

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

### Explanatory Memorandum

The Residential Tenancies (Covid-19 Response) Bill 2020 (the Bill) provides for an Act to implement the decision of National Cabinet on 29 March 2020 to place a moratorium on evictions in response to COVID-19 and to facilitate better public health outcomes by reducing the risk of eviction of tenants at a time when the health advice is recommending that people stay at home. Most importantly, the Bill is seeking to stabilise the rental market during this extraordinary time.

The Bill regulates residential tenancy agreements, long-stay agreements in residential parks and the accommodation agreements for boarders and lodgers. The Bill also modifies the operation of the *Residential Tenancies Act 1987 (WA)* and the *Residential Parks (Long-stay Tenants) Act 2006 (WA)*. The Bill's provisions will apply during the emergency period, initially set at six months.

In order to ensure efficient and effective dispute resolution during the emergency period, the Bill also outlines a new dispute resolution procedure. The Bill provides a mandatory conciliation step in the dispute resolution process, with the potential to provide binding resolution of a significant percentage of disputes. This conciliation process would act as a buffer and filter between complainants and the Magistrates Court and the State Administrative Tribunal (SAT) protecting the Magistrates Court and SAT from being overwhelmed by dispute applications. The Magistrates Court and SAT will be retained as the decision making bodies for disputes incapable of being resolved through conciliation.

In summary, and in addition to a moratorium on evictions, the Bill provides for the following outcomes during the emergency period:

- that rents shall not be increased during the emergency period to ensure that tenants are not constructively evicted from premises through landlords seeking to price them out of the premises;
- that landlords and park operators are relieved of their obligation to perform ordinary repairs during the emergency period if the reason they cannot do so is COVID-19 related financial hardship or a direction given under either the *Emergency Management Act 2005 (WA)* or the *Public Health Act 2016 (WA)*;
- that fixed term agreements due to expire during the emergency period will automatically continue as periodic agreements;
- that if premises are repossessed during the emergency period, the tenancy continues and the mortgagee or other person with superior title becomes the landlord;
- when and how default notices can be given for non-payment of rent, failing to enter into an agreement for the repayment of rent or failing to maintain an agreement for the repayment of rent; and
- when and how agreements can be terminated;
- the new dispute resolution process; and

- transitional provisions to respond to issues transitioning into the emergency period as well as allowing for the transition out of the emergency period.

<b>Clause 1</b>	<b>Short Title</b>
	The Act will be called the <i>Residential tenancies (COVID-19 Response) Act 2020</i>
<b>Clause 2</b>	<b>Commencement</b>
	<p>This clause provides that sections 1 and 2 of the Act will commence on Royal Assent. Sections 25 and 42 the day after assent.</p> <p>Sections 14(3)(b), (4) to (7) and 26(3)(b) and (4) to (7) and Part 4 Divisions 3, 4 and 5 will commence on a day to be fixed by proclamation. These provisions relate to the new dispute resolution process and will enable commencement once the procedures of the process are established.</p> <p>The balance of the provisions are deemed to have commenced on 30 March 2020.</p>
<b>Clause 3</b>	<b>Terms used</b>
	<p>Clause 3 contains the following definitions:</p> <p><b>accommodation agreement:</b> This term means a residential tenancy agreement that grants a right to occupy to a boarder or lodger, a residential tenancy agreement prescribed, or of a class of residential tenancy agreement prescribed, by regulations for the purposes of this paragraph;</p> <p><b>assent day:</b> has the meaning given in section 2(a);</p> <p><b>boarder:</b> This term means a boarder as referred to in section 5(2)(d) of the <i>Residential Tenancies Act 1987</i>;</p> <p><b>Commissioner:</b> This term means the person designated as the Commissioner under the <i>Fair Trading Act 2010</i> section 55.</p> <p><b>emergency period:</b> This term is defined in section 4 of the Act, commencing on 30 March 2020 and ending either on 28 September 2020 or another date to be prescribed in regulation;</p> <p><b>landlord:</b> This term means a person who grants a right of occupancy under an accommodation agreement. The term also includes a personal representative, successor or assignee of a landlord, and if the context requires, a prospective or former landlord;</p>

**lodger:** This term means a lodger as referred to in section 5(2)(d) of the *Residential Tenancies Act 1987*;

**long-stay agreement:** This term means a long-stay agreement to which the *Residential Parks (Long-stay Tenants) Act 2006* applies;

**owner:** This term means a park operator in the context of a long-stay agreement and a lessor in the context of a residential tenancy agreement.

**resident:** This term means a person, including a boarder or lodger, who is granted a right of occupancy under an accommodation agreement and includes, if the context requires, a prospective or former resident;

**residential tenancy agreement:** This term means a residential tenancy agreement to which the *Residential Tenancies Act 1987* applies;

**tenancy:** This term means a tenancy under a long-stay agreement or a right of occupancy under a residential tenancy agreement;

**tenancy Act:** This term means the *Residential Parks (Long-stay Tenants) Act 2006* or the *Residential Tenancies Act 1987*, depending on the context;

**tenancy agreement:** This term means a long-stay agreement or residential tenancy agreement;

**tenant:** This term means a long-stay tenant within the meaning of the *Residential Parks (Long-stay Tenants) Act 2006* or a tenant within the meaning of the *Residential Tenancies Act 1987*.

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

Further it provides that terms used in this Act (other than to the extent to which this Act relates solely to the *Residential Tenancies Act 1987* and also in the *Residential Parks (Long-stay Tenants) Act 2006*) have the same meaning in this Act as they have in that Act unless the contrary intention appears.

<b>Clause 4</b>	<b>Term used: emergency period</b>
	Clause 4 defines the emergency period as the period commencing on 30 March 2020 and ending either on a day prescribed in the regulations or if a date is not prescribed prior to 29 September 2020, then the emergency period ends on 29 September 2020.
<b>Clause 5</b>	<b>Relationship of Act to other Acts</b>
	<p>Clause 5 provides that this Act, other than to the extent that it relates solely to the <i>Residential Parks (Long-stay Tenants) Act 2006</i> is to be read with the <i>Residential Tenancies Act 1987</i> as if they were a single Act.</p> <p>Likewise, this Act, other than to the extent to which it relates solely to the <i>Residential Tenancies Act 1987</i>, is to be read with the <i>Residential Parks (Long-stay Tenants) Act 2006</i> as if they were a single Act.</p>
<b>Clause 6</b>	<b>Act binds Crown</b>
	Clause 6 provides that this Act binds the Crown.
<b>Clause 7</b>	<b>Act prevails over agreements and particular Acts</b>
	<p>Clause 7 provides that where there is an inconsistency, this Act prevails over:</p> <ul style="list-style-type: none"> <li>• the provisions of the <i>Residential Parks (Long-stay Tenants) Act 2006</i> and the <i>Residential Tenancies Act 1987</i>; and</li> <li>• except for the provisions of Part 2 — the terms of an accommodation agreement; and</li> <li>• except for the provisions of Part 3 — the terms of a tenancy agreement.</li> </ul>
	<b>Part 2 -Tenancy agreements</b>
	<b>Division 1 - Provisions affecting tenancy agreements (other than termination)</b>
<b>Clause 8</b>	<b>Rent not to increase during the emergency period</b>
	<p>This clause defines a notice of rent increase, in relation to a tenancy agreement, which means:</p> <p>in relation to a residential tenancy agreement — a notice of increase of rent given under the <i>Residential Tenancies Act 1987</i> section 30; or</p> <p>in relation to a long-stay agreement — a notice of increase of rent given under the <i>Residential Parks (Long-stay Tenants) Act 2006</i> section 30.</p>

