23 **13. Repossession of property during emergency period subject**
24 **to tenancy agreement**
- 25 (1) This section applies if, but for Division 2, a tenancy agreement
26 would have been terminated during the emergency period
27 because —
- 28 (a) under the *Residential Parks (Long-stay Tenants)*
29 *Act 2006* section 33(3)(b) or the *Residential Tenancies*
30 *Act 1987* section 60(1)(d), a person whose title is
31 superior to the owner becomes entitled to possession of
32 the premises the subject of the agreement; or

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Part 2 Tenancy agreements

Division 1 Provisions affecting tenancy agreements (other than in relation to termination)

s. 14

1 (b) under the *Residential Parks (Long-stay Tenants)*
2 *Act 2006* section 33(3)(c) or the *Residential Tenancies*
3 *Act 1987* section 60(1)(e), a mortgagee takes possession
4 of the premises the subject of the agreement.

5 (2) The tenancy agreement binds the person with superior title or
6 the mortgagee as if the person or mortgagee were the lessor or
7 park operator who had entered into the agreement.

8 **14. Giving rent default notices under tenancy Acts for failure to**
9 **pay rent during emergency period**

10 (1) In this section —

11 ***rent default notice*** means —

12 (a) a notice of termination or default notice under the
13 *Residential Parks (Long-stay Tenants) Act 2006*
14 section 39; or

15 (b) a notice of termination under the *Residential Tenancies*
16 *Act 1987* section 62(1) upon the ground of a breach of
17 the agreement to pay rent, or a notice under
18 section 62(4)(a) of that Act specifying the breach;

19 ***rent repayment agreement*** means an agreement (whether or not
20 in writing) —

21 (a) made between a tenant and owner about rent not paid in
22 accordance with a tenancy agreement during the
23 emergency period; and

24 (b) setting out how part or all of the rent not paid will be
25 paid to the owner.

26 (2) This section applies if a tenant fails to pay rent, in accordance
27 with a tenancy agreement, due during the emergency period.

28 (3) The owner cannot give a rent default notice in relation to the
29 failure to pay the rent unless —

30 (a) the tenant and owner have entered into a rent repayment
31 agreement and the tenant has failed to make payments in
32 accordance with that agreement; or

- 1 (b) the owner gives the rent default notice under
2 subsection (5).
- 3 (4) If the parties to a tenancy agreement cannot agree on a rent
4 repayment agreement, either party may make a submission to
5 the Commissioner under section 48(1).
- 6 (5) If a party makes a submission to the Commissioner under
7 section 48(1), the owner may give a rent default notice in
8 relation to the failure to pay the rent if —
- 9 (a) the Commissioner has dismissed the submission; or
10 (b) the Commissioner has certified —
- 11 (i) under section 56(2) that no agreement has been
12 reached in relation to a rent repayment
13 agreement; and
14 (ii) under section 56(5) that the tenant has not
15 cooperated with the conciliation proceeding;
- 16 or
- 17 (c) the Commissioner —
- 18 (i) has certified under section 56(2) that no
19 agreement has been reached in relation to a rent
20 repayment agreement; but
21 (ii) has not certified under section 56(5) that the
22 tenant has not cooperated with the conciliation
23 proceeding.
- 24 (6) However, the owner cannot give a rent default notice under
25 subsection (5) if the Commissioner has certified —
- 26 (a) under section 56(2) that no agreement has been reached
27 in relation to a rent repayment agreement; and
28 (b) under section 56(5) that the owner has not cooperated
29 with the conciliation proceeding.

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Part 2 Tenancy agreements

Division 2 Provisions affecting termination of tenancy agreements during emergency period

s. 15

1 (7) The owner cannot give a rent default notice under
2 subsection (5)(a) or (c) until the day that is 3 months after the
3 end of the emergency period.

4 Note for this section:

5 See Division 2 and section 70 or 71 in relation to the effect of a notice
6 of termination given under this section.

7 **15. Recovery of interest on rent not paid under tenancy**
8 **agreements during emergency period prohibited**

9 (1) In this section —
10 *outstanding rent* means rent a tenant fails to pay in accordance
11 with a tenancy agreement that is due during the emergency
12 period.

13 (2) This section applies despite any other written law.

14 (3) An owner cannot recover, whether by virtue of a right under the
15 tenancy agreement or otherwise, an amount from a tenant that is
16 for interest in relation to outstanding rent.

17 (4) If a court or tribunal gives judgment in favour of a claim for
18 money that includes money in relation to outstanding rent, the
19 judgment sum cannot include interest, or a lump sum of money
20 in lieu of such interest, in relation to the outstanding rent.

21 **Division 2 — Provisions affecting termination of tenancy**
22 **agreements during emergency period**

23 **16. Application of Division**

24 This Division applies during the emergency period.

25 **17. Termination of tenancy agreements during emergency**
26 **period to be in accordance with Division**

27 (1) A tenancy agreement, or a person's interest in a tenancy
28 agreement, cannot terminate or be terminated during the
29 emergency period other than under this Division.

-
- 1 (2) This Division applies despite —
2 (a) the *Residential Tenancies Act 1987* section 60(1); and
3 (b) the *Residential Parks (Long-stay Tenants) Act 1987*
4 section 33.
- 5 (3) The *Residential Tenancies Act 1987* section 60(2) applies to
6 terminations under this Division.
- 7 (4) The *Residential Parks (Long-stay Tenants) Act 2006*
8 section 33(2C) applies to terminations under this Division.

9 **18. Termination of tenancy agreements arising out of family**
10 **violence**

- 11 A tenant's interest in a tenancy agreement is terminated if —
- 12 (a) for a residential tenancy agreement — the interest is
13 terminated under the *Residential Tenancies Act 1987*
14 section 60(1)(ba), (bb) or (bc); or
- 15 (b) for a long-stay agreement —
- 16 (i) the interest is terminated under the *Residential*
17 *Parks (Long-stay Tenants) Act 2006*
18 section 33(2A) or (2B); or
- 19 (ii) the State Administrative Tribunal makes an order
20 terminating the tenant's interest under the
21 *Residential Parks (Long-stay Tenants) Act 2006*
22 section 74B.

