



Western Australia

Residential Tenancies (COVID-19 Response) Act 2020

As at 23 Apr 2020

No. 18 of 2020
Published on www.legislation.wa.gov.au

Residential Tenancies (COVID-19 Response) Act 2020

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Terms used	2
4.	Term used: emergency period	4
5.	Relationship of Act to other Acts	5
6.	Act binds Crown	5
7.	Act prevails over agreements and particular Acts	5

Part 2 — Tenancy agreements

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

8.	Rent cannot increase during emergency period	6
9.	Delayed effect of variation of rent calculated by reference to tenant's income under <i>Residential Tenancies Act 1987</i> s. 31A	7
10.	Rent cannot increase after renegotiation of lease during emergency period	8
11.	Owner not required to maintain and repair under tenancy agreement if unable to do so during emergency period	9
12.	Fixed-term tenancy ending during emergency period to continue as periodic tenancy	10
13.	Repossession of property during emergency period subject to tenancy agreement	12

14.	Giving rent default notices under tenancy Acts for failure to pay rent during emergency period	12
15.	Recovery of interest on rent not paid under tenancy agreements during emergency period prohibited	14
Division 2 — Provisions affecting termination of tenancy agreements during emergency period		
16.	Application of Division	15
17.	Termination of tenancy agreements during emergency period to be in accordance with Division	15
18.	Termination of tenancy agreements arising out of family violence	15
19.	Termination of tenancy agreement in relation to failure to pay rent during emergency period	16
20.	Termination without specifying grounds	18
21.	Termination in other cases	19
Part 3 — Accommodation agreements		
Division 1 — Provisions affecting accommodation agreements (other than in relation to termination)		
22.	Rent cannot increase during emergency period	21
23.	Rent cannot increase after renegotiation of lease during emergency period	22
24.	Landlord not required to maintain and repair under accommodation agreement if unable to do so during emergency period	22
25.	Fixed-term tenancy ending during emergency period to continue as periodic tenancy	23
26.	Recovery of possession prohibited except in particular circumstances	24
27.	Giving rent default notices for failure to pay rent during emergency period	24
28.	Recovery of interest on rent not paid under accommodation agreements during emergency period prohibited	26

Division 2 — Provisions affecting termination of accommodation agreements during emergency period		
29.	Application of Division	27
30.	Termination of accommodation agreements during emergency period to be in accordance with Division	27
31.	Termination of interest in accommodation agreement arising from family violence	27
32.	Termination of accommodation agreement in relation to failure to pay rent during emergency period	28
33.	Termination without specifying grounds	31
34.	Termination if accommodation agreement frustrated	31
35.	Termination in other circumstances	32
36.	Competent court may terminate agreement if resident causing serious damage or injury	33
37.	Competent court may terminate agreement because of undue hardship	34
38.	Termination at end of emergency period for non-compliance with rent default notice	34
39.	Requirement for notice of termination given under Division	35
40.	Application of <i>Residential Tenancies Act 1987</i> s. 71 to termination notice given under s. 34 or 38	35
Division 3 — Administration of Part		
41.	Recovery of amounts paid in contravention of s. 22	36
42.	Application of <i>Residential Tenancies Act 1987</i> s. 17A and 17B to this Part	36
43.	Commissioner’s functions and powers under this Part	37
44.	Issuing infringement notices in relation to offence under s. 26	38
Part 4 — Disputes		
Division 1 — Preliminary		
45.	Terms used	39
46.	Term used: relevant dispute	39

	Division 2 — Applications for relief	
47.	Application for relief in relation to relevant dispute or failure to comply with order in respect of residential tenancy agreement	40
48.	Application for relief in relation to relevant dispute or failure to comply with order in respect of accommodation agreements	40
	Division 3 — Mandatory conciliation	
49.	Conciliation process must occur before application for relief	41
50.	Making submission to Commissioner	43
51.	Time limit for submission	43
52.	Withdrawal of submission	44
53.	Commissioner to dismiss or accept submission	44
54.	Further information and verification	45
	Division 4 — Conciliation proceedings	
55.	Conciliation proceedings	46
56.	Participation in conciliation proceeding	47
57.	Evidence of financial hardship	47
58.	Representation at conciliation proceeding	48
59.	Completion of conciliation proceeding	49
60.	Commissioner must make order to give effect to agreement reached during conciliation	49
	Division 5 — Miscellaneous	
61.	Evidence of certain things inadmissible	50
62.	Costs	50
63.	Delegation of powers and duties in relation to conciliation	50
	Part 5 — Miscellaneous	
64.	Regulations	52
65.	Powers of investigation under Act	52
	Part 6 — Repeal	
66.	Repeal	53
	Part 7 — Transitional provisions	
	Division 1 — Preliminary	
67.	Terms used	54

	Division 2 — Provisions about events occurring before assent day	
68.	Termination notices given under tenancy Acts before 30 March 2020	54
69.	Termination of tenancy agreements during pre-assent emergency period under tenancy Acts	55
70.	Termination under accommodation agreement during pre-assent emergency period	55
71.	Status of termination notice under accommodation agreement before 30 March 2020	55
	Division 3 — Other transitional provisions	
72.	Mortgagee terminating tenancy agreements after emergency period	56
73.	Effect of notices of termination given under tenancy Acts for termination after emergency period	56
74.	Effect of notices of termination given under tenancy Acts for termination during emergency period	56
75.	Effect of termination notice given under this Act that takes effect after end of emergency period	57
	Division 4 — Transitional regulations	
76.	Transitional regulations	57
	Part 8 — Residential Tenancies Act 1987 amended	
77.	Act amended	59
78.	Section 82E amended	59
	Defined terms	