	<p>This clause also provides that rent payable under a tenancy agreement cannot be increased during the emergency period and that any increase during the emergency period is of no effect.</p> <p>If a notice of rent increase is given either before, on or after 30 March 2020 when the emergency period commences, and the date in the notice that the rent is intended to increase falls on a day in the emergency period, this clause deems that the notice instead specifies the day after the end of the emergency period and the tenant is not required to pay the rent increase until that date.</p> <p>This clause clarifies that the restriction on rent increases during the emergency period does not apply to an agreement between the parties to a residential tenancy agreement to temporarily reduce the rent payable due to financial hardship caused by the economic effects of the COVID-19 pandemic and the parties further agree, during the emergency period, to raise the rent to an amount that is not more than the rent payable before the parties agreed to the temporary reduction.</p> <p>If the parties to a residential tenancy agreement did agree to temporarily reduce the rent and subsequently agree to increase the rent in circumstances described above, this clause clarifies that a notice of rent increase is not required to be given.</p>
<b>Clause 9</b>	<b>Delayed effect of variation of rent calculated by reference to tenant's income under Residential Tenancies Act 1987 s.31A</b>
	<p>This clause provides that if a notice of change to the method of calculating rent by reference to a person's income is given under section 31A of the <i>Residential Tenancies Act 1987</i> and the notice specifies a date during the emergency period as a date that the increase in rent is due to take effect, the date of effect is taken to be the day after the day on which the emergency period ends. Until this day, a tenant cannot be required to pay rent in accordance with the new method of calculation of the rent.</p>
<b>Clause 10</b>	<b>Rent cannot increase after renegotiation of lease during emergency period</b>
	<p>This clause provides that if a fixed term agreement ends during the emergency period and the parties enter into a new fixed term agreement in relation to the same premises, the tenant cannot be required to pay an amount of rent that is greater than the amount that was payable under the former agreement.</p> <p>Clause 10(4) applies section 31B of the Residential Tenancies Act 1987 to that part of the 30 day notice period that falls after the end of the emergency period. The result is that the tenant cannot be required to pay the increased rent for a total 30 day</p>

	notice period – but part of the notice period may fall within the emergency period.
<b>Clause 11</b>	<b>Owner not required to maintain and repair under tenancy agreement if unable to do so during emergency period</b>
	<p>This clause provides that an owner does not have to comply with an obligation under the relevant Act or a long-stay agreement to repair and maintain the premises if the owner is unable to do so because of financial hardship caused by the economic effects of the COVID-19 pandemic or because of a direction given under the <i>Emergency Management Act 2005</i> or the <i>Public Health Act 2016</i>.</p> <p>This clause also clarifies that the modification does not apply to an owner's duty to perform urgent repairs under section 43 of the <i>Residential Tenancies Act 1987</i>, an owner's duty to give compensation to a tenant who has paid for repairs in accordance with Schedule 1 clause 8 of the <i>Residential Parks (Long-stay Tenants) Act 2006</i> or a park operator's duty in relation to urgent repairs if the state of disrepair has arisen otherwise than as a result of a breach of a long-stay agreement by the tenant and is likely to cause injury to a person or property or undue inconvenience to the tenant.</p>
<b>Clause 12</b>	<b>Fixed-term tenancy ending during emergency period to continue as periodic tenancy</b>
	<p>This clause provides that if a fixed term tenancy agreement is due to expire during the emergency period and if the parties have not entered into another fixed term agreement, the agreement is deemed to continue as a periodic agreement.</p> <p>Termination of the periodic agreement can be in accordance with Division 2 of this Part of the Bill during the emergency period or in accordance with the Act that applies to the agreement after the emergency period.</p> <p>This clause provides that an agreement that continues as a periodic agreement shall continue on the same terms as applied under the fixed term agreement. However, a party to the agreement can apply to either the court or the State Administrative Tribunal (SAT) for modification of the terms of the agreement. The clause confirms that the court or SAT cannot increase the rent payable under the agreement during the emergency period.</p> <p>The clause also confirms that if a court or SAT is making an order modifying the terms of the agreement, the order may be backdated to the day after the expiry of the fixed term agreement, even if the court or SAT makes its order after the emergency period.</p>

	<p>This clause confirms that section 70A of the <i>Residential Tenancies Act 1987</i>, which ordinarily allows a party to a fixed term tenancy agreement to give notice of intention not to renew the agreement, does not apply during the emergency period.</p> <p>This clause also confirms that section 76C(2) of the <i>Residential Tenancies Act 1987</i> does not apply to agreements extended under sub-clause (2). The provisions of the Bill will replace the operation of section 76C(2) during the emergency period.</p>
<b>Clause 13</b>	<b>Repossession of property during emergency period subject to tenancy agreement</b>
	<p>This clause provides that a person with superior title or a mortgagee who becomes entitled to take possession of the premises during the emergency period is bound by the terms of the agreement as if the person with superior title or the mortgagee were a lessor or park operator who had entered into the agreement.</p>
<b>Clause 14</b>	<b>Giving default notices under tenancy Acts for failure to pay rent during emergency period</b>
	<p>This clause defines the following terms:</p> <p><b>rent default notice:</b> This term means a notice of breach of the agreement given under section 62 of the <i>Residential Tenancies Act 1987</i> or a termination notice or default notice given under section 39 of the <i>Residential Parks (Long-stay Tenants) Act 2006</i>.</p> <p><b>rent repayment agreement:</b> This term means an agreement, whether it is in writing or not, that is made between a tenant and an owner about any rent that is not paid in accordance with the tenancy agreement during the emergency period that sets out how some or all of the rent that has not been paid will be paid to the owner.</p> <p>This provision applies if a tenant fails to pay rent in accordance with a tenancy agreement due during the emergency period.</p> <p>This clause confirms that an owner cannot give a tenant a rent default notice unless:</p> <ul style="list-style-type: none"> <li>• the parties entered into a rent repayment agreement, but the tenant has subsequently failed to make payments in accordance with that agreement; or</li> <li>• the parties have not entered into a rent repayment agreement because either the Commissioner has dismissed an application for conciliation; the Commissioner has certified that agreement could not be reached and the tenant has not cooperated with the conciliation; the Commissioner has certified that</li> </ul>