23 **19. Termination without specifying grounds**

- 24 (1) A tenancy agreement is terminated if —
- 25 (a) the tenant gives notice of termination of the agreement
26 without specifying any grounds for the notice in
27 accordance with —
- 28 (i) for a residential tenancy agreement — the
29 *Residential Tenancies Act 1987* section 67(1); or

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Part 2 Tenancy agreements

Division 2 Provisions affecting termination of tenancy agreements during emergency period

s. 20

- 1 (ii) for a long-stay agreement — the *Residential*
2 *Parks (Long-stay Tenants) Act 2006* section 38;
3 and
4 (b) the notice of termination is given not less than 21 days
5 before the day on which the agreement is to terminate;
6 and
7 (c) the tenant delivers up vacant possession of the premises
8 the subject of the agreement on or after the expiry of the
9 period referred to in paragraph (b).
- 10 (2) A notice of termination given under subsection (1)(a) by a
11 tenant in relation to a tenancy agreement for a fixed term may
12 specify a day earlier than the last day of the fixed term as the
13 day on which the tenant intends to give vacant possession of the
14 premises the subject of the agreement to the owner.
- 15 (3) An owner is not entitled to compensation for loss (including
16 loss of rent) arising only from a tenant terminating under
17 subsection (1) a tenancy agreement for a fixed term.

18 **20. Termination in other cases**

- 19 (1) A residential tenancy agreement is terminated if —
20 (a) the agreement is terminated under the *Residential*
21 *Tenancies Act 1987* section 60(1)(a) after a notice of
22 termination is given —
23 (i) by the lessor under section 63 of that Act; or
24 (ii) under section 69 of that Act;
25 or
26 (b) the *Residential Tenancies Act 1987* section 60(1)(f), (g)
27 or (i) applies; or
28 (c) a competent court terminates the agreement under the
29 *Residential Tenancies Act 1987* section 73 or 74.

- 1 (2) A long-stay agreement is terminated if —
- 2 (a) the agreement is terminated under the *Residential Parks*
- 3 *(Long-stay Tenants) Act 2006* section 33 after a notice
- 4 of termination is given —
- 5 (i) by the park operator under section 41 of that Act;
- 6 or
- 7 (ii) under section 45(3) of that Act;
- 8 or
- 9 (b) the *Residential Parks (Long-stay Tenants) Act 2006*
- 10 section 33(3)(d) or (e) applies; or
- 11 (c) the State Administrative Tribunal makes an order
- 12 terminating the agreement under the *Residential Parks*
- 13 *(Long-stay Tenants) Act 2006* section 71 or 73.

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Part 3 — Accommodation agreements

**Division 1 — Provisions affecting accommodation agreements
(other than in relation to termination)**

21. Rent cannot increase during emergency period

- (1) Rent payable under an accommodation agreement cannot be increased during the emergency period.
- (2) An increase of rent payable under an accommodation agreement in contravention of subsection (1) has no effect.
- (3) If a landlord notifies the resident (whether before, on or after 30 March 2020) of an increase in the rent payable under an accommodation agreement and that increase would, but for this section, take effect on a day during the emergency period —
 - (a) the increase takes effect on the day after the end of the emergency period; and
 - (b) the resident cannot be required to pay the increased rent until the day referred to in paragraph (a).
- (4) Despite subsections (1) to (3), if the parties to an accommodation agreement agree (whether before, on or after 30 March 2020) to reduce the rent payable due to financial hardship caused by the economic effects of the COVID-19 pandemic, the rent may be increased during or after the emergency period if —
 - (a) the parties agree to the increase; and
 - (b) the increased rent is not greater than the amount of rent payable before the agreement to reduce the rent.

22. Rent cannot increase after renegotiation of lease during emergency period

- (1) This section applies if —
 - (a) an accommodation agreement (the *former agreement*) creates a tenancy for a fixed term; and

- 1 (b) the term of the former agreement ends during the
2 emergency period; and
- 3 (c) the parties to the former agreement enter into a new
4 accommodation agreement (the *new agreement*) in
5 relation to the same premises commencing immediately
6 after the end of the term of the former agreement.
- 7 (2) Despite the new agreement, the resident cannot be required
8 during the emergency period to pay an amount of rent that is
9 more than the amount that would have been payable under the
10 former agreement if the former agreement had continued to
11 have effect during that period.

12 **23. Landlord not required to maintain and repair under**
13 **accommodation agreement if unable to do so during**
14 **emergency period**

- 15 (1) This section applies if an accommodation agreement contains a
16 term that requires the landlord to maintain the residential
17 premises the subject of the agreement or conduct any repairs to
18 the premises.
- 19 (2) During the emergency period, the term is modified so that the
20 landlord does not contravene the term if the landlord is unable
21 to maintain the residential premises, or conduct repairs to the
22 premises, due to —
- 23 (a) financial hardship caused by the economic effects of the
24 COVID-19 pandemic; or
- 25 (b) an inability to access the premises due to a direction
26 given under the *Emergency Management Act 2005* or
27 *Public Health Act 2016*.
- 28 (3) The modification in subsection (2) does not affect any
29 obligation a landlord may have that is equivalent to the
30 obligations a lessor has under the *Residential Tenancies*
31 *Act 1987* section 43(2)(b) and (3)(b).

- 1 **24. Fixed-term tenancy ending during emergency period to**
2 **continue as periodic tenancy**
- 3 (1) This section applies if —
- 4 (a) an accommodation agreement is for a fixed term; and
- 5 (b) the fixed term ends during the emergency period; and
- 6 (c) at the end of the day on which the fixed term ends (the
- 7 *expiry day*) the landlord and resident have not entered
- 8 into an accommodation agreement in relation to the
- 9 same premises for a fixed term commencing
- 10 immediately after the expiry day.
- 11 (2) The accommodation agreement continues, subject to
- 12 subsection (3), as an agreement for a periodic tenancy after the
- 13 expiry day on the same terms that applied immediately before
- 14 the expiry day until —
- 15 (a) the accommodation agreement is terminated —
- 16 (i) during the emergency period — under
- 17 Division 2; or
- 18 (ii) after the emergency period — under the
- 19 agreement;
- 20 or
- 21 (b) the landlord and resident enter into an accommodation
- 22 agreement in relation to the same premises for another
- 23 fixed term.
- 24 (3) A competent court may, upon application by a party to an
- 25 accommodation agreement that continues under subsection (2),
- 26 make any modification to the terms of the agreement as may be
- 27 necessary for, or appropriate to, the agreement’s continuance.
- 28 (4) However, a competent court must not make an order that
- 29 increases the rent payable under the agreement during the
- 30 emergency period.