Western Australia

Residential Tenancies (COVID-19 Response) Act 2020

No. 18 of 2020

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.**

[Assented to 23 April 2020]

The Parliament of Western Australia enacts as follows:

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 26 and 44 come into operation on the day after assent day;
- (c) sections 14(3)(b) and (4) to (7) and 27(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

- (ii) is prescribed by regulations for the purposes of this paragraph;

assent day has the meaning given in section 2(a);

boarder means a boarder as referred to in the *Residential Tenancies Act 1987* section 5(2)(d);

Commissioner means the person for the time being designated as the Commissioner under the *Fair Trading Act 2010* section 55;

emergency period has the meaning given in section 4;

landlord —

- (a) means a person who grants a right of occupancy under an accommodation agreement; and
- (b) includes —
 - (i) a personal representative, successor or assignee of a landlord; and
 - (ii) if the context requires — a prospective or former landlord;

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

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

owner means —

- (a) in relation to a long-stay agreement — a park operator; or
- (b) in relation to a residential tenancy agreement — a lessor;

resident —

- (a) means a person, including a boarder or lodger, who is granted a right of occupancy under an accommodation agreement; and
- (b) includes, if the context requires, a prospective or former resident;

s. 4

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

tenancy means —

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

tenancy Act means —

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

tenancy agreement means a long-stay agreement or residential tenancy agreement;

tenant means —

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

(2) 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.

(3) 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.

4. Term used: emergency period

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

- (a) beginning on 30 March 2020; and

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

5. Relationship of Act to other Acts

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

6. Act binds Crown

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

7. Act prevails over agreements and particular Acts

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

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

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

day during the emergency period as the day from which the increased rent becomes payable —

- (a) the notice is taken to specify the day after the end of the emergency period; and
 - (b) the tenant cannot be required to pay the increased rent until the day taken to be specified under paragraph (a).
- (5) Despite subsections (2) to (4), if the parties to a tenancy 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.
- (6) Rent may be increased under subsection (5) without a notice of increase of rent being given despite —
- (a) the *Residential Parks (Long-stay Tenants) Act 2006* section 30; and
 - (b) a provision of an on-site home agreement or site-only agreement; and
 - (c) the *Residential Tenancies Act 1987* section 30.

9. Delayed effect of variation of rent calculated by reference to tenant's income under *Residential Tenancies Act 1987* s. 31A

- (1) This section applies if —
- (a) a notice of a change to the method of calculating rent is given under the *Residential Tenancies Act 1987* section 31A; and
 - (b) the notice specifies a day during the emergency period as the day from which the change is to take effect; and

- (c) the change to the method would, if it took effect, result in an increase in the rent payable under a residential tenancy agreement.
- (2) The notice is taken to specify the day after the end of the emergency period and the tenant cannot be required to pay rent in accordance with the new method of calculating rent until the day that is taken to be specified.

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

- (1) This section applies if —
 - (a) a tenancy agreement (the *former agreement*) creates a tenancy for a fixed term; and
 - (b) the term of the former agreement ends during the emergency period; and
 - (c) the parties to the former agreement enter into a new tenancy agreement (the *new agreement*) in relation to the same premises commencing immediately after the end of the term of the former agreement.
- (2) Despite the new agreement, the tenant cannot be required during the emergency period to pay an amount of rent that is more than the amount that would have been payable under the former agreement if the former agreement had continued to have effect during that period.
- (3) Subsection (4) applies if —
 - (a) the first day of the first 30 days (the *30-day period*) of a new agreement (as defined in the *Residential Tenancies Act 1987* section 31B(1)(b)) occurs within the emergency period; and
 - (b) the last day of the 30-day period occurs after the end of the emergency period.

- (4) The *Residential Tenancies Act 1987* section 31B has effect in relation to the part of the 30-day period that falls after the end of 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
 - (ii) a term in the agreement that imposes obligations on the park operator in relation to urgent repairs to premises if the state of disrepair has arisen otherwise than as a result of a breach of the long-stay agreement by the tenant and is likely to cause injury to a person or property or undue inconvenience to the tenant.

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

- (1) This section applies if —
 - (a) a tenancy agreement creates a tenancy for a fixed term; and
 - (b) the term of the agreement expires during the emergency period; and
 - (c) at the end of the day on which the agreement would, but for this section, expire (the *expiry day*) the owner and tenant have not entered into a tenancy agreement in relation to the same premises that creates a tenancy for a fixed term commencing immediately after the expiry day.
- (2) The tenancy agreement continues, subject to subsection (3), as a periodic tenancy after the expiry day on the same terms that applied immediately before the expiry day until —
 - (a) the tenancy agreement is terminated —
 - (i) during the emergency period — under Division 2; or

