

WESTERN AUSTRALIA
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AMENDMENTS AND SCHEDULES
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Issue No. 1
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RESIDENTIAL TENANCIES (COVID-19 RESPONSE) BILL 2020 [187-1]

When in committee on the *Residential Tenancies (COVID-19 Response) Bill 2020*:

Clause 14

Hon Rick Mazza: To move –

1/14 Page 12, after line 25 — To insert:

- (1A) Prior to the entering into of a rent repayment agreement, the tenant must provide to the landlord or the landlord’s agent, a statutory declaration setting out the tenant’s personal financial hardship as a result of the COVID-19 pandemic.

Clause 16

Minister for Regional Development representing the Minister for Commerce: To move –

5/16 Page 14, line 24 — To delete “This” and insert:

- (1) Subject to subsection (2), this

Minister for Regional Development representing the Minister for Commerce: To move –

6/16 Page 14, after line 24 — To insert:

- (2) Section 18A applies during and after the emergency period.

New Clause 18A

Minister for Regional Development representing the Minister for Commerce: To move –

7/NC18A Page 15, after line 22 — To insert:

18A. Termination of tenancy agreement in relation to failure to pay rent during emergency period

(1) In this section —

deciding entity means —

- (a) for a long-stay agreement — the State Administrative Tribunal; or
- (b) for a residential tenancy agreement — a competent court;

remedial period means the 60-day period beginning on the day on which the owner gives the tenant the remedial notice;

rent repayment agreement has the meaning given in section 14(1).

(2) This section applies if —

- (a) a tenant fails to pay rent, in accordance with a tenancy agreement, due during the emergency period; and
- (b) the tenant's failure to pay rent is not due to financial hardship caused by the economic effects of the COVID-19 pandemic.

(3) The owner may give the tenant a written notice (the *remedial notice*) stating that —

- (a) the tenant has failed to pay the rent in accordance with the tenancy agreement; and
- (b) the owner offers to enter into a rent repayment agreement in relation to the rent; and
- (c) the tenancy agreement may be terminated under this section if the tenant fails to pay the rent, and refuses to enter into a rent repayment agreement in relation to the rent, during the 60-day period beginning on the day on which the owner gives the tenant the remedial notice.

(4) Subsection (5) applies if the tenant unreasonably —

- (a) fails to pay the rent during the remedial period; and
- (b) refuses to enter into a rent repayment agreement in relation to the rent during the remedial period.

(5) After the end of the remedial period, the owner may apply to a deciding entity for —

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

(6) However, the owner cannot apply to a deciding entity under subsection (5) on or after the day on which Part 4 Divisions 3, 4 and 5 come into operation under section 2(c) unless —

- (a) the owner has made a submission to the Commissioner under section 48(1) in relation to the failure to pay the rent; and
- (b) the Commissioner has certified —
 - (i) under section 56(2) that no agreement has been reached in relation to the failure to pay the rent; and
 - (ii) under section 56(5) that the tenant has not cooperated with the conciliation proceeding.

- (7) On an application under subsection (5), a deciding entity may make an order terminating the tenancy agreement if the deciding entity considers that —
- (a) the preconditions set out in subsections (2) to (6) for the making of the application have been met; and
 - (b) the making of the order is justified in the circumstances.
- (8) If the deciding entity makes the order under subsection (7), the deciding entity —
- (a) must also make an order for possession of the residential premises the subject of the tenancy agreement; and
 - (b) may make such ancillary or incidental orders as the deciding entity considers appropriate.
- (9) The *Residential Tenancies Act 1987* section 71(3) to (6) applies to an application and order made under this section with all necessary modifications, including as if a reference in those provisions to —
- (a) the court were a reference to the deciding entity; and
 - (b) section 71(2) were a reference to subsections (7) and (8) of this section; and
 - (c) a lessor were, in relation to a long-stay agreement, a reference to a park operator; and
 - (d) a tenant were, in relation to a long-stay agreement, a reference to a long-stay tenant; and
 - (e) a notice were a reference to the remedial notice; and
 - (f) a notice given by the lessor upon the ground referred to in section 69 were a reference to the remedial notice.

Clause 19

Hon Rick Mazza:

2/19 Page 15, line 23 to page 16, line 17 — To oppose the clause.

Minister for Regional Development representing the Minister for Commerce: To move –

11/19 Page 16, lines 10 and 11 — To delete “A notice of termination given under subsection (1)(a) by a tenant in relation to a tenancy agreement for a fixed term may” and insert:

If a tenant in relation to a tenancy agreement for a fixed term suffers financial hardship caused by the economic effects of the COVID 19 pandemic, a notice of termination given under subsection (1)(a) by the tenant may

New Clause 19A

Hon Rick Mazza: To move –

3/NC19A Page 16, after line 17 — To insert:

19A. Termination of tenant’s fixed term interest by court on grounds of financial hardship

- (1) Despite any other provision of this Act or another written law, or a requirement under a contract, a court may make an order terminating a tenant’s fixed term

interest in a residential tenancy agreement if it is satisfied that the tenant is experiencing personal financial hardship as a result of the COVID-19 pandemic.

- (2) Despite any other provision of this Act or another written law, or a requirement under a contract, the State Administrative Tribunal may make an order terminating a tenant's fixed term interest in a long-stay agreement if it is satisfied that the tenant is experiencing personal financial hardship as a result of the COVID-19 pandemic.
- (3) An order referred to in subsection (1) and (2) —
 - (a) can only be made on an application by the tenant; and
 - (b) takes effect on a day specified in the order, being a day that is not less than 7 days and not more than 30 days after the order is made.