1 (5) An order made by a competent court may, if the court orders,
2 apply on and from the day after the expiry day, even if the order
3 is made after the end of the emergency period.

4 **25. Recovery of possession prohibited except in particular**
5 **circumstances**

6 (1) This section applies during the part of the emergency period that
7 occurs after assent day.

8 (2) A person must not enter or re-enter premises for the purpose of
9 recovering possession of the premises or part of the premises
10 from a resident of the premises, whether entry or re-entry is
11 effected peaceably or otherwise, unless —

12 (a) the person has a right to enter or re-enter the premises
13 under an accommodation agreement; or

14 (b) the person enters or re-enters the premises under a court
15 order.

16 Penalty for this subsection: a fine of \$20 000.

17 **26. Giving rent default notices for failure to pay rent during**
18 **emergency period**

19 (1) In this section —
20 **rent default notice**, in relation to an accommodation agreement,
21 means a notice in writing stating that —

22 (a) the resident has failed to pay rent in accordance with a
23 term of the accommodation agreement; and

24 (b) payment of the rent is required within a specified period
25 of at least 14 days; and

26 (c) a failure to pay the rent in accordance with the notice is
27 grounds for giving a termination notice under
28 section 36;

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Part 3 Accommodation agreements

Division 1 Provisions affecting accommodation agreements (other than in relation to termination)

s. 26

- 1 ***rent repayment agreement*** means an agreement (whether or not
2 in writing) —
- 3 (a) made between a resident and landlord about rent not
4 paid in accordance with an accommodation agreement
5 during the emergency period; and
- 6 (b) setting out how part or all of the rent not paid will be
7 paid to the landlord.
- 8 (2) This section applies if a resident fails to pay rent, in accordance
9 with an accommodation agreement, due during the emergency
10 period.
- 11 (3) The landlord cannot give a rent default notice in relation to the
12 failure to pay the rent unless —
- 13 (a) the resident and landlord have entered into a rent
14 repayment agreement and the resident has failed to make
15 payments in accordance with that agreement; or
- 16 (b) the landlord gives the rent default notice under
17 subsection (5).
- 18 (4) If the parties to an accommodation agreement cannot agree on a
19 rent repayment agreement, either party may make a submission
20 to the Commissioner under section 48(1).
- 21 (5) If a party makes a submission to the Commissioner under
22 section 48(1), the landlord may give a rent default notice in
23 relation to the failure to pay the rent if —
- 24 (a) the Commissioner has dismissed the submission; or
- 25 (b) the Commissioner has certified —
- 26 (i) under section 56(2) that no agreement has been
27 reached in relation to a rent repayment
28 agreement; and
- 29 (ii) under section 56(5) that the resident has not
30 cooperated with the conciliation proceeding;
- 31 or

- 1 (c) the Commissioner —
- 2 (i) has certified under section 56(2) that no
- 3 agreement has been reached in relation to a rent
- 4 repayment agreement; but
- 5 (ii) has not certified under section 56(5) that the
- 6 resident has not cooperated with the conciliation
- 7 proceeding.
- 8 (6) However, the landlord cannot give a rent default notice under
- 9 subsection (5) if the Commissioner has certified —
- 10 (a) under section 56(2) that no agreement has been reached
- 11 in relation to a rent repayment agreement; and
- 12 (b) under section 56(5) that the landlord has not cooperated
- 13 with the conciliation proceeding.
- 14 (7) The landlord cannot give a rent default notice under
- 15 subsection (5)(a) or (c) until the day that is 3 months after the
- 16 end of the emergency period.

17 **27. Recovery of interest on rent not paid under accommodation**

18 **agreements during emergency period prohibited**

- 19 (1) In this section —
- 20 *outstanding rent* means rent a resident fails to pay in
- 21 accordance with an accommodation agreement that is due
- 22 during the emergency period.
- 23 (2) This section applies despite any other written law.
- 24 (3) A landlord cannot recover, whether by virtue of a right under
- 25 the accommodation agreement or otherwise, an amount from a
- 26 resident that is for interest in relation to outstanding rent.
- 27 (4) If a court or tribunal gives judgment in favour of a claim for
- 28 money that includes money in relation to outstanding rent, the
- 29 judgment sum cannot include interest, or a lump sum of money
- 30 in lieu of such interest, in relation to the outstanding rent.

1 **Division 2 — Provisions affecting termination of**
2 **accommodation agreements during emergency period**

3 **28. Application of Division**

4 (1) Subject to subsection (2), this Division applies during the
5 emergency period.

6 (2) Sections 36 and 38 apply during and after the emergency period.

7 **29. Termination of accommodation agreements during**
8 **emergency period to be in accordance with Division**

9 (1) An accommodation agreement, or a person’s interest in an
10 accommodation agreement, cannot terminate or be terminated
11 during the emergency period other than under this Division.

12 (2) The termination of a resident’s interest in an accommodation
13 agreement under this Division does not terminate the agreement
14 in respect of any other resident under the agreement.

15 **30. Termination of interest in accommodation agreement**
16 **arising from family violence**

17 (1) The *Residential Tenancies Act 1987* sections 71AB to 71AE
18 apply to and in relation to a resident, landlord and
19 accommodation agreement as if a reference in those provisions
20 to —

21 (a) a tenant were a reference to a resident; and

22 (b) a lessor were a reference to a landlord; and

23 (c) a residential tenancy agreement were a reference to an
24 accommodation agreement; and

25 (d) a tenancy period were a reference to the period during
26 which an accommodation agreement is in force.

- 1 (2) A resident's interest in an accommodation agreement is
2 terminated if any of the following apply —
- 3 (a) the resident —
- 4 (i) gives notice, under the *Residential Tenancies*
5 *Act 1987* section 71AB(1), of termination of the
6 resident's interest together with at least 1 of the
7 documents required under the *Residential*
8 *Tenancies Act 1987* section 71AB(2); and
- 9 (ii) vacates the residential premises the subject of the
10 agreement on or after the expiry of the period of
11 notice required under the *Residential Tenancies*
12 *Act 1987* section 71AB(5);
- 13 (b) the resident —
- 14 (i) gives notice, under the *Residential Tenancies*
15 *Act 1987* section 71AD(4), of termination of the
16 resident's interest; and
- 17 (ii) vacates the residential premises the subject of the
18 agreement on or after the expiry of the period of
19 notice required under the *Residential Tenancies*
20 *Act 1987* section 71AD(5);
- 21 (c) a competent court terminates the resident's interest
22 under the *Residential Tenancies Act 1987* section 71AE.