	<p>agreement has not been reached but that it is not because the tenant has acted unreasonably.</p> <p>This clause provides that if the parties cannot agree on a rent repayment agreement, they can attend conciliation under the dispute resolution provisions outlined in Part 4 of the Act.</p> <p>If the parties have engaged in conciliation under Part 4 and the Commissioner has dismissed the conciliation submission or the parties cannot agree on a rent repayment agreement (except in circumstances where the tenant has not cooperated with the conciliation process), the owner may give, on the day that is 3 months after the end of the emergency period, a rent default notice in relation to the tenant's failure to pay rent due during the emergency period.</p> <p>The owner cannot give a rent default notice to a tenant if the Commissioner has certified that no agreement has been reached and that the owner has not cooperated with the conciliation process.</p>
<b>Clause 15</b>	<b>Recovery of interest on rent not paid under tenancy agreements during emergency period prohibited</b>
	This clause provides that an owner cannot recover interest from a tenant in respect of unpaid rent due during the emergency period. Notwithstanding the operation of any law to the contrary, a court or tribunal cannot order the payment of interest.
	<b>Division 2 - Provisions affecting termination of tenancy agreements during emergency period</b>
<b>Clause 16</b>	<b>Application of Division</b>
	This clause provides that Division 2 of Part 2 applies during the emergency period.
<b>Clause 17</b>	<b>Termination of tenancy agreements during emergency period to be in accordance with Division</b>
	<p>This clause that, during the emergency period, a tenancy agreement, or a person's interest in a tenancy agreement, can only be terminated in accordance with Division 2 and not otherwise.</p> <p>The clause confirms that Division 2 of this Act applies despite section 60(1) of the <i>Residential Tenancies Act 1987</i> or section 33 of the <i>Residential Parks (Long-stay Tenants) Act 2006</i>.</p> <p>This clause confirms that section 60(2) of the <i>Residential Tenancies Act 1987</i> and section 33(2C) of the <i>Residential Parks (Long-stay Tenants) Act 2006</i> continue to apply during the emergency period. These respective provisions provide that</p>

	termination of a person's interest in the agreement does not terminate the whole agreement.
<b>Clause 18</b>	<b>Termination of tenancy agreements arising out of family violence</b>
	This clause confirms that during the emergency period a person's interest in a tenancy agreement may be terminated on the grounds of family violence in accordance with sections 60(1)(ba), (bb) or (bc) of the <i>Residential Tenancies Act 1987</i> or sections 32(2A), (2B) or section 74B of the <i>Residential Parks (Long-stay Tenants) Act 2006</i> .
<b>Clause 19</b>	<b>Termination without specifying grounds</b>
	<p>This clause provides that a tenant may terminate either a periodic agreement or a fixed term agreement by giving the owner 21 days' notice of termination and giving the owner vacant possession of the premises.</p> <p>This clause also confirms that if a tenant terminates a fixed term tenancy agreement prior to its end date, the owner is not entitled to compensation for loss arising from the tenant terminating the agreement early.</p>
<b>Clause 20</b>	<b>Termination in other cases</b>
	<p>This clause sets out the other circumstances under which a residential tenancy agreement can be terminated under this Act. These are:</p> <ul style="list-style-type: none"> <li>• if a notice of termination is given under section 69 of the <i>Residential Tenancies Act 1987</i> relating to frustration of the agreement; or</li> <li>• notice of termination is given to the tenant under section 63 of the <i>Residential Tenancies Act 1987</i> upon sale of the premises; or</li> <li>• one of the following occurs – the tenant abandons the premises; the lessor and tenant agree in writing to terminate the agreement and the tenant gives vacant possession; all tenants die; or</li> <li>• a court makes an order terminating the tenancy agreement under section 73 of the <i>Residential Tenancies Act 1987</i> on the ground the tenant is causing serious injury or harm; or section 74 of the <i>Residential Tenancies Act 1987</i> on the grounds the lessor or tenant is suffering undue hardship.</li> </ul>
	<b>Part 3 - Accommodation agreements</b>
	<b>Division 1 - Provisions affecting accommodation agreements (other than in relation to termination)</b>
<b>Clause 21</b>	<b>Rent cannot increase during emergency period</b>
	This clause provides that rent payable under an accommodation agreement cannot be increased during the

	<p>emergency period and that any increase during the emergency period is of no effect.</p> <p>If a notice of rent increase is given either before, on or after 30 March 2020 when the emergency period commences, and the date in the notice that the rent is intended to increase falls on a day in the emergency period, this clause deems that the notice instead specifies a day that is the day after the end of the emergency period and the tenant is not required to pay the rent increase until that date.</p> <p>This clause clarifies that the restriction on rent increases during the emergency period does not apply to an agreement between the parties to an accommodation agreement to temporarily reduce the rent payable due to financial hardship caused by the economic effects of the COVID-19 pandemic and the parties further agree, during the emergency period, to raise the rent to an amount that is not more than the rent payable before the parties agreed to the temporary reduction.</p>
<b>Clause 22</b>	<b>Rent cannot increase after renegotiating of lease during emergency period</b>
	<p>This clause provides that if a fixed term accommodation agreement ends during the emergency period and the parties enter into a new fixed term accommodation agreement in relation to the same premises, the tenant cannot be required to pay an amount of rent that is greater than the amount that was payable under the former agreement.</p>
<b>Clause 23</b>	<b>Landlord not required to maintain and repair if unable to do so during emergency period</b>
	<p>This clause provides that it applies of a term of the accommodation agreement requires the landlord to maintain the residential premises the subject of the agreement or to carry out repairs to the premises.</p> <p>This clause provides that a landlord does not have to comply with an obligation under the accommodation agreement to repair and maintain the premises if the landlord is unable to do so because of financial hardship caused by the economic effects of the COVID-19 pandemic or because of a direction given under the <i>Emergency Management Act 2005</i> or the <i>Public Health Act 2016</i>.</p> <p>This clause also clarifies that the modification does not apply to an owner's duty to perform urgent repairs that are equivalent to the duties of a landlord under section 43 of the <i>Residential Tenancies Act 1987</i>.</p>
<b>Clause 24</b>	<b>Fixed-term tenancy ending during emergency period to continue as periodic tenancy</b>
	<p>This clause provides that if a fixed term accommodation agreement is due to expire during the emergency period and if</p>

	<p>the parties have not entered into another fixed term agreement, the agreement is deemed to continue as a periodic agreement.</p> <p>Termination of the periodic agreement can be in accordance with Division 2 of this Part during the emergency period or in accordance with the agreement after the emergency period.</p> <p>This clause provides that an agreement that continues as a periodic agreement shall continue on the same terms as applied under the fixed term agreement. However, a party to the agreement can apply to the court for modification of the terms of the agreement, although the court cannot make an order increasing the rent payable during the emergency period.</p> <p>The clause also confirms that if a court is making an order modifying the terms of the agreement, the order may be backdated to the day after the expiry of the fixed term agreement, even if the court makes its order after the emergency period.</p>
<b>Clause 25</b>	<b>Recovery of possession prohibited except in particular circumstances</b>
	<p>This provision applies to the part of the emergency period that occurs after assent day.</p> <p>The clause provides that a person must not enter the premises for the purposes of recovering possession of the premises, or part of the premises, from the resident unless the person has a right to possess the premises under an accommodation agreement or the person enters in accordance with a court order.</p> <p>This clause creates a penalty for failing to comply with this provision. The penalty is a fine of up to \$20 000.</p>
<b>Clause 26</b>	<b>Giving rent default notices for failing to pay rent during the emergency period</b>
	<p>This clause defines the following terms:</p> <p><b>rent default notice:</b> This term means a notice in writing stating that:</p> <ul style="list-style-type: none"> <li>• the resident has failed to pay rent in accordance with a term of the accommodation agreement; and</li> <li>• specifying payment of the rent is required within a period of at least 14 days; and</li> <li>• failure to pay the rent in accordance with the notice is grounds for giving a termination notice under section 34 of this Act that terminates the agreement after the emergency period.</li> </ul>