- (ii) after the emergency period — under the tenancy Act that applies to the agreement;
 - or
 - (b) the owner and tenant enter into a tenancy agreement in relation to the same premises that creates a tenancy for another fixed term.
- (3) A party to a tenancy agreement that continues under subsection (2) may apply for a modification of the terms of the tenancy agreement —
- (a) in relation to a residential tenancy agreement — to a competent court under the *Residential Tenancies Act 1987* section 76C(3); or
 - (b) in relation to a long-stay agreement — to the State Administrative Tribunal under the *Residential Parks (Long-stay Tenants) Act 2006* Part 5.
- (4) However, a competent court or the State Administrative Tribunal must not make an order that increases the rent payable under the agreement during the emergency period.
- (5) An order made by a competent court or the State Administrative Tribunal may, if the court or Tribunal orders, apply on and from the day after the expiry day, even if the order is made after the end of the emergency period.
- (6) A notice of termination of a residential tenancy agreement given under the *Residential Tenancies Act 1987* section 70A during the emergency period has no effect.
- (7) The *Residential Tenancies Act 1987* section 76C(2) does not apply to a residential tenancy agreement that continues under subsection (2).

13. Repossession of property during emergency period subject to tenancy agreement

- (1) This section applies if, but for Division 2, a tenancy agreement would have been terminated during the emergency period because —
- (a) under the *Residential Parks (Long-stay Tenants) Act 2006* section 33(3)(b) or the *Residential Tenancies Act 1987* section 60(1)(d), a person whose title is superior to the owner becomes entitled to possession of the premises the subject of the agreement; or
 - (b) under the *Residential Parks (Long-stay Tenants) Act 2006* section 33(3)(c) or the *Residential Tenancies Act 1987* section 60(1)(e), a mortgagee takes possession of the premises the subject of the agreement.
- (2) The tenancy agreement binds the person with superior title or the mortgagee as if the person or mortgagee were the lessor or park operator who had entered into the agreement.

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

- (1) In this section —
- rent default notice** means —
- (a) a notice of termination or default notice under the *Residential Parks (Long-stay Tenants) Act 2006* section 39; or
 - (b) a notice of termination under the *Residential Tenancies Act 1987* section 62(1) upon the ground of a breach of the agreement to pay rent, or a notice under section 62(4)(a) of that Act specifying the breach;
- rent repayment agreement** means an agreement (in writing) —
- (a) made between a tenant and owner about rent not paid in accordance with a tenancy agreement during the emergency period; and

- (b) setting out how part or all of the rent not paid will be paid to the owner.
- (2) This section applies if a tenant fails to pay rent, in accordance with a tenancy agreement, due during the emergency period.
- (3) The owner cannot give a rent default notice in relation to the failure to pay the rent unless —
 - (a) the tenant and owner have entered into a rent repayment agreement and the tenant has failed to make payments in accordance with that agreement; or
 - (b) the owner gives the rent default notice under subsection (5).
- (4) If the parties to a tenancy agreement cannot agree on a rent repayment agreement, either party may make a submission to the Commissioner under section 50(1).
- (5) If a party makes a submission to the Commissioner under section 50(1), the owner may give a rent default notice in relation to the failure to pay the rent if —
 - (a) the Commissioner has dismissed the submission; or
 - (b) the Commissioner has certified —
 - (i) under section 59(2) that no agreement has been reached in relation to a rent repayment agreement; and
 - (ii) under section 59(5) that the tenant has not cooperated with the conciliation proceeding;or
 - (c) the Commissioner —
 - (i) has certified under section 59(2) that no agreement has been reached in relation to a rent repayment agreement; but

Residential Tenancies (COVID-19 Response) Act 2020

Part 2 Tenancy agreements

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

s. 15

- (ii) has not certified under section 59(5) that the tenant has not cooperated with the conciliation proceeding.
- (6) However, the owner cannot give a rent default notice under subsection (5) if the Commissioner has certified —
 - (a) under section 59(2) that no agreement has been reached in relation to a rent repayment agreement; and
 - (b) under section 59(5) that the owner has not cooperated with the conciliation proceeding.
- (7) The owner cannot give a rent default notice under subsection (5)(a) or (c) until the day that is 3 months after the end of the emergency period.

Note for this section:

See Division 2 and section 73 or 74 in relation to the effect of a notice of termination given under this section.

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

- (1) In this section —

outstanding rent means rent a tenant fails to pay in accordance with a tenancy agreement that is due during the emergency period.
- (2) This section applies despite any other written law.
- (3) An owner cannot recover, whether by virtue of a right under the tenancy agreement or otherwise, an amount from a tenant that is for interest in relation to outstanding rent.
- (4) If a court or tribunal gives judgment in favour of a claim for money that includes money in relation to outstanding rent, the judgment sum cannot include interest, or a lump sum of money in lieu of such interest, in relation to the outstanding rent.

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

16. Application of Division

- (1) Subject to subsection (2), this Division applies during the emergency period.
- (2) Section 19 applies during and after the emergency period.

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

- (1) A tenancy agreement, or a person's interest in a tenancy agreement, cannot terminate or be terminated during the emergency period other than under this Division.
- (2) This Division applies despite —
 - (a) the *Residential Tenancies Act 1987* section 60(1); and
 - (b) the *Residential Parks (Long-stay Tenants) Act 1987* section 33.
- (3) The *Residential Tenancies Act 1987* section 60(2) applies to terminations under this Division.
- (4) The *Residential Parks (Long-stay Tenants) Act 2006* section 33(2C) applies to terminations under this Division.