23 **31. Termination without specifying grounds**

- 24 (1) An accommodation agreement is terminated if —
- 25 (a) the resident gives notice of termination of the
26 accommodation agreement to the landlord, whether or
27 not the notice specifies grounds for the notice; and
- 28 (b) the notice of termination is given not less than 7 days (or
29 a shorter period agreed between the resident and
30 landlord) before the day on which the agreement is to
31 terminate; and

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Division 2 Provisions affecting termination of accommodation agreements during emergency period

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- 1 (c) the resident vacates the residential premises the subject
2 of the agreement on or after the expiry of the period
3 referred to in paragraph (b).
- 4 (2) A notice of termination given under subsection (1)(a) by a
5 resident in relation to an accommodation agreement for a fixed
6 term may specify a day earlier than the last day of the term as
7 the day on which the agreement is terminated.
- 8 (3) A landlord is not entitled to compensation for loss (including
9 loss of rent) arising only from a resident terminating under
10 subsection (1) an accommodation agreement for a fixed term.

11 **32. Termination if accommodation agreement frustrated**

12 An accommodation agreement is terminated if —

- 13 (a) the residential premises, or a part of the premises, the
14 subject of the agreement —
- 15 (i) are destroyed or rendered uninhabitable or cease
16 to be lawfully usable as a residence and the state
17 of the residential premises, or part of the
18 premises, arises otherwise than as a result of a
19 breach of the accommodation agreement; or
- 20 (ii) are appropriated or acquired by any authority by
21 compulsory process;
- 22 and
- 23 (b) either —
- 24 (i) the resident gives notice of termination of the
25 accommodation agreement to the landlord stating
26 the day on which the agreement is terminated,
27 which is at least 2 days after the day on which
28 the notice is given; or
- 29 (ii) the landlord gives notice of termination of the
30 accommodation agreement to the resident stating
31 the day on which the agreement is terminated,

- 1 which is at least 7 days after the day on which
2 the notice is given;
- 3 and
- 4 (c) either —
- 5 (i) the resident vacates the premises on or after the
6 expiry of the period of notice required under
7 paragraph (b); or
- 8 (ii) a competent court, on application by the
9 landlord, terminates the agreement under the
10 *Residential Tenancies Act 1987* section 71 as
11 applied by section 38 of this Act.

12 **33. Termination in other circumstances**

13 An accommodation agreement is terminated if —

- 14 (a) the resident abandons the residential premises the
15 subject of the agreement; or
- 16 (b) the resident vacates the residential premises the subject
17 of the agreement under an agreement in writing between
18 the landlord and the resident to terminate the
19 accommodation agreement; or
- 20 (c) every resident who is a party to the agreement dies; or
- 21 (d) a competent court makes an order terminating the
22 agreement under section 34 or 35.

23 **34. Competent court may terminate agreement if resident**
24 **causing serious damage or injury**

- 25 (1) A landlord may apply to a competent court to terminate an
26 accommodation agreement if the resident has intentionally or
27 recklessly caused or permitted, or is likely to intentionally or
28 recklessly cause or permit —
- 29 (a) serious damage to the residential premises the subject of
30 the agreement; or

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- 1 (b) serious damage to a common area or chattels in the
2 common area; or
- 3 (c) injury to —
- 4 (i) the landlord; or
- 5 (ii) an agent of the landlord who is licensed under
6 the *Real Estate and Business Agents Act 1978*; or
- 7 (iii) any person in occupation of or permitted on
8 adjacent premises.
- 9 (2) If a competent court is satisfied of the matters stated in
10 subsection (1), the court —
- 11 (a) may make an order to terminate the agreement; and
- 12 (b) if it makes an order under paragraph (a) — must make
13 an order for possession of the residential premises the
14 subject of the agreement, with immediate effect.
- 15 **35. Competent court may terminate agreement because of**
16 **undue hardship**
- 17 (1) A landlord or resident may apply to a competent court to
18 terminate an accommodation agreement.
- 19 (2) If the competent court is satisfied the landlord or resident would
20 suffer undue hardship if the agreement were not terminated by
21 the court, the court may make an order to terminate the
22 agreement.
- 23 (3) If the competent court makes an order under subsection (2), the
24 court —
- 25 (a) must make an order —
- 26 (i) for possession of the residential premises the
27 subject of the agreement; and
- 28 (ii) specifying the day on which the order for
29 possession of the premises takes effect;
- 30 and

- 1 (b) may make any other orders the court considers
2 appropriate, including in relation to compensation of the
3 resident or landlord for any loss caused by the
4 termination of the agreement.

5 **36. Termination at end of emergency period for non-compliance**
6 **with rent default notice**

7 An accommodation agreement is terminated if —

- 8 (a) the landlord gives a rent default notice under section 26
9 to the resident in relation to a failure to pay rent under
10 the accommodation agreement during the emergency
11 period; and
12 (b) the resident fails to comply with the rent default notice;
13 and
14 (c) the landlord gives notice of termination of the agreement
15 to the resident specifying the day on which the
16 agreement is to terminate, which must be —
17 (i) after the end of the emergency period; and
18 (ii) at least 14 days after the day on which the notice
19 is given;
20 and
21 (d) either —
22 (i) the resident delivers up vacant possession of the
23 residential premises the subject of the agreement
24 on or after the day specified under paragraph (c);
25 or
26 (ii) a competent court, on application by the
27 landlord, terminates the agreement under the
28 *Residential Tenancies Act 1987* section 71 as
29 applied by section 38 of this Act.

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Division 2 Provisions affecting termination of accommodation agreements during emergency period

s. 37

1 **37. Requirement for notice of termination given under Division**

2 A notice of termination of an accommodation agreement, or of a
3 resident's interest in the agreement, given under this Division
4 must —

- 5 (a) be in writing; and
6 (b) be signed by the person giving the notice; and
7 (c) identify the residential premises the subject of the
8 agreement; and
9 (d) state the day on which the agreement, or the resident's
10 interest in the agreement, is to terminate.