	<p><b>rent repayment agreement:</b> This term means an agreement, whether or not in writing, made between a landlord and resident about rent not paid during the emergency period and setting out how part or all of the rent will be repaid to the landlord.</p> <p>This clause confirms that landlord cannot give a resident a rent default notice unless:</p> <ul style="list-style-type: none"> <li>• the parties have not entered into a rent repayment agreement because the resident has acted unreasonably in refusing to enter into the agreement; or</li> <li>• the parties entered into a rent repayment agreement, but the resident has subsequently failed to make payments in accordance with that agreement; or</li> <li>• the landlord gives a notice in accordance subsection (5).</li> </ul> <p>This clause provides that if the parties cannot agree on a rent repayment agreement, they can attend conciliation under the dispute resolution provisions outlined in Part 4 of the Act.</p> <p>If the parties have engaged in conciliation under Part 4 and cannot agree on a rent repayment agreement, the landlord may give, on the day that is 3 months after the end of the emergency period, a rent default notice in relation to a resident's failure to pay rent during the emergency period.</p> <p>This clause outlines that a person is acting unreasonably in relation to refusing to enter into a rent repayment agreement if the person:</p> <ul style="list-style-type: none"> <li>• does not make reasonable attempts to enter into a rent repayment agreement; or</li> <li>• refuses to participate in conciliation under Part 4; or</li> <li>• does not make reasonable attempts while engaging in conciliation under Part 4 to enter into a rent repayment agreement.</li> </ul>
<b>Clause 27</b>	<b>Recovery of interest on rent not paid under accommodation agreements during emergency period prohibited</b>
	This clause provides that an owner cannot recover interest from a resident in respect of unpaid rent due during the emergency period. Notwithstanding the operation of any law to the contrary, a court or tribunal cannot order the payment of interest.
	<b>Division 2 - Provisions affecting termination of accommodation agreements during emergency period</b>

<b>Clause 28</b>	<b>Application of the Division</b>
	This clause provides that Division 2 applies during the emergency period. Clauses 36 and 38 continue to apply after the emergency period.
<b>Clause 29</b>	<b>Termination of accommodation agreements during emergency period to be in accordance with Division</b>
	This clause provides that an accommodation agreement, or a person's interest in an accommodation agreement, cannot terminate or be terminated except in accordance with this Division during the emergency period.
<b>Clause 30</b>	<b>Termination of interest in accommodation agreement arising from family violence</b>
	<p>This clause has the effect of applying sections 71AB to 71AE of the <i>Residential Tenancies Act 1987</i> to an accommodation agreement under this Act as if a reference in those provisions to a tenant were a reference to a resident under this Act and a reference to a lessor were a reference to a landlord under this Act.</p> <p>This has the effect of allowing a resident who is a party to an accommodation agreement to terminate their own interest in an accommodation agreement if they have been or are likely to be subjected to family violence or to apply to the court to terminate the interest of another resident who is the perpetrator of family violence.</p>
<b>Clause 31</b>	<b>Termination without specifying grounds</b>
	This clause provides that a resident may terminate either a periodic agreement or a fixed term agreement by giving the landlord 7 days' notice of termination and giving the landlord vacant possession of the premises. A landlord is not entitled to compensation for loss, including loss of rent.
<b>Clause 32</b>	<b>Termination if accommodation agreement is frustrated</b>
	<p>This clause sets out that an accommodation agreement may be terminated during the emergency period if the following occurs:</p> <p>the residential premises, or a part of the premises, the subject of the agreement —</p> <ul style="list-style-type: none"> <li>• are destroyed or rendered uninhabitable; or</li> <li>• cease to be lawfully usable as a residence; or</li> <li>• are appropriated or acquired by any authority by compulsory process.</li> </ul> <p>In these circumstances the agreement can be terminated if either the resident gives the landlord at least 2 days' notice of termination of the agreement or the landlord gives the resident at least 7 days' notice of termination of the agreement, and either the resident gives the landlord vacant possession of the</p>

	premises or the court makes an order terminating the agreement.
<b>Clause 33</b>	<b>Termination in other circumstances</b>
	<p>This clause provides that an accommodation agreement is terminated if:</p> <ul style="list-style-type: none"> <li>• a resident abandons the premises; or</li> <li>• the resident vacates the premises under an agreement in writing between the resident and landlord to terminate the agreement; or</li> <li>• every resident who is a party to the agreement dies; or</li> <li>• a court makes an order under section 34 or 35 of this Act.</li> </ul>
<b>Clause 34</b>	<b>Competent court may terminate agreement if resident causing serious damage or injury</b>
	<p>This clause provides that a landlord may apply to a court to terminate an accommodation agreement if the resident has intentionally or recklessly caused or permitted, or is likely to intentionally or recklessly cause or permit:</p> <ul style="list-style-type: none"> <li>• serious damage to the residential premises the subject of the agreement; or</li> <li>• serious damage to a common area or chattels in the common area; or</li> <li>• injury to: <ul style="list-style-type: none"> <li>○ the landlord; or</li> <li>○ the property manager of the premises; or</li> <li>○ any person in occupation of or permitted on adjacent premises.</li> </ul> </li> </ul> <p>If a court is satisfied that a resident is causing serious damage or injury, the court may make an order terminating the accommodation agreement. If the court makes an order terminating the agreement, the court must make an order for possession of the premises.</p>
<b>Clause 35</b>	<b>Competent court may terminate agreement because of undue hardship</b>
	<p>This clause allows a landlord or resident to apply to a court to terminate an accommodation agreement on the ground that they would suffer undue hardship if the agreement were not terminated.</p> <p>If the court makes an order under this clause it must make an order for possession and must specify the date that possession of the premises is to take effect. The court is also empowered to make other orders as the court considers appropriate, including in relation to compensation of the resident or landlord for any loss caused by termination of the agreement.</p>

<b>Clause 36</b>	<b>Termination at the end of emergency period for non-compliance with rent default notice</b>
	<p>This clause provides that if a landlord gives a resident a rent default notice and the resident does not comply with the default notice, the agreement terminates if:</p> <ul style="list-style-type: none"> <li>• the landlord gives the resident a notice of termination specifying a date of termination that is after the emergency period and is at least 14 days after the notice of termination is given; and</li> <li>• the resident gives the landlord vacant possession of the premises; or</li> <li>• a court, upon application by the landlord, makes an order terminating the agreement under this Act.</li> </ul>
<b>Clause 37</b>	<b>Requirement for notice of termination given under Division</b>
	<p>This clause provides that a notice of termination of an accommodation agreement under this Division must:</p> <ul style="list-style-type: none"> <li>• be in writing; and</li> <li>• be signed by the person giving the notice; and</li> <li>• identify the residential premises; and</li> <li>• state the day on which the agreement, or the resident's interest in the agreement, is to terminate.</li> </ul>
<b>Clause 38</b>	<b>Application of <i>Residential Tenancies Act 1987</i> s. 71 to termination notice given under s. 32 and 36</b>
	<p>This clause provides that if a landlord has given a resident a notice of termination under section 32 or 36 of this Act and the resident has not delivered up vacant possession of the premises, the landlord may apply to a competent court under section 71 of the <i>Residential Tenancies Act 1987</i> for an order terminating the accommodation agreement and an order for possession as though the accommodation agreement were a residential tenancy agreement, a landlord was a lessor and a resident were a tenant.</p>
	<b>Division 3 – Administration of Part</b>
<b>Clause 39</b>	<b>Recovery of amounts paid in contravention of section 21</b>
	<p>This clause provides that if a resident under an accommodation agreement pays to a landlord in contravention of section 21, the resident may apply to the court to recover the amount from the landlord or deduct the amount payable under the accommodation agreement.</p>
<b>Clause 40</b>	<b>Application of the <i>Residential Tenancies Act 1987</i> s.17A and 17B to this Part</b>
	<p>This clause applies sections 17A and 17B of the <i>Residential Tenancies Act 1987</i> as if a reference in those provisions to —</p>