18. Termination of tenancy agreements arising out of family violence

A tenant's interest in a tenancy agreement is terminated if —

- (a) for a residential tenancy agreement — the interest is terminated under the *Residential Tenancies Act 1987* section 60(1)(ba), (bb) or (bc); or
- (b) for a long-stay agreement —
 - (i) the interest is terminated under the *Residential Parks (Long-stay Tenants) Act 2006* section 33(2A) or (2B); or

- (ii) the State Administrative Tribunal makes an order terminating the tenant's interest under the *Residential Parks (Long-stay Tenants) Act 2006* section 74B.

19. 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 50(1) in relation to the failure to pay the rent; and
 - (b) the Commissioner has certified —
 - (i) under section 59(2) that no agreement has been reached in relation to the failure to pay the rent; and
 - (ii) under section 59(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 —

Residential Tenancies (COVID-19 Response) Act 2020

Part 2 Tenancy agreements

Division 2 Provisions affecting termination of tenancy agreements during emergency period

s. 20

- (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.

20. Termination without specifying grounds

- (1) A tenancy agreement is terminated if —
- (a) the tenant gives notice of termination of the agreement without specifying any grounds for the notice in accordance with —
 - (i) for a residential tenancy agreement — the *Residential Tenancies Act 1987* section 67(1); or
 - (ii) for a long-stay agreement — the *Residential Parks (Long-stay Tenants) Act 2006* section 38;and
 - (b) the notice of termination is given not less than 21 days before the day on which the agreement is to terminate; and

- (c) the tenant delivers up vacant possession of the premises the subject of the agreement on or after the expiry of the period referred to in paragraph (b).
- (2) 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 specify a day earlier than the last day of the fixed term as the day on which the tenant intends to give vacant possession of the premises the subject of the agreement to the owner.
- (3) An owner is not entitled to compensation for loss (including loss of rent) arising only from a tenant terminating under subsection (1) a tenancy agreement for a fixed term.

21. Termination in other cases

- (1) A residential tenancy agreement is terminated if —
 - (a) the agreement is terminated under the *Residential Tenancies Act 1987* section 60(1)(a) after a notice of termination is given —
 - (i) by the lessor under section 63 of that Act; or
 - (ii) under section 69 of that Act;
 - or
 - (b) the *Residential Tenancies Act 1987* section 60(1)(f), (g) or (i) applies; or
 - (c) a competent court terminates the agreement under the *Residential Tenancies Act 1987* section 73 or 74.
- (2) A long-stay agreement is terminated if —
 - (a) the agreement is terminated under the *Residential Parks (Long-stay Tenants) Act 2006* section 33 after a notice of termination is given —
 - (i) by the park operator under section 41 of that Act;
 - or

Residential Tenancies (COVID-19 Response) Act 2020

Part 2 Tenancy agreements

Division 2 Provisions affecting termination of tenancy agreements during emergency period

s. 21

- (ii) under section 45(3) of that Act;
- or
- (b) the *Residential Parks (Long-stay Tenants) Act 2006* section 33(3)(d) or (e) applies; or
- (c) the State Administrative Tribunal makes an order terminating the agreement under the *Residential Parks (Long-stay Tenants) Act 2006* section 71 or 73.

Part 3 — Accommodation agreements

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

22. 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.

23. 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
 - (b) the term of the former agreement ends during the emergency period; and
 - (c) the parties to the former agreement enter into a new accommodation agreement (the *new agreement*) in relation to the same premises commencing immediately after the end of the term of the former agreement.
- (2) Despite the new agreement, the resident cannot be required during the emergency period to pay an amount of rent that is more than the amount that would have been payable under the former agreement if the former agreement had continued to have effect during that period.

24. Landlord not required to maintain and repair under accommodation agreement if unable to do so during emergency period

- (1) This section applies if an accommodation agreement contains a term that requires the landlord to maintain the residential premises the subject of the agreement or conduct any repairs to the premises.
- (2) During the emergency period, the term is modified so that the landlord does not contravene the term if the landlord is unable to maintain the residential 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 any obligation a landlord may have that is equivalent to the obligations a lessor has under the *Residential Tenancies Act 1987* section 43(2)(b) and (3)(b).

25. Fixed-term tenancy ending during emergency period to continue as periodic tenancy

- (1) This section applies if —
- (a) an accommodation agreement is for a fixed term; and
 - (b) the fixed term ends during the emergency period; and
 - (c) at the end of the day on which the fixed term ends (the *expiry day*) the landlord and resident have not entered into an accommodation agreement in relation to the same premises for a fixed term commencing immediately after the expiry day.
- (2) The accommodation agreement continues, subject to subsection (3), as an agreement for a periodic tenancy after the expiry day on the same terms that applied immediately before the expiry day until —
- (a) the accommodation agreement is terminated —
 - (i) during the emergency period — under Division 2; or
 - (ii) after the emergency period — under the agreement;
 - or
 - (b) the landlord and resident enter into an accommodation agreement in relation to the same premises for another fixed term.
- (3) A competent court may, upon application by a party to an accommodation agreement that continues under subsection (2), make any modification to the terms of the agreement as may be necessary for, or appropriate to, the agreement's continuance.