11 **38. Application of *Residential Tenancies Act 1987* s. 71 to**
12 **termination notice given under s. 32 and 36**

13 (1) If a landlord has given a resident a notice of termination under
14 section 32 or 36 and the resident has not delivered up vacant
15 possession of the residential premises the subject of the
16 accommodation agreement in accordance with the notice, the
17 landlord may apply to a competent court under the *Residential*
18 *Tenancies Act 1987* section 71 for —

- 19 (a) an order terminating the agreement; and
20 (b) an order for possession of the residential premises.

21 (2) The *Residential Tenancies Act 1987* section 71(2)(a) and (b) and
22 (3) to (6) applies to an application under subsection (1) as if a
23 reference in that provision to —

- 24 (a) an application under this section were a reference to an
25 application under subsection (1); and
26 (b) a lessor were a reference to a landlord; and
27 (c) a tenant were a reference to a resident; and
28 (d) a residential tenancy agreement were a reference to an
29 accommodation agreement; and
30 (e) section 69 were a reference to section 32 of this Act.

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Division 3 — Administration of Part

2

39. Recovery of amounts paid in contravention of s. 21

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If, in relation to an accommodation agreement, a resident pays an amount in rent to a landlord because of an increase in rent that contravenes section 21, the resident may —

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(a) on application to a competent court, recover that amount from the landlord; or

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(b) deduct the amount from rent payable under the agreement.

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40. Application of *Residential Tenancies Act 1987* s. 17A and 17B to this Part

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The *Residential Tenancies Act 1987* sections 17A and 17B apply to and in relation to an accommodation agreement, resident and landlord as if a reference in those provisions to —

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(a) a residential tenancy agreement were a reference to an accommodation agreement; and

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(b) a tenant were a reference to a resident; and

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(c) a lessor were a reference to a landlord; and

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(d) a reference to section 60(1)(ba) or (bb) were a reference to section 30(2)(a) or (b) of this Act; and

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(e) a reference to section 71AE(3) were a reference to section 71AE(3) as applied by section 30(1) of this Act.

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41. Commissioner's functions and powers under this Part

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(1) The Commissioner has the following functions for the purposes of this Part —

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(a) investigating and conducting research into matters relating to the interests of parties to accommodation agreements;

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- 1 (b) publishing reports and disseminating information on
2 matters relating to the interests of parties to
3 accommodation agreements;
- 4 (c) investigating, whether upon the complaint of a party to
5 an accommodation agreement or otherwise, a
6 contravention of a provision of this Part or an
7 infringement of a party's rights under an
8 accommodation agreement;
- 9 (d) taking action based on an investigation conducted under
10 paragraph (c), including —
11 (i) negotiating over the matter investigated; or
12 (ii) prosecuting an offence;
- 13 (e) giving advice or information to persons about the
14 provisions of this Part or any other law affecting the
15 rights of the parties to an accommodation agreement.
- 16 (2) The Commissioner has all the powers they need to carry out
17 their functions.

18 **42. Issuing infringement notices in relation to offence**
19 **under s. 25**

20 The *Residential Tenancies Act 1987* section 88A applies to an
21 offence under section 25 of this Act as if —

- 22 (a) for the purposes of section 88A(2) of that Act,
23 section 25 of this Act were a prescribed offence; and
24 (b) for the purposes of section 88A(4) of that Act, the
25 prescribed modified penalty for section 25(2) of this Act
26 were \$4 000.

1 **Part 4 — Disputes**

2 **Division 1 — Preliminary**

3 **43. Terms used**

4 In this Part —

5 *applicable agreement* means —

- 6 (a) a long-stay agreement; or
- 7 (b) a residential tenancy agreement; or
- 8 (c) an accommodation agreement;

9 *party*, to a conciliation proceeding in respect of an applicable
10 agreement, means each of the parties to the applicable
11 agreement;

12 *relevant dispute* has the meaning given in section 44;

13 *submission* —

- 14 (a) means a submission to the Commissioner under
15 section 48(1); and
- 16 (b) includes a part of a submission.

17 **44. Term used: relevant dispute**

18 (1) In this Part, a *relevant dispute*, in respect of an applicable
19 agreement —

- 20 (a) means a dispute in connection with the applicable
21 agreement arising out of, or in relation to, the operation
22 of a provision of Part 2 or 3 or Part 7 Division 3; and
- 23 (b) includes a dispute in connection with the applicable
24 agreement that arises because a person does, or omits to
25 do, an act in contravention of the provision.

26 (2) Despite subsection (1), *relevant dispute* does not include a
27 dispute that is of a class of dispute prescribed by regulations for
28 the purposes of this subsection.

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Division 2 — Applications for relief

2

45. Application for relief in relation to relevant dispute in respect of residential tenancy agreement

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If a relevant dispute has arisen in respect of a residential tenancy agreement —

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(a) a lessor or tenant under the agreement may apply for relief to a competent court under the *Residential Tenancies Act 1987* section 15(1) in relation to the relevant dispute as if that provision also referred to disputes arising in connection with a residential tenancy agreement; and

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(b) on such an application, the court may make an order under the *Residential Tenancies Act 1987* section 15(2) as if that provision also stated that the court may make any order that the court considers appropriate; and

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(c) the *Residential Tenancies Act 1987* section 15(3) applies to an order made under paragraph (b) that restrains or requires any action as if it were an order under section 15(2)(a) of that Act.

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Note for this section:

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See the *Residential Parks (Long-stay Tenants) Act 2006* Part 5 for applications in respect of long-stay agreements.

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46. Application for relief in relation to relevant dispute in respect of accommodation agreements

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(1) Where a resident or landlord under an accommodation agreement claims that a relevant dispute has arisen in respect of the agreement, the resident or landlord may apply for relief in relation to the relevant dispute to a competent court.

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(2) On an application under subsection (1) the court may make any order that the court considers appropriate.

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(3) The court may make an order under subsection (2) that restrains or requires any action notwithstanding that the order provides a

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- 1 remedy in the nature of an injunction or order for specific
2 performance in circumstances in which such remedy would not
3 otherwise be available.
- 4 (4) The court may order that a person be joined as a party to the
5 proceedings if the court considers that —
- 6 (a) the person ought to be bound by, or have the benefit of,
7 a decision of the court in the proceedings; or
- 8 (b) the person’s interests are affected by the proceedings; or
- 9 (c) for any other reason it is desirable that the person be
10 joined as a party.
- 11 (5) The court may make an order under subsection (4) on the
12 application of any person or on its own initiative.
- 13 (6) The *Residential Tenancies Act 1987* section 16(1) applies to an
14 order made under subsection (2) as if the order were an order
15 under section 15(2) of that Act.