	<ul style="list-style-type: none"> <li>• a residential tenancy agreement were a reference to an accommodation agreement; and</li> <li>• a tenant were a reference to a resident; and</li> <li>• a lessor were a reference to a landlord; and</li> <li>• a reference to section 60(1)(ba) or (bb) were a reference to section 30(2)(a) or (b) of this Act; and</li> <li>• a reference to section 71AE(3) were a reference to section 71AE(3) as applied by section 30(1) of this Act.</li> </ul>
<b>Clause 41</b>	<b>Commissioner's functions under this Part</b>
	<p>This clause provides that the Commissioner has the following functions for the purposes of this Part of this Act in relation to accommodation agreements:</p> <ul style="list-style-type: none"> <li>• investigating and conducting research into matters relating to the interests of parties to accommodation agreements;</li> <li>• publishing reports and disseminating information on matters relating to the interests of parties to accommodation agreements;</li> <li>• investigating, whether upon the complaint of a party to an accommodation agreement or otherwise, a contravention of a provision of this Part or an infringement of a party's rights under an accommodation agreement;</li> <li>• taking action based on an investigation conducted under paragraph (c), including — <ul style="list-style-type: none"> <li>○ negotiating over the matter investigated;</li> <li>○ or prosecuting an offence;</li> </ul> </li> <li>• giving advice or information to persons about the provisions of this Part or any other law affecting the rights of the parties to an accommodation agreement.</li> </ul>
<b>Clause 42</b>	<b>Issuing infringement notices in relation to offence under s. 25</b>
	This clause allows for an infringement notice to be issued for a breach of section 24 of this Act and that the modified penalty for this breach is \$4 000.
	<b>Part 4 - Disputes</b>
	<b>Division 1 - Preliminary</b>
<b>Clause 43</b>	<b>Terms Used</b>
	<p>Clause 43 contains the following definitions</p> <p><b>applicable agreement</b> is defined to include:</p> <ul style="list-style-type: none"> <li>(a) a long-stay agreement</li> <li>(b) a residential tenancy agreement</li> <li>(c) an accommodation agreement</li> </ul>

	<p>Each of these agreements are defined in clause 3 of the Bill.</p> <p>The purpose of including the term “applicable agreement”, as defined, in this Part is to ensure that the dispute resolution process set out in the Part will apply to each of these three particular agreements.</p> <p><b>party</b> to a conciliation proceeding under this Part in relation to an “applicable agreement” is defined to mean all of the parties to the “applicable agreement”.</p> <p><b>relevant dispute</b> is defined in clause 44.</p> <p><b>submission</b> is defined to include part of a submission. Parties must make a “submission” to the Commissioner to commence a conciliation process under clause 48 of the Bill and this definition is intended to make clear that a submission may be dealt with in whole or in part, particularly where a submission relates to several different matters in dispute.</p>
<b>Clause 44</b>	<b>Term used: relevant dispute</b>
	<p>Clause 44(1) defines the term “relevant dispute” as used in Part 4.</p> <p>This term is used in this Part to capture the disputes under the Bill that will be subject to the dispute resolution process set out in this Part, in particular, those disputes that will be required to be attempted to be settled through conciliation by the Commissioner.</p> <p>A dispute will be a “relevant dispute” in relation to an “applicable agreement” if it is a dispute arising out of, or in relation to, the operation of a provision in Part 2, Part 3 or Part 7 Division 3 of the Bill and includes disputes in connection with the “applicable agreement” arising out of a person doing or omitting to do an act that contravenes any of those provisions.</p> <p>Clause 44(2) provides that the Regulations made under the Bill may prescribe a dispute or class of disputes that will not be captured by the term “relevant dispute”.</p>
<b>Clause 45</b>	<p><b>Division 2 – Applications for relief</b></p> <p><b>Application for relief in relation to relevant dispute in respect of a residential tenancy agreement</b></p>
	<p>Clause 45(a) provides that if a relevant dispute has arisen in respect of a residential tenancy agreement under the Bill, a lessor or tenant may apply to a competent court under section 15(1) of the <i>Residential Tenancies Act 1987 (WA)</i>.</p> <p>Clause 45(b) provides that upon receiving such an application, the court can make an order under section 15(2) of the <i>Residential Tenancies Act 1987 (WA)</i>.</p>

	<p>Clause 45(c) provides that section 15(3) of the <i>Residential Tenancies Act 1987 (WA)</i> applies to an order made in relation to such an application as if it were an order under section 15(2)(a) of the <i>Residential Tenancies Act 1987 (WA)</i>. This means that the court may make an order providing a remedy in the nature of an injunction or order for specific performance even where such a remedy would not otherwise be available.</p> <p>The purpose of this clause is to ensure that section 15 of the <i>Residential Tenancies Act 1987 (WA)</i> is wide enough to allow a person to apply to the Magistrates Court (or other competent court) in relation to a “relevant dispute”.</p> <p>A similar provision is not required in relation to relevant disputes involving long-stay agreements and applications to the State Administrative Tribunal because section 62 of the <i>Residential Parks (Long-stay Tenants) Act 2006 (WA)</i> is wide enough in scope to provide the State Administrative Tribunal with the necessary jurisdiction.</p> <p>The right to apply to court for relief is subject to the limitation set out in clause 47.</p>
<p><b>Clause 46</b></p>	<p><b>Application for relief in relation to relevant dispute in respect of accommodation agreements</b></p>
	<p>Clause 46(1) sets out the rights of residents or landlords under accommodation agreements, as defined in the Bill, to apply to a competent court for relief in the case of a dispute.</p> <p>Clause 46(2) provides that upon an application for relief, the court may make any order the court considers appropriate.</p> <p>Clause 46(3) provides that the court can make an order in the nature of an injunction or order for specific performance even where such order would not otherwise be available.</p> <p>Clause 46(4) provides that the court may order that a person be joined as a party to the proceedings in a range of circumstances.</p> <p>Clause 46(5) provides that the court may make an order that a person be joined as a party to proceedings on the application of any person on its own initiative.</p> <p>Clause 46(6) provides that section 16(1) of the <i>Residential Tenancies Act 1987 (WA)</i>, which imposes a fine of \$10,000 for failure to comply without reasonable excuse with an order under section 15(2) of that Act, applies to an order under clause 46(2), as if the order under clause 46(2) were an order under section 15(2) of the <i>Residential Tenancies Act 1987 (WA)</i>.</p> <p>This clause creates a stand-alone right to go to the Magistrates Court in relation to “relevant disputes” about accommodation agreements (but not in relation to accommodation agreements generally). This clause is required because section 15 of the</p>