- (4) However, a competent court must not make an order that increases the rent payable under the agreement during the emergency period.
- (5) An order made by a competent court may, if the court orders, apply on and from the day after the expiry day, even if the order is made after the end of the emergency period.

26. Recovery of possession prohibited except in particular circumstances

- (1) This section applies during the part of the emergency period that occurs after assent day.
- (2) A person must not enter or re-enter premises for the purpose of recovering possession of the premises or part of the premises from a resident of the premises, whether entry or re-entry is effected peaceably or otherwise, unless —
 - (a) the person has a right to enter or re-enter the premises under an accommodation agreement; or
 - (b) the person enters or re-enters the premises under a court order.

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

27. Giving rent default notices for failure to pay rent during emergency period

- (1) In this section —
rent default notice, in relation to an accommodation agreement, means a notice in writing stating that —
 - (a) the resident has failed to pay rent in accordance with a term of the accommodation agreement; and
 - (b) payment of the rent is required within a specified period of at least 14 days; and
 - (c) a failure to pay the rent in accordance with the notice is grounds for giving a termination notice under section 38;

rent repayment agreement means an agreement (in writing) —

- (a) made between a resident and landlord about rent not paid in accordance with an accommodation agreement during the emergency period; and
 - (b) setting out how part or all of the rent not paid will be paid to the landlord.
- (2) This section applies if a resident fails to pay rent, in accordance with an accommodation agreement, due during the emergency period.
- (3) The landlord cannot give a rent default notice in relation to the failure to pay the rent unless —
- (a) the resident and landlord have entered into a rent repayment agreement and the resident has failed to make payments in accordance with that agreement; or
 - (b) the landlord gives the rent default notice under subsection (5).
- (4) If the parties to an accommodation agreement cannot agree on a rent repayment agreement, either party may make a submission to the Commissioner under section 50(1).
- (5) If a party makes a submission to the Commissioner under section 50(1), the landlord may give a rent default notice in relation to the failure to pay the rent if —
- (a) the Commissioner has dismissed the submission; or
 - (b) the Commissioner has certified —
 - (i) under section 59(2) that no agreement has been reached in relation to a rent repayment agreement; and
 - (ii) under section 59(5) that the resident has not cooperated with the conciliation proceeding;

or

Residential Tenancies (COVID-19 Response) Act 2020

Part 3 Accommodation agreements

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

s. 28

- (c) the Commissioner —
 - (i) has certified under section 59(2) that no agreement has been reached in relation to a rent repayment agreement; but
 - (ii) has not certified under section 59(5) that the resident has not cooperated with the conciliation proceeding.
- (6) However, the landlord cannot give a rent default notice under subsection (5) if the Commissioner has certified —
 - (a) under section 59(2) that no agreement has been reached in relation to a rent repayment agreement; and
 - (b) under section 59(5) that the landlord has not cooperated with the conciliation proceeding.
- (7) The landlord cannot give a rent default notice under subsection (5)(a) or (c) until the day that is 3 months after the end of the emergency period.

28. Recovery of interest on rent not paid under accommodation agreements during emergency period prohibited

- (1) In this section —

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

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

29. Application of Division

- (1) Subject to subsection (2), this Division applies during the emergency period.
- (2) Sections 32, 38 and 40 apply during and after the emergency period.

30. Termination of accommodation agreements during emergency period to be in accordance with Division

- (1) An accommodation agreement, or a person's interest in an accommodation agreement, cannot terminate or be terminated during the emergency period other than under this Division.
- (2) The termination of a resident's interest in an accommodation agreement under this Division does not terminate the agreement in respect of any other resident under the agreement.

31. Termination of interest in accommodation agreement arising from family violence

- (1) The *Residential Tenancies Act 1987* sections 71AB to 71AE apply to and in relation to a resident, landlord and accommodation agreement as if a reference in those provisions to —
 - (a) a tenant were a reference to a resident; and
 - (b) a lessor were a reference to a landlord; and
 - (c) a residential tenancy agreement were a reference to an accommodation agreement; and
 - (d) a tenancy period were a reference to the period during which an accommodation agreement is in force.

- (2) A resident's interest in an accommodation agreement is terminated if any of the following apply —
- (a) the resident —
 - (i) gives notice, under the *Residential Tenancies Act 1987* section 71AB(1), of termination of the resident's interest together with at least 1 of the documents required under the *Residential Tenancies Act 1987* section 71AB(2); and
 - (ii) vacates the residential premises the subject of the agreement on or after the expiry of the period of notice required under the *Residential Tenancies Act 1987* section 71AB(5);
 - (b) the resident —
 - (i) gives notice, under the *Residential Tenancies Act 1987* section 71AD(4), of termination of the resident's interest; and
 - (ii) vacates the residential premises the subject of the agreement on or after the expiry of the period of notice required under the *Residential Tenancies Act 1987* section 71AD(5);
 - (c) a competent court terminates the resident's interest under the *Residential Tenancies Act 1987* section 71AE.

32. 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 27(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.

Residential Tenancies (COVID-19 Response) Act 2020

Part 3 Accommodation agreements

Division 2 Provisions affecting termination of accommodation agreements during emergency period

s. 32

- (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 50(1) in relation to the failure to pay the rent; and
 - (b) the Commissioner has certified —
 - (i) under section 59(2) that no agreement has been reached in relation to the failure to pay the rent; and
 - (ii) under section 59(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.