Clause 28

Minister for Regional Development representing the Minister for Commerce: To move –

8/28 Page 24, line 6 — To insert after “Sections”:

30A,

New Clause 30A

Minister for Regional Development representing the Minister for Commerce: To move –

9/NC30A Page 25, after line 22 — To insert:

30A. Termination of accommodation agreement in relation to failure to pay rent during emergency period

- (1) In this section —

remedial period means the 60-day period beginning on the day on which the landlord gives the resident the remedial notice;

rent repayment agreement has the meaning given in section 26(1).
- (2) This section applies if —
 - (a) a resident fails to pay rent, in accordance with an accommodation agreement, due during the emergency period; and
 - (b) the resident's failure to pay rent is not due to financial hardship caused by the economic effects of the COVID-19 pandemic.
- (3) The landlord may give the resident a written notice (the *remedial notice*) stating that —
 - (a) the resident has failed to pay the rent in accordance with the accommodation agreement; and
 - (b) the landlord offers to enter into a rent repayment agreement in relation to the rent; and
 - (c) the accommodation agreement may be terminated under this section if the resident fails to pay the rent, and refuses to enter into a rent repayment agreement in relation to the rent, during the 60-day period beginning on the day on which the landlord gives the resident the remedial notice.

- (4) Subsection (5) applies if the resident unreasonably —
 - (a) fails to pay the rent during the remedial period; and
 - (b) refuses to enter into a rent repayment agreement in relation to the rent during the remedial period.
- (5) After the end of the remedial period, the landlord may apply to a competent court for —
 - (a) an order terminating the accommodation agreement; and
 - (b) an order for possession of the residential premises the subject of the accommodation agreement.
- (6) However, the landlord cannot apply to a competent court under subsection (5) on or after the day on which Part 4 Divisions 3, 4 and 5 come into operation under section 2(c) unless —
 - (a) the landlord has made a submission to the Commissioner under section 48(1) in relation to the failure to pay the rent; and
 - (b) the Commissioner has certified —
 - (i) under section 56(2) that no agreement has been reached in relation to the failure to pay the rent; and
 - (ii) under section 56(5) that the resident has not cooperated with the conciliation proceeding.
- (7) On an application under subsection (5), a competent court may make an order terminating the accommodation agreement if the competent court considers that —
 - (a) the preconditions set out in subsections (2) to (6) for the making of the application have been met; and
 - (b) the making of the order is justified in the circumstances.
- (8) If the competent court makes the order under subsection (7), the competent court —
 - (a) must also make an order for possession of the residential premises the subject of the accommodation agreement; and
 - (b) may make such ancillary or incidental orders as the competent court considers appropriate.
- (9) The *Residential Tenancies Act 1987* section 71(3) to (6) applies to an application and order made under this section with all necessary modifications, including as if a reference in those provisions to —
 - (a) section 71(2) were a reference to subsections (7) and (8) of this section; and
 - (b) a lessor were a reference to a landlord; and
 - (c) a tenant were a reference to a resident; and
 - (d) a notice were a reference to the remedial notice; and
 - (e) a notice given by the lessor upon the ground referred to in section 69 were a reference to the remedial notice.

Clause 31

Minister for Regional Development representing the Minister for Commerce: To move –

12/31 Page 26, lines 4 to 7 — To delete the lines and insert:

- (2) If a resident in relation to an accommodation agreement for a fixed term suffers financial hardship caused by the economic effects of the COVID-19 pandemic, a notice of termination given under subsection (1)(a) by the resident may specify a day earlier than the last day of the term as the day on which the agreement is terminated.

Clause 45

Minister for Regional Development representing the Minister for Commerce: To move –

13/45 Page 34, lines 4 and 5 — To delete the lines and insert:

If a relevant dispute has arisen in respect of a residential tenancy agreement, or a person has failed to comply with an order made in connection with a residential tenancy agreement under section 57(1) —

Minister for Regional Development representing the Minister for Commerce: To move –

14/45 Page 34, line 9 — To insert after “relevant dispute”:

or failure

Clause 46

Minister for Regional Development representing the Minister for Commerce: To move –

15/46 Page 34, line 27 — To insert after “the agreement,”:

or that a person has failed to comply with an order made in connection with the agreement under section 57(1),

Minister for Regional Development representing the Minister for Commerce: To move –

16/46 Page 34, line 28 — To insert after “relevant dispute”:

or failure

Clause 47

Minister for Regional Development representing the Minister for Commerce: To move –

17/47 Page 36, line 19 — To delete “for the purpose of enforcing” and insert:

in relation to a failure by a person to comply with

Minister for Regional Development representing the Minister for Commerce: To move –

10/47 Page 36, after line 25 — To insert:

- (ba) an application under section 18A(5) or 30A(5); or

Clause 53

Hon Rick Mazza: To move –

4/53 Page 39, after line 31 — To insert:

- (1A) Prior to the conduct of a conciliation under subsection (1) the tenant must provide to the landlord or the landlord’s agent a statutory declaration setting out the tenant’s personal financial hardship as a result of the COVID-19 pandemic.
- (1B) The failure of the tenant to provide a statutory declaration as described in subsection (1A) is to be considered non-cooperation for the purposes of section 56(5).

Clause 58

Minister for Regional Development representing the Minister for Commerce: To move –

18/58 Page 43, line 17 — To delete “for the purpose of enforcing” and insert:

in relation to a failure by a person to comply with