	<p><i>Residential Tenancies Act 1987 (WA)</i> is limited in its terms to residential tenancy agreements.</p> <p>The remaining provisions of Part III of the <i>Residential Tenancies Act 1987 (WA)</i> will apply to an application to the Magistrates Court under this clause by virtue of clause 5 of the Bill, which provides that this Bill is to be read with the <i>Residential Tenancies Act 1987 (WA)</i> as if the two were a single Act.</p> <p>The right to apply to court for relief is subject to the limitation set out in clause 47.</p>
<b>Clause 47</b>	<p><b>Division 3 – Mandatory conciliation</b></p> <p><b>Conciliation process must occur before application for relief</b></p>
	<p>Clause 47(1) defines the terms “relevant application” and “relevant relief” for the purposes of the clause.</p> <p>“Relevant application” means an application for relief in relation to a matter that is the subject of a “relevant dispute” (defined in clause 44) in respect of an “applicable agreement” (defined in clause 43) or a modification of the terms of an applicable agreement to which clause 12(2) or 24(2) apply.</p> <p>“Relevant relief” is defined to mean specific orders under the <i>Residential Tenancies Act 1987 (WA)</i> and the <i>Residential Parks (Long-stay Tenants) Act 2006 (WA)</i>, as well as orders under clause 34 or 35 of the Bill.</p> <p>Clause 47(2) provides that a person must not make a “relevant application” to a court or tribunal for relief unless and until a submission has been made to the Commissioner under clause 48(1) and either the Commissioner has:</p> <ul style="list-style-type: none"> <li>(a) dismissed the submission;</li> <li>(b) certified under clause 56(2) that no agreement has been reached in relation to the matter; or</li> <li>(c) certified under clause 56(4) that an agreement has been reached but a party other than the person seeking relief from the court or tribunal has refused to give consent to an order.</li> </ul> <p>These provisions together establish the basis for the new mandatory conciliation process to be undertaken before any person can apply to a court or tribunal for relief in relation to a relevant matter.</p> <p>Clause 47(3) provides that the restriction on applying for relief from a court or tribunal does not apply for the purpose of</p>

	<p>seeking to enforce an order under clause 57(1) (which relates to a binding order made by the Commissioner with the consent of the parties at the conclusion of a conciliation); to an application for relevant relief relating to the termination of an applicable agreement that is permitted during the emergency period under Part 2 Division 2 or Part 3 Division 2 of the Bill; or to a relevant application or class of relevant applications prescribed in Regulations.</p> <p>Clause 47(4) provides that a failure by a person to comply with clause 47(2) will not affect the validity of any direction or order made by a court or tribunal on a relevant application by that person.</p>
<b>Clause 48</b>	<b>Making submission to Commissioner</b>
	<p>Clause 48 sets out the process for lodging a submission with the Commissioner to commence the conciliation process.</p> <p>Clause 48(1) provides that, subject to clause 50(3) (which relates to the consequences for withdrawing a submission) a party to an applicable agreement can make a submission to the Commissioner about:</p> <ul style="list-style-type: none"> <li>(a) a relevant dispute in respect to the applicable agreement;</li> <li>(b) a modification of the terms of the agreement where clause 12(2) or 24(2) apply; or</li> <li>(c) being unable to agree on a rent repayment agreement in respect of the applicable agreement under clause 14(4) or 26(4).</li> </ul> <p>Clause 48(2) makes clear that a submission can be made in accordance with this provision where the event giving rise to the submission occurred before this Part of the Bill came into operation.</p> <p>Clause 48(3) provides that a submission must be in the manner and form approved by the Commissioner. There is no provision for a fee to be charged for lodging a submission. Clause 53(3) requires the Commissioner to conduct conciliation proceedings with as little formality and as speedily as possible. Consistent with this obligation, it is intended that the form for a submission will be as simple as possible and be able to be lodged through a variety of means, including online.</p>
<b>Clause 49</b>	<b>Time limit for submission</b>
	<p>This clause sets out the time limits within which a submission must be made to the Commissioner.</p> <p>There are three separate time limits provided for.</p> <p>If the submission relates to a “relevant dispute” in respect of an “applicable agreement”, the submission must be lodged not more than 6 months after the event giving rise to the dispute (see clause 48(1)(a)).</p>

	<p>If the submission relates to the modification of the terms of an “applicable agreement” under clause 12(2) or 24(2), the submission must be lodged not more than 6 months after the day the “applicable agreement” became a periodic tenancy under those clauses (see clause 48(1)(b)).</p> <p>If the submission relates to parties being unable to agree on a rent repayment agreement under clause 14(4) or 26(4), the submission must be lodged not more than 3 months after the end of the emergency period (see clause 48(1)(c))</p> <p>If a submission is made to the Commissioner out of time, the Commissioner will have a discretion to dismiss the submission and not undertake a conciliation (see clause 51(3)(c)).</p> <p>Where the Commissioner dismisses a submission for being out of time, the person making the submission will be able to proceed to make an application to the court or the State Administrative Tribunal, as relevant (see clause 47(2)(a)).</p>
<b>Clause 50</b>	<b>Withdrawal of submission</b>
	<p>Clause 50(1) provides that a person who makes a submission to the Commissioner may withdraw that submission.</p> <p>Clause 50(2) provides that a submission to the Commissioner may be withdrawn even though conciliation proceedings have commenced.</p> <p>Clause 50(3) provides that if a person withdraws their submission to the Commissioner after conciliation proceedings have commenced the person may not remake that submission.</p> <p>This clause is intended to prevent persons trying to subvert the conciliation process or causing unnecessary delay by submitting, withdrawing and then subsequently submitting one or more versions of the submission.</p> <p>Where one party to an applicable agreement withdraws a submission made to the Commissioner after conciliation proceedings have commenced, this clause does not prevent another party to that applicable agreement lodging a submission with the Commissioner about the same matter.</p> <p>Clause 50(4) provides that a conciliation proceeding will have commenced when the Commissioner has notified the parties that it has commenced. This provision will require the Commissioner to issue a notice to each of the parties to a matter that is the subject of a submission under clause 48 when the conciliation proceedings have commenced.</p>
<b>Clause 51</b>	<b>Commissioner to dismiss or accept submission</b>
	<p>Clause 51(1) provides that after receiving a submission to commence a conciliation process the Commissioner must either</p>

	<p>dismiss the submission or accept it and conduct a conciliation in accordance with clause 53.</p> <p>Clause 51(2) empowers the Commissioner to make any inquiries considered appropriate in order to decide whether to dismiss or accept a submission.</p> <p>Clause 51(3) sets out the only grounds on which the Commissioner may dismiss a submission. These grounds are that:</p> <p>(a) the submission is not made in accordance with Part 4;</p> <p>(b) in the Commissioner’s opinion the submission is not about a matter referred to in clause 48(1);</p> <p>(c) the submission is made outside of time limits set in clause 49;</p> <p>(d) in the Commissioner’s opinion, the submission is vexatious, misconceived, frivolous or without substance;</p> <p>(e) the matter covered in the submission is the subject of another submission;</p> <p>(f) an arbitrator, court or other person or body has made an order, judgment or finding about the matter covered in the submission; or</p> <p>(g) the matter covered in the submission has been the subject of a previous submission by the person unless that previous submission was withdrawn before conciliation proceedings commenced.</p> <p>(h) clause 52(3) applies.</p>
<b>Clause 52</b>	<b>Further information and verification</b>
	<p>Clause 52(1) empowers the Commissioner to require, in writing, a person making a submission to give the Commissioner further details about the submission or to verify any details in the submission by statutory declaration.</p> <p>Clause 52(2) provides that a requirement issued under clause 52(1) must specify a reasonable time within which the person must comply.</p> <p>Clause 52(3) provides that if the person making a submission doesn’t comply with a requirement issued under clause 52(1) within the specified time, the Commissioner may dismiss the submission.</p>
<b>Clause 53</b>	<b>Division 4 - Conciliation proceedings</b> <b>Conciliation proceedings</b>
	<p>Clause 53(1) provides that if the Commissioner accepts a submission under clause 51(1) the Commissioner must conduct a conciliation in respect of the submission.</p>