33. Termination without specifying grounds

- (1) An accommodation agreement is terminated if —
 - (a) the resident gives notice of termination of the accommodation agreement to the landlord, whether or not the notice specifies grounds for the notice; and
 - (b) the notice of termination is given not less than 7 days (or a shorter period agreed between the resident and landlord) before the day on which the agreement is to terminate; and
 - (c) the resident vacates the residential premises the subject of the agreement on or after the expiry of the period referred to in paragraph (b).
- (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.
- (3) A landlord is not entitled to compensation for loss (including loss of rent) arising only from a resident terminating under subsection (1) an accommodation agreement for a fixed term.

34. Termination if accommodation agreement frustrated

An accommodation agreement is terminated if —

- (a) the residential premises, or a part of the premises, the subject of the agreement —
 - (i) are destroyed or rendered uninhabitable or cease to be lawfully usable as a residence and the state

Residential Tenancies (COVID-19 Response) Act 2020

Part 3 Accommodation agreements

Division 2 Provisions affecting termination of accommodation agreements during emergency period

s. 35

of the residential premises, or part of the premises, arises otherwise than as a result of a breach of the accommodation agreement; or

- (ii) are appropriated or acquired by any authority by compulsory process;

and

(b) either —

- (i) the resident gives notice of termination of the accommodation agreement to the landlord stating the day on which the agreement is terminated, which is at least 2 days after the day on which the notice is given; or
- (ii) the landlord gives notice of termination of the accommodation agreement to the resident stating the day on which the agreement is terminated, which is at least 7 days after the day on which the notice is given;

and

(c) either —

- (i) the resident vacates the premises on or after the expiry of the period of notice required under paragraph (b); or
- (ii) a competent court, on application by the landlord, terminates the agreement under the *Residential Tenancies Act 1987* section 71 as applied by section 40 of this Act.

35. Termination in other circumstances

An accommodation agreement is terminated if —

- (a) the resident abandons the residential premises the subject of the agreement; or
- (b) the resident vacates the residential premises the subject of the agreement under an agreement in writing between

the landlord and the resident to terminate the accommodation agreement; or

- (c) every resident who is a party to the agreement dies; or
- (d) a competent court makes an order terminating the agreement under section 36 or 37.

36. Competent court may terminate agreement if resident causing serious damage or injury

- (1) A landlord may apply to a competent 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 —
 - (a) serious damage to the residential premises the subject of the agreement; or
 - (b) serious damage to a common area or chattels in the common area; or
 - (c) injury to —
 - (i) the landlord; or
 - (ii) an agent of the landlord who is licensed under the *Real Estate and Business Agents Act 1978*; or
 - (iii) any person in occupation of or permitted on adjacent premises.
- (2) If a competent court is satisfied of the matters stated in subsection (1), the court —
 - (a) may make an order to terminate the agreement; and
 - (b) if it makes an order under paragraph (a) — must make an order for possession of the residential premises the subject of the agreement, with immediate effect.

37. Competent court may terminate agreement because of undue hardship

- (1) A landlord or resident may apply to a competent court to terminate an accommodation agreement.
- (2) If the competent court is satisfied the landlord or resident would suffer undue hardship if the agreement were not terminated by the court, the court may make an order to terminate the agreement.
- (3) If the competent court makes an order under subsection (2), the court —
 - (a) must make an order —
 - (i) for possession of the residential premises the subject of the agreement; and
 - (ii) specifying the day on which the order for possession of the premises takes effect;
 - and
 - (b) may make any other orders the court considers appropriate, including in relation to compensation of the resident or landlord for any loss caused by the termination of the agreement.

38. Termination at end of emergency period for non-compliance with rent default notice

An accommodation agreement is terminated if —

- (a) the landlord gives a rent default notice under section 27 to the resident in relation to a failure to pay rent under the accommodation agreement during the emergency period; and
- (b) the resident fails to comply with the rent default notice; and

- (c) the landlord gives notice of termination of the agreement to the resident specifying the day on which the agreement is to terminate, which must be —
 - (i) after the end of the emergency period; and
 - (ii) at least 14 days after the day on which the notice is given;and
- (d) either —
 - (i) the resident delivers up vacant possession of the residential premises the subject of the agreement on or after the day specified under paragraph (c); or
 - (ii) a competent court, on application by the landlord, terminates the agreement under the *Residential Tenancies Act 1987* section 71 as applied by section 40 of this Act.

39. Requirement for notice of termination given under Division

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

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

40. Application of *Residential Tenancies Act 1987* s. 71 to termination notice given under s. 34 or 38

- (1) If a landlord has given a resident a notice of termination under section 34 or 38 and the resident has not delivered up vacant possession of the residential premises the subject of the

accommodation agreement in accordance with the notice, the landlord may apply to a competent court under the *Residential Tenancies Act 1987* section 71 for —

- (a) an order terminating the agreement; and
 - (b) an order for possession of the residential premises.
- (2) The *Residential Tenancies Act 1987* section 71(2)(a) and (b) and (3) to (6) applies to an application under subsection (1) as if a reference in that provision to —
- (a) an application under this section were a reference to an application under subsection (1); and
 - (b) a lessor were a reference to a landlord; and
 - (c) a tenant were a reference to a resident; and
 - (d) a residential tenancy agreement were a reference to an accommodation agreement; and
 - (e) section 69 were a reference to section 34 of this Act.