16 **Division 3 — Mandatory conciliation**

17 **47. Conciliation process must occur before application for relief**

- 18 (1) In this section —
- 19 *relevant application* means —
- 20 (a) an application for relief in relation to a matter the
21 subject of a relevant dispute in respect of an applicable
22 agreement; or
- 23 (b) an application for a modification of the terms of an
24 applicable agreement that continues under section 12(2)
25 or 24(2);
- 26 *relevant relief* means any of the following —
- 27 (a) an order under the *Residential Tenancies Act 1987*
28 section 71AE (including as applied by section 30(1) of
29 this Act), section 71 (including as applied by section 38
30 of this Act), section 73 or 74;

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Division 3 Mandatory conciliation

s. 47

- 1 (b) an order under the *Residential Parks (Long-stay*
2 *Tenants) Act 2006* section 68, 71, 73 or 74B;
- 3 (c) an order under section 34 or 35.
- 4 (2) A person must not make a relevant application to a court or
5 tribunal unless and until a submission has been made about the
6 matter the subject of the relevant application and —
- 7 (a) the Commissioner has dismissed the submission; or
8 (b) the Commissioner has certified under section 56(2) that
9 no agreement has been reached in relation to the matter;
10 or
- 11 (c) both of the following apply —
- 12 (i) the Commissioner has certified under
13 section 56(4) that agreement has been reached in
14 relation to the matter;
- 15 (ii) an order has not been made under section 57(1)
16 because a party other than the person refuses to
17 consent to the making of the order.
- 18 (3) Subsection (2) does not apply to —
- 19 (a) an application for the purpose of enforcing an order
20 made under section 57(1); or
- 21 (b) an application for relevant relief that relates to the
22 termination of an applicable agreement, or a person's
23 interest in an applicable agreement, that is permitted
24 during the emergency period under Part 2 Division 2 or
25 Part 3 Division 2; or
- 26 (c) a relevant application that is of a class of relevant
27 applications prescribed by regulations for the purposes
28 of this paragraph.
- 29 (4) A failure to comply with subsection (2) does not affect the
30 validity of any direction or order made by a court or tribunal on
31 or in respect of a relevant application.

- 1 **48. Making submission to Commissioner**
- 2 (1) Subject to section 50(3), a party to an applicable agreement may
3 make a submission to the Commissioner about —
- 4 (a) a relevant dispute in respect of the applicable agreement;
5 or
- 6 (b) if the applicable agreement is one that continues under
7 section 12(2) or 24(2) — a modification of the terms of
8 the agreement; or
- 9 (c) being unable to agree on a rent repayment agreement in
10 respect of the applicable agreement under section 14(4)
11 or 26(4).
- 12 (2) A submission may be made irrespective of whether the event
13 giving rise to the submission occurred before or after the
14 coming into operation of this Part.
- 15 (3) A submission must be made in a manner and form approved by
16 the Commissioner.
- 17 **49. Time limit for submission**
- 18 A submission is made out of time if it is made —
- 19 (a) in the case of a submission referred to in
20 section 48(1)(a) — more than 6 months after the event
21 giving rise to the dispute the subject of the submission;
22 or
- 23 (b) in the case of a submission referred to in
24 section 48(1)(b) — more than 6 months after the day the
25 applicable agreement becomes an agreement for a
26 periodic tenancy under section 12(2) or 24(2), as
27 relevant; or
- 28 (c) in the case of a submission referred to in
29 section 48(1)(c) — more than 3 months after the end of
30 the emergency period.

1 **50. Withdrawal of submission**

2 (1) A submission may be withdrawn by the person who made the
3 submission.

4 (2) The submission may be withdrawn even though a conciliation
5 proceeding has commenced in respect of the submission.

6 (3) However, if a person withdraws a submission after a
7 conciliation proceeding has commenced in respect of the
8 submission, the person may not make another submission in
9 relation to the same matter.

10 (4) For the purposes of subsection (3), a conciliation proceeding has
11 commenced if the Commissioner has notified the parties that the
12 conciliation proceeding has commenced.

13 **51. Commissioner to dismiss or accept submission**

14 (1) After receiving a submission the Commissioner must either —

15 (a) dismiss the submission; or

16 (b) accept the submission and conduct a conciliation
17 proceeding under section 53(1).

18 (2) The Commissioner may make any inquiries the Commissioner
19 considers appropriate to enable the Commissioner to decide
20 what action to take under subsection (1).

21 (3) The Commissioner may dismiss the submission only if —

22 (a) the submission is not made in accordance with this Part;
23 or

24 (b) in the opinion of the Commissioner, the submission is
25 not about a matter referred to in section 48(1); or

26 (c) the submission is made out of time as referred to in
27 section 49; or

28 (d) in the opinion of the Commissioner, the submission is
29 vexatious, misconceived, frivolous or without substance;
30 or

- 1 (e) the matter the subject of the submission is the subject of
2 another submission; or
- 3 (f) an arbitrator or a court, or other person or body, has
4 made an order, judgment or other finding about the
5 matter the subject of the submission; or
- 6 (g) the matter the subject of the submission has been the
7 subject of a previous submission by the person, unless
8 the previous submission was withdrawn before a
9 conciliation proceeding in relation to the previous
10 submission commenced (within the meaning given in
11 section 50(4)); or
- 12 (h) the submission may be dismissed under section 52(3).

13 **52. Further information and verification**

- 14 (1) The Commissioner may, in writing, require a person making a
15 submission to do either or both of the following —
- 16 (a) give the Commissioner further details about the
17 submission;
- 18 (b) verify any details about the submission by statutory
19 declaration.
- 20 (2) The Commissioner must specify in the requirement a reasonable
21 time within which the person must comply with the
22 requirement.
- 23 (3) The Commissioner may dismiss a submission if the person
24 making the submission does not comply with a requirement
25 under subsection (1) within the time specified in the
26 requirement.

27 **Division 4 — Conciliation proceedings**

28 **53. Conciliation proceedings**

- 29 (1) If the Commissioner accepts a submission under
30 section 51(1)(b), the Commissioner must conduct a conciliation
31 proceeding in respect of the submission.