	<p>Clause 53(2) provides that in conducting a conciliation it is the Commissioners' function to encourage the settlement of the matters being conciliated. To that end, the Commissioner is empowered to:</p> <ul style="list-style-type: none"> <li>(a) communicate with parties by a variety of means;</li> <li>(b) arrange for conferences with the parties by a variety of means;</li> <li>(c) facilitate, participate in and manage any conferences arranged; and</li> <li>(d) give advice and make recommendations to assist the parties to reach agreement.</li> </ul> <p>Clause 53(3) requires the Commissioner to conduct conciliation proceedings with as little formality and technicality, and as speedily, as possible within the requirements of the Part and what is required to ensure a proper conciliation.</p> <p>These provisions will enable conciliations to be conducted with regard to restrictions imposed to manage COVID-19 in the community. While the option of physical meetings and conferences is retained, it is the intention that the majority of conciliations will be conducted utilising telephone and online technologies.</p> <p>Clause 53(4) provides that the Commissioner may commence a conciliation with or without the consent of the parties. This provision is intended to prevent a party from frustrating the conciliation process by not consenting to participate in that process. This provision is supported by the requirements set out in clause 54.</p>
<b>Clause 54</b>	<b>Attendance at and participation in conciliation proceeding</b>
	<p>Clause 54(1) provides that the Commissioner may issue a written notice requiring a person to participate in a conciliation proceeding where that person is a party to the conciliation proceeding or, in the Commissioner's opinion, the person's participation may help in the conciliation proceeding.</p> <p>Clause 54(2) provides that any notice issued by the Commissioner under clause 54(1) must specify the manner in which the person is required to participate in a conciliation proceeding. The Commissioner may require participation by a variety of means, including telephone, video or email. The option of requiring attendance in person is also available to the Commissioner. However, having regard to restrictions imposed to manage COVID-19 in the community, it is the intention that the majority of conciliations will be conducted utilising telephone and online technologies.</p> <p>Clause 54(3) provides that the Commissioner must withdraw a notice requiring a person to participate issued under clause 54(1)</p>

	<p>where the submission giving rise to the conciliation proceeding has been withdrawn.</p> <p>Clause 54(4) provides that where a notice to participate in a conciliation proceeding has been issued by the Commissioner under clause 54(1), and not withdrawn under clause 54(3), there will be a fine of \$5,000 if a person the subject of the notice does not, without a reasonable excuse, comply with the notice.</p> <p>This provision is intended to support the conciliation process by ensuring that all persons relevant to a conciliation proceeding do participate in that proceeding.</p> <p>This provision, including the level of the fine, is consistent with a similar provision in section 25 of the <i>Building Services (Complaint Resolution and Administration) Act 2011 (WA)</i> relating to failure to attend a conciliation process under that Act.</p>
<b>Clause 55</b>	<b>Representation at conciliation proceeding</b>
	<p>Clause 55(1) provides that, as a general rule, a party is not to be represented by or assisted by another person during a conciliation. In particular, this provision is intended to exclude legal representation from the conciliation process. This is consistent with clause 53(3), which requires the Commissioner to conduct conciliation proceedings with as little formality and technicality as possible.</p> <p>Clause 55(2) sets out exceptions to the general rule in clause 55(1) and provides that parties may be represented or assisted by a person whom they authorise and who is not a legal practitioner where:</p> <p>(a) The party is not a natural person and the other person is an officer, employee or agent of the party.</p> <p>This provision would enable a company that owns premises the subject of a conciliation proceeding to be represented in a conciliation by its management, staff or other agent.</p> <p>(b) The other person is an agent of the owner or landlord of the premises that are the subject of the conciliation and the agent is licensed under the <i>Real Estate and Business Agents Act 1978 (WA)</i>.</p> <p>This provision would enable any owner or landlord of premises the subject of a conciliation proceeding to be represented in a conciliation by the property manager of those premises, as long as the property manager is duly licensed.</p> <p>(c) The other person is employed or engaged by a non-profit association or similar body to act as an advocate for parties to “applicable agreements”.</p>

	<p>This provision would enable tenants, in particular, involved in a conciliation proceeding to be represented by a tenancy advocacy body.</p> <p>(d) The Commissioner is satisfied that a party is unable to participate personally in a conciliation or is unable to present their views on their own behalf and no other party to the proceedings would be disadvantaged.</p> <p>This provision would enable the Commissioner to ensure that a party to a conciliation proceeding can have their views adequately represented where they are either physically remote or where they might suffer from some disability.</p> <p>Clause 55(3) provides the Commissioner with a general discretion to permit any person who is not a legal practitioner to participate in a conciliation proceeding where that person's participation may help the conciliation proceeding.</p>
<b>Clause 56</b>	<b>Completion of conciliation proceeding</b>
	<p>Clause 56(1) provides that a conciliation process will be concluded where, in the opinion of the Commissioner, it is concluded or there is no further purpose in continuing with the conciliation process.</p> <p>Clause 56(2) provides that if the conciliation proceeding did not result in an agreement between the parties on some or all of the matters the subject of the conciliation then the Commissioner must certify that no agreement has been reached on those matters.</p> <p>Clause 56(3) provides that the Commissioner cannot make a certification under clause 56(1) if the relevant submission has been withdrawn.</p> <p>Clause 56(4) provides that where the conciliation proceedings results in an agreement between parties on some or all of the matters being conciliated the Commissioner must certify that an agreement has been reached on those matters.</p> <p>Clause 56(5) provides that where the Commissioner is satisfied on reasonable grounds that a party has not cooperated with the conciliation proceeding, the Commissioner may certify that fact.</p> <p>This provision is one of a number of provisions intended to support the conciliation proceedings and encourage parties to cooperate with the process. Action by the Commissioner under this provision will be relevant to the awarding of costs where the matter proceeds to a court or the State Administrative Tribunal (see clause 59).</p>

<b>Clause 57</b>	<b>Commissioner must make order to give effect to agreement reached during conciliation</b>
	<p>Clause 57(1) provides that, if the parties to conciliation proceedings negotiate an agreement and the parties consent to the Commissioner giving effect to that agreement by issuing an order, the Commissioner must issue such an order. This provision does not give the Commissioner a discretion to decline to issue an order where the parties have reached agreement and have consented to an order being issued.</p> <p>Clause 57(2) provides that an order issued by the Commissioner under clause 57(1) will be final and binding on the parties to the order.</p>
<b>Clause 58</b>	<b>Division 5 - Miscellaneous</b>
	<b>Evidence of certain things inadmissible</b>
	<p>Clause 58(1) provides that, as a general rule, evidence of anything lawfully said or done in the course of a conciliation proceeding will not be admissible in any proceeding before a court, tribunal or other body.</p> <p>Clause 58(2) provides exceptions to the general rule in clause 58(1). Evidence referred to in clause 58(1) is admissible in another proceeding before a court, tribunal or other body if:</p> <p>(a) the parties to the conciliation proceeding consent;</p> <p>(b) there is a dispute as to whether, for the purpose of clause 57, the parties negotiated an agreement or consented to an order being issued by the Commissioner and the evidence is relevant to that dispute; or</p> <p>(c) the proceeding is for the purpose of enforcing an order made under clause 57(1).</p>
<b>Clause 59</b>	<b>Costs</b>
	<p>Clause 59 provides that if a person makes a relevant application as defined in clause 47(1) to a court or tribunal about a matter that has been the subject of conciliation, the court or tribunal must, when considering whether to make an order in relation to costs, have regard to any certification by the Commissioner under clause 56(5) that a party has not cooperated with the conciliation proceeding.</p> <p>While this clause will make certification by the Commissioner under clause 56(5) relevant to decisions about the awarding of costs by a court or the State Administrative Tribunal, it will not remove the discretion of the court or the State Administrative Tribunal to award costs.</p>
<b>Clause 60</b>	<b>Delegation of powers and duties in relation to conciliation</b>
	<p>Clause 60(1) provides that the Commissioner may delegate any of their powers and duties under this Part to either:</p>