Division 3 — Administration of Part

41. Recovery of amounts paid in contravention of s. 22

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 22, the resident may —

- (a) on application to a competent court, recover that amount from the landlord; or
- (b) deduct the amount from rent payable under the agreement.

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

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 —

- (a) a residential tenancy agreement were a reference to an accommodation agreement; and
- (b) a tenant were a reference to a resident; and
- (c) a lessor were a reference to a landlord; and
- (d) a reference to section 60(1)(ba) or (bb) were a reference to section 31(2)(a) or (b) of this Act; and
- (e) a reference to section 71AE(3) were a reference to section 71AE(3) as applied by section 31(1) of this Act.

43. Commissioner's functions and powers under this Part

- (1) The Commissioner has the following functions for the purposes of this Part —
 - (a) investigating and conducting research into matters relating to the interests of parties to accommodation agreements;
 - (b) publishing reports and disseminating information on matters relating to the interests of parties to accommodation agreements;
 - (c) 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;
 - (d) taking action based on an investigation conducted under paragraph (c), including —
 - (i) negotiating over the matter investigated; or
 - (ii) prosecuting an offence;
 - (e) 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.
- (2) The Commissioner has all the powers they need to carry out their functions.

44. Issuing infringement notices in relation to offence under s. 26

The *Residential Tenancies Act 1987* section 88A applies to an offence under section 26 of this Act as if —

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

Part 4 — Disputes

Division 1 — Preliminary

45. Terms used

In this Part —

applicable agreement means —

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

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

relevant dispute has the meaning given in section 46;

submission —

- (a) means a submission to the Commissioner under section 50(1); and
- (b) includes a part of a submission.

46. Term used: relevant dispute

- (1) In this Part, a *relevant dispute*, in respect of an applicable agreement —
 - (a) means a dispute in connection with the applicable agreement arising out of, or in relation to, the operation of a provision of Part 2 or 3 or Part 7 Division 3; and
 - (b) includes a dispute in connection with the applicable agreement that arises because a person does, or omits to do, an act in contravention of the provision.
- (2) Despite subsection (1), *relevant dispute* does not include a dispute that is of a class of dispute prescribed by regulations for the purposes of this subsection.

Division 2 — Applications for relief

47. Application for relief in relation to relevant dispute or failure to comply with order in respect of residential tenancy agreement

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 60(1) —

- (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 or failure as if that provision also referred to disputes arising in connection with a residential tenancy agreement; and
- (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
- (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.

Note for this section:

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

48. Application for relief in relation to relevant dispute or failure to comply with order in respect of accommodation agreements

- (1) Where a resident or landlord under an accommodation agreement claims that a relevant dispute has arisen in respect of the agreement, or that a person has failed to comply with an order made in connection with the agreement under

section 60(1), the resident or landlord may apply for relief in relation to the relevant dispute or failure to a competent court.

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

Division 3 — Mandatory conciliation

49. Conciliation process must occur before application for relief

- (1) In this section —

relevant application means —

 - (a) an application for relief in relation to a matter the subject of a relevant dispute in respect of an applicable agreement; or

- (b) an application for a modification of the terms of an applicable agreement that continues under section 12(2) or 25(2);

relevant relief means any of the following —

- (a) an order under the *Residential Tenancies Act 1987* section 71AE (including as applied by section 31(1) of this Act), section 71 (including as applied by section 40 of this Act), section 73 or 74;
 - (b) an order under the *Residential Parks (Long-stay Tenants) Act 2006* section 68, 71, 73 or 74B;
 - (c) an order under section 36 or 37.
- (2) A person must not make a relevant application to a court or tribunal unless and until a submission has been made about the matter the subject of the relevant application and —
- (a) the Commissioner has dismissed the submission; or
 - (b) the Commissioner has certified under section 59(2) that no agreement has been reached in relation to the matter; or
 - (c) both of the following apply —
 - (i) the Commissioner has certified under section 59(4) that agreement has been reached in relation to the matter;
 - (ii) an order has not been made under section 60(1) because a party other than the person refuses to consent to the making of the order.
- (3) Subsection (2) does not apply to —
- (a) an application in relation to a failure by a person to comply with an order made under section 60(1); or
 - (b) an application for relevant relief that relates to the termination of an applicable agreement, or a person's interest in an applicable agreement, that is permitted

during the emergency period under Part 2 Division 2 or Part 3 Division 2; or

- (c) an application under section 19(5) or 32(5); or
 - (d) a relevant application that is of a class of relevant applications prescribed by regulations for the purposes of this paragraph.
- (4) A failure to comply with subsection (2) does not affect the validity of any direction or order made by a court or tribunal on or in respect of a relevant application.