- 1 (2) The Commissioner’s function in conducting the conciliation
2 proceeding is to encourage the settlement of the matters the
3 subject of the submission and for that purpose the
4 Commissioner may —
- 5 (a) communicate with the parties by telephone, video link,
6 email or any other means the Commissioner considers
7 appropriate; and
- 8 (b) arrange for conferences with the parties about the
9 submission, including conferences by telephone, video
10 link or any other means the Commissioner considers
11 appropriate; and
- 12 (c) facilitate, participate in or manage those conferences;
13 and
- 14 (d) give advice and make recommendations to assist in the
15 reaching of an agreement.
- 16 (3) The Commissioner is to conduct the conciliation proceeding
17 with as little formality and technicality, and as speedily, as the
18 requirements of this Part and a proper conciliation of the matter
19 permit.
- 20 (4) A conciliation proceeding may be commenced with or without
21 the consent of the parties to the conciliation proceeding.

22 **54. Attendance at and participation in conciliation proceeding**

- 23 (1) The Commissioner may, by written notice, require a person to
24 participate in a conciliation proceeding if —
- 25 (a) the person is a party to the conciliation proceeding; or
26 (b) in the Commissioner’s opinion, the person’s
27 participation may help in the conciliation proceeding.
- 28 (2) The notice must specify the manner in which the person is
29 required to participate, which may include appearance in person
30 or by means of telephone, video link, email or any other means
31 the Commissioner considers appropriate.

1 (3) The Commissioner must withdraw a notice given under
2 subsection (1) if the submission the subject of the conciliation
3 proceeding is withdrawn.

4 (4) A person who has been given a notice under subsection (1) that
5 has not been withdrawn, must not, without reasonable excuse,
6 fail to comply with the notice.

7 Penalty for this subsection: a fine of \$5 000.

8 **55. Representation at conciliation proceeding**

9 (1) Except as provided in subsection (2), a party is not to be
10 represented or assisted by another person during a conciliation
11 proceeding.

12 (2) A party may be represented or assisted by another person (the
13 **representative**) who is not a legal practitioner if the
14 representative is authorised by the party to do so and —

15 (a) the party is not a natural person and the representative is
16 an officer, employee or agent of the party; or

17 (b) the representative is —

18 (i) the agent of the owner or landlord of the
19 premises the subject of the conciliation
20 proceeding; and

21 (ii) licensed under the *Real Estate and Business*
22 *Agents Act 1978*;

23 or

24 (c) the representative is a person employed or engaged by a
25 non-profit association or similar body to act as an
26 advocate for parties to applicable agreements; or

27 (d) the Commissioner is satisfied that —

28 (i) the party is unable to participate personally or is
29 unable to present their views on their own behalf;
30 and

1 (ii) another party to the conciliation proceeding
2 would not be disadvantaged by the representation
3 or assistance.

4 (3) Subsection (1) does not prevent the Commissioner from
5 permitting a person who is not a legal practitioner to participate
6 in a conciliation proceeding if, in the opinion of the
7 Commissioner, that person may help in the conciliation
8 proceeding.

9 **56. Completion of conciliation proceeding**

10 (1) This section applies if, in the opinion of the Commissioner, a
11 conciliation proceeding has concluded or there is no further
12 purpose in continuing with the conciliation proceeding.

13 (2) If the conciliation proceeding did not result in an agreement
14 between the parties on some or all of the matters the subject of
15 the proceeding, the Commissioner must certify that no
16 agreement has been reached on those matters.

17 (3) The Commissioner must not make a certification under
18 subsection (2) in relation to a matter if the submission about that
19 matter has been withdrawn.

20 (4) If the conciliation proceeding results in an agreement between
21 the parties on some or all of the matters the subject of the
22 proceeding, the Commissioner must certify that an agreement
23 has been reached on those matters.

24 (5) The Commissioner may certify that a party has not cooperated
25 with the conciliation proceeding if the Commissioner is satisfied
26 on reasonable grounds that this is the case.

27 **57. Commissioner must make order to give effect to agreement**
28 **reached during conciliation**

29 (1) If parties to a conciliation proceeding under this Part negotiate
30 an agreement, the Commissioner must, if each of those parties
31 consent, give effect to the agreement by order.

- 1 (2) An order made under subsection (1) is final and binding on
2 those parties.

3 **Division 5 — Miscellaneous**

4 **58. Evidence of certain things inadmissible**

- 5 (1) Evidence of anything lawfully said or done in the course of a
6 conciliation proceeding under this Part is not admissible in any
7 proceeding before a court, tribunal or other body unless
8 subsection (2) applies.

- 9 (2) Evidence referred to in subsection (1) is admissible in a
10 proceeding if —

- 11 (a) the parties to the conciliation proceeding consent to the
12 admission of the evidence; or
13 (b) there is a dispute in the proceeding as to whether, for the
14 purposes of section 57(1), the parties to the conciliation
15 proceeding negotiated an agreement or consented to an
16 order and the evidence is relevant to that dispute; or
17 (c) the proceeding is for the purpose of enforcing an order
18 made under section 57(1).

19 **59. Costs**

20 If a person makes a relevant application (as defined in
21 section 47(1)) to a competent court or tribunal in relation to a
22 matter that has been the subject of a conciliation proceeding
23 under this Part, the court or tribunal must, in considering
24 whether to make an order in relation to costs, have regard to any
25 certification made by the Commissioner under section 56(5).

26 **60. Delegation of powers and duties in relation to conciliation**

- 27 (1) The Commissioner may delegate any power or duty of the
28 Commissioner under this Part to a person —
29 (a) employed in the department of the Public Service
30 principally assisting in the administration of the *Fair*

Residential Tenancies (COVID-19 Response) Bill 2020

Part 4 Disputes

Division 5 Miscellaneous

s. 60

- 1 *Trading Act 2010* whose duties consist of or include
2 conducting conciliations under this Part; or
3 (b) who is approved by the Commissioner as a person who
4 may conduct conciliations under this Part.
- 5 (2) The *Fair Trading Act 2010* section 60(2) to (5) applies to a
6 delegation under subsection (1) as if it were a delegation under
7 section 60(1) of that Act.

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Part 5 — Miscellaneous

61. Regulations

The Governor may make regulations prescribing matters —
(a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for giving
effect to this Act.

62. Powers of investigation under Act

The *Fair Trading Act 2010* section 61 and Part 6 apply for the
purposes of this Act.

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Part 6 — Repeal

2

63. Repeal

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This Act is repealed at the end of the period of 12 months that begins on the day after the day on which the emergency period ends.