	<p>(a) a public service officer employed in the Department of Mines, Industry Regulation and Safety (which is the department principally assisting in the administration of the <i>Fair Trading Act 2010 (WA)</i>); or</p> <p>(b) a person approved by the Commissioner as a person who can undertake conciliations.</p> <p>This clause will permit the Commissioner to engage persons on contract to undertake conciliations. However, it is intended that, as far as is possible, having regard to available expertise and resources, that conciliations will be undertaken by public service officers.</p> <p>Clause 60(2) provides that sections 60(2) to 60(5) of the <i>Fair Trading Act 2010 (WA)</i>, which set out requirements that apply to a delegation under that Act, will apply to a delegation under clause 60(1) as if that delegation was a delegation under section 60(1) of the <i>Fair Trading Act 2010 (WA)</i>.</p>
	<b>Part 5 - Miscellaneous</b>
<b>Clause 61</b>	<b>Regulations</b>
	This clause provides for the Governor to make regulations for this Act.
<b>Clause 62</b>	<b>Powers of Investigation under Act</b>
	This clause provides that section 61 and Part 6 of the <i>Fair Trading Act 2010</i> apply to provide powers of investigation.
	<b>Part 6 - Repeal</b>
<b>Clause 63</b>	<b>Repeal</b>
	This clause provides that the Act will be repealed 12 months after the end of the emergency period.
	<b>Part 7 - Transitional provisions</b>
	<b>Division 1 - Preliminary</b>
<b>Clause 64</b>	<b>Terms used</b>
	<p>This clause defines the following terms:</p> <p><b>pre-assent emergency period:</b> This means the period commencing on 30 March 2020 and ending immediately before assent day;</p> <p><b>specified day:</b> This term means, 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.</p>
	<b>Division 2 - Application of Acts to events occurring before assent day</b>
<b>Clause 65</b>	<b>Termination notices given under tenancy Acts before 30 March 2020</b>

	This clause provides that if a notice of termination was given before 30 March 2020, even if the specified day occurs during the emergency period, the termination of the agreement is valid and may proceed.
<b>Clause 66</b>	<b>Termination of tenancy agreements during pre-assent emergency period under tenancy Acts</b>
	This clause provides that if, during the pre-assent emergency period, vacant possession of the premises was given to the owner of the premises or a court ordered the termination of the tenancy agreement, that termination is taken to have occurred and the relevant tenancy Act continues to apply to that termination.
<b>Clause 67</b>	<b>Termination under accommodation agreement during pre-assent emergency period</b>
	This clause provides that if a landlord or resident terminated an accommodation agreement during the pre-assent emergency period, Part 3 of this Act does not apply to that termination.
<b>Clause 68</b>	<b>Status of termination notice under accommodation agreement before 30 March 2020</b>
	<p>This clause provides that if:</p> <ul style="list-style-type: none"> <li>• an accommodation agreement requires notice to be given before it can be terminated; and</li> <li>• before 30 March 2020, the resident is given notice that the right of occupancy is to be terminated in accordance with the accommodation agreement; and</li> <li>• the termination is to take effect during the part of the emergency period that occurs after assent day;</li> </ul> <p>The termination of the resident's right of occupancy takes effect during the emergency period as if Part 3 were not enacted.</p>
	<b>Division 3 – Other transitional provisions</b>
<b>Clause 69</b>	<b>Mortgagee terminating tenancy agreements after emergency period</b>
	<p>This clause provides that this provision applies to a mortgagee who has taken possession of a property subject to the residential tenancy agreement under section 13 of this Act.</p> <p>The <i>Residential Tenancies Act 1987</i> 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. This has the effect that a mortgagee can only issue the tenant a notice to vacate the premises under section 81A from the day after the last day of the emergency period.</p> <p>The Residential Parks (Long-stay Tenants) Act 2006 section 33(3)(c) applies as if the mortgagee took possession of the</p>

	premises under the mortgage on the day after the end of the emergency period.
<b>Clause 70</b>	<b>Effect of notices of termination given under tenancy Acts for termination after emergency period</b>
	This clause provides that a notice of termination of a tenancy agreement given under a tenancy Act during the emergency period takes effect on the day stated in the notice if the specified day in the notice of termination is a day after the emergency period and section 14 of this Act does not apply to the notice.
<b>Clause 71</b>	<b>Effect of notices of termination given under tenancy Acts for termination during emergency period</b>
	<p>This clause provides that if a notice of termination is given and:</p> <ul style="list-style-type: none"> <li>• the specified day in the notice is a day during the emergency period; and</li> <li>• the termination cannot occur during the emergency period because of the operation of this Act; and</li> <li>• the notice of termination does not occur under – <ul style="list-style-type: none"> <li>○ the Residential Parks (Long-stay Tenants) Act 2006 section 41; or</li> <li>○ the Residential Tenancies Act 1987 sections 63 and 70A;</li> </ul> </li> </ul> <p>then the specified day in the notice is taken to be the day after the end of the emergency period.</p>
<b>Clause 72</b>	<b>Effect of termination notice given under this Act that takes effect after end of emergency period</b>
	This clause provides that if a notice of termination of termination is given in accordance with this Act and the specified day is a date after the emergency period, this Act continues to apply to the notice of termination and the termination of the agreement as if the termination occurred during the emergency period.
	<b>Division 4 - Transitional regulations</b>
<b>Clause 73</b>	<b>Transitional regulations</b>
	<p>This clause provides that if there is not sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required, or necessary or convenient, to be prescribed for dealing with the matter.</p> <p>Transitional regulations may provide that specified provisions of a written law —</p> <ul style="list-style-type: none"> <li>• do not apply to or in relation to a specified matter; or</li> </ul>

	<ul style="list-style-type: none"> <li>• apply with specified modifications to or in relation to any matter.</li> </ul> <p>If transitional regulations provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than publication day but not earlier than 30 March 2020, the transitional regulations have effect according to their terms.</p> <p>If transitional regulations contain a provision referred to in subsection (4), the provision does not operate so as to —</p> <ul style="list-style-type: none"> <li>• affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before publication day; or</li> <li>• impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before publication day.</li> </ul>
<b>Clause 74</b>	<p><b>Part 8 - Residential Tenancies Act 1987 amended</b></p> <p><b>Act amended</b></p>
	<p>This clause provides that Part 7 of this Act amends the <i>Residential Tenancies Act 1987</i>.</p>
<b>Clause 75</b>	<p><b>Section 82E(1)(b) amended</b></p>
	<p>This clause provides that a person cannot be listed on a tenancy database for reason of a failure by the person to pay rent during the emergency period as defined in the <i>Residential Tenancies (COVID-19 Response) Act 2020</i> section 4 due to financial hardship caused by the economic effects of the COVID-19 pandemic or any other matter, relating to the effects of the COVID-19 pandemic, prescribed by the regulations.</p>