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Part 7 — Transitional provisions

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Division 1 — Preliminary

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64. Terms used

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In this Part —

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pre-assent emergency period means the period beginning on
30 March 2020 and ending immediately before assent day;

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7

specified day, in relation to a notice of termination, means the
day specified in the notice as the day on which possession of the
premises is to be delivered up by the tenant.

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Division 2 — Provisions about events occurring before assent day

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12

65. Termination notices given under tenancy Acts before 30 March 2020

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(1) This section applies if —

15

(a) before 30 March 2020, a person gave a notice of
termination under a tenancy Act in relation to a tenancy
agreement; and

16

17

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(b) the specified day in the notice of termination is during
the emergency period.

19

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(2) Despite Part 2 —

21

(a) the notice of termination has effect under the tenancy
Act; and

22

23

(b) the agreement may be terminated under the tenancy Act.

- 1 **66. Termination of tenancy agreements during pre-assent**
2 **emergency period under tenancy Acts**
- 3 (1) This section applies if during the pre-assent emergency period
4 either of the following occur (a *termination event*) —
- 5 (a) vacant possession of the premises the subject of a
6 tenancy agreement is given to the owner under a tenancy
7 Act;
- 8 (b) a court or Tribunal orders the termination of a tenancy
9 agreement under a tenancy Act.
- 10 (2) The tenancy Act applies in relation to the termination event
11 despite Part 2.
- 12 **67. Termination under accommodation agreement during**
13 **pre-assent emergency period**
- 14 If a landlord or resident terminated an accommodation
15 agreement in accordance with the agreement during the
16 pre-assent emergency period, Part 3 does not have effect in
17 relation to the termination.
- 18 **68. Status of termination notice under accommodation**
19 **agreement before 30 March 2020**
- 20 (1) This section applies if —
- 21 (a) an accommodation agreement requires notice to be
22 given before it can be terminated; and
- 23 (b) before 30 March 2020, the resident gives or is given
24 notice that the right of occupancy is to be terminated in
25 accordance with the accommodation agreement; and
- 26 (c) the termination is to take effect during the emergency
27 period.
- 28 (2) The termination of the resident’s right of occupancy takes effect
29 as if Part 3 were not enacted.

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Division 3 — Other transitional provisions

69. Mortgagee terminating tenancy agreements after emergency period

- (1) This section applies to a mortgagee who has taken possession of a property subject to a tenancy agreement under section 13.
- (2) The *Residential Tenancies Act 1987* sections 60(1)(e) and 81A apply as if the residential tenancy agreement is terminated under section 60(1)(e) of that Act on the day after the end of the emergency period.
- (3) The *Residential Parks (Long-stay Tenants) Act 2006* section 33(3)(c) applies as if the mortgagee took possession of the premises under the mortgage on the day after the end of the emergency period.

70. Effect of notices of termination given under tenancy Acts for termination after emergency period

A notice of termination of a tenancy agreement given under a tenancy Act during the emergency period takes effect on the specified day in the notice if that day is a day after the emergency period.

71. Effect of notices of termination given under tenancy Acts for termination during emergency period

- (1) This section applies if —
 - (a) a notice of termination of a tenancy agreement under a tenancy Act is given during the emergency period; and
 - (b) the specified day in the notice is a day during the emergency period; and
 - (c) the termination cannot occur during the emergency period because of Part 2 Division 2; and
 - (d) the termination does not occur under the *Residential Tenancies Act 1987* section 70A.

1 (2) The specified day in the notice of termination is taken to be the
2 day after the end of the emergency period.

3 **72. Effect of termination notice given under this Act that takes**
4 **effect after end of emergency period**

5 (1) This section applies if —

6 (a) a person has been given a notice of termination before
7 the end of the emergency period under —

8 (i) in relation to a tenancy agreement for a fixed
9 term — section 19(1); or

10 (ii) Part 3 Division 2;

11 and

12 (b) the specified day in the notice is a day after the end of
13 the emergency period.

14 (2) This Act applies in relation to the notice of termination and
15 termination of the agreement after the end of the emergency
16 period as if the termination occurred during the emergency
17 period.

18 **Division 4 — Transitional regulations**

19 **73. Transitional regulations**

20 (1) In this section —

21 ***publication day***, for transitional regulations, means the day on
22 which the transitional regulations are published in the *Gazette*;

23 ***specified***, in relation to transitional regulations, means specified
24 or described in the transitional regulations;

25 ***transitional matter*** —

26 (a) means a matter that needs to be dealt with for the
27 purposes of —

28 (i) effecting the transition to or from the provisions
29 of this Act or to or from the emergency period;
30 or

1 **Part 8 — Residential Tenancies Act 1987 amended**

2 **74. Act amended**

3 This Part amends the *Residential Tenancies Act 1987*.

4 **75. Section 82E amended**

5 After section 82E(1)(b) insert:

6

7 (ba) the breach does not consist of, or relate to —

8 (i) a failure by the person to pay rent
9 during the emergency period as defined
10 in the *Residential Tenancies (COVID-19*
11 *Response) Act 2020* section 4 due to
12 financial hardship caused by the
13 economic effects of the COVID-19
14 pandemic; or

15 (ii) any other matter relating to the effects
16 of the COVID-19 pandemic prescribed
17 by regulations;

18 and

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Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
30-day period	10(3)
accommodation agreement	3(1)
applicable agreement	43
assent day	2, 3(1)
boarder	3(1)
Commissioner	3(1)
emergency period	3(1), 4
expiry day	12(1), 24(1)
former agreement	10(1), 22(1)
landlord	3(1)
lodger	3(1)
long-stay agreement	3(1)
maintenance term	11(1)
new agreement	10(1), 22(1)
notice of increase of rent	8(1)
outstanding rent	15(1), 27(1)
owner	3(1)
party	43
pre-assent emergency period	64
publication day	73(1)
relevant application	47(1)
relevant dispute	43, 44(1), 44(2)
relevant relief	47(1)
rent default notice	14(1), 26(1)
rent repayment agreement	14(1), 26(1)
representative	55(2)
resident	3(1)
residential tenancy agreement	3(1)
specified	73(1)
specified day	64
submission	43
tenancy	3(1)
tenancy Act	3(1)
tenancy agreement	3(1)
tenant	3(1)
termination event	66(1)
transitional matter	73(1)
transitional regulations	73(1)