50. Making submission to Commissioner

- (1) Subject to section 52(3), a party to an applicable agreement may make a submission to the Commissioner about —
- (a) a relevant dispute in respect of the applicable agreement; or
 - (b) if the applicable agreement is one that continues under section 12(2) or 25(2) — a modification of the terms of the agreement; or
 - (c) being unable to agree on a rent repayment agreement in respect of the applicable agreement under section 14(4) or 27(4).
- (2) A submission may be made irrespective of whether the event giving rise to the submission occurred before or after the coming into operation of this Part.
- (3) A submission must be made in a manner and form approved by the Commissioner.

51. Time limit for submission

A submission is made out of time if it is made —

- (a) in the case of a submission referred to in section 50(1)(a) — more than 6 months after the event

giving rise to the dispute the subject of the submission;
or

- (b) in the case of a submission referred to in section 50(1)(b) — more than 6 months after the day the applicable agreement becomes an agreement for a periodic tenancy under section 12(2) or 25(2), as relevant; or
- (c) in the case of a submission referred to in section 50(1)(c) — more than 3 months after the end of the emergency period.

52. Withdrawal of submission

- (1) A submission may be withdrawn by the person who made the submission.
- (2) The submission may be withdrawn even though a conciliation proceeding has commenced in respect of the submission.
- (3) However, if a person withdraws a submission after a conciliation proceeding has commenced in respect of the submission, the person may not make another submission in relation to the same matter.
- (4) For the purposes of subsection (3), a conciliation proceeding has commenced if the Commissioner has notified the parties that the conciliation proceeding has commenced.

53. Commissioner to dismiss or accept submission

- (1) After receiving a submission the Commissioner must either —
 - (a) dismiss the submission; or
 - (b) accept the submission and conduct a conciliation proceeding under section 55(1).
- (2) The Commissioner may make any inquiries the Commissioner considers appropriate to enable the Commissioner to decide what action to take under subsection (1).

- (3) The Commissioner may dismiss the submission only if —
- (a) the submission is not made in accordance with this Part;
or
 - (b) in the opinion of the Commissioner, the submission is not about a matter referred to in section 50(1); or
 - (c) the submission is made out of time as referred to in section 51; or
 - (d) in the opinion of the Commissioner, the submission is vexatious, misconceived, frivolous or without substance;
or
 - (e) the matter the subject of the submission is the subject of another submission; or
 - (f) an arbitrator or a court, or other person or body, has made an order, judgment or other finding about the matter the subject of the submission; or
 - (g) the matter the subject of the submission has been the subject of a previous submission by the person, unless the previous submission was withdrawn before a conciliation proceeding in relation to the previous submission commenced (within the meaning given in section 52(4)); or
 - (h) the submission may be dismissed under section 54(3).

54. Further information and verification

- (1) The Commissioner may, in writing, require a person making a submission to do either or both of the following —
- (a) give the Commissioner further details about the submission;
 - (b) verify any details about the submission by statutory declaration.
- (2) The Commissioner must specify in the requirement a reasonable time within which the person must comply with the requirement.

- (3) The Commissioner may dismiss a submission if the person making the submission does not comply with a requirement under subsection (1) within the time specified in the requirement.

Division 4 — Conciliation proceedings

55. Conciliation proceedings

- (1) If the Commissioner accepts a submission under section 53(1)(b), the Commissioner must conduct a conciliation proceeding in respect of the submission.
- (2) The Commissioner's function in conducting the conciliation proceeding is to encourage the settlement of the matters the subject of the submission and for that purpose the Commissioner may —
- (a) communicate with the parties by telephone, video link, email or any other means the Commissioner considers appropriate; and
 - (b) arrange for conferences with the parties about the submission, including conferences by telephone, video link or any other means the Commissioner considers appropriate; and
 - (c) facilitate, participate in or manage those conferences; and
 - (d) give advice and make recommendations to assist in the reaching of an agreement.
- (3) The Commissioner is to conduct the conciliation proceeding with as little formality and technicality, and as speedily, as the requirements of this Part and a proper conciliation of the matter permit.
- (4) A conciliation proceeding may be commenced with or without the consent of the parties to the conciliation proceeding.

56. Participation in conciliation proceeding

- (1) The Commissioner may, by written notice, require a person to participate in a conciliation proceeding if —
 - (a) the person is a party to the conciliation proceeding; or
 - (b) in the Commissioner's opinion, the person's participation may help in the conciliation proceeding.
- (2) The notice must specify the manner in which the person is required to participate, which may include appearance in person or by means of telephone, video link, email or any other means the Commissioner considers appropriate.
- (3) The Commissioner must withdraw a notice given under subsection (1) if the submission the subject of the conciliation proceeding is withdrawn.
- (4) A person who has been given a notice under subsection (1) that has not been withdrawn, must not, without reasonable excuse, fail to comply with the notice.
Penalty for this subsection: a fine of \$5 000.

57. Evidence of financial hardship

- (1) If, during a conciliation proceeding, a person claims that they are experiencing financial hardship caused by the economic effects of the COVID-19 pandemic, the Commissioner may, in writing, require the person to —
 - (a) give the Commissioner details of the financial hardship;
or
 - (b) give the Commissioner a statutory declaration setting out the details of the financial hardship.
- (2) The Commissioner must specify in the requirement a reasonable time within which the person must comply with the requirement.

- (3) If the person does not comply with a requirement under subsection (1) within the time specified in the requirement, the Commissioner must make a certification under section 59(5) in relation to the person.

58. Representation at conciliation proceeding

- (1) Except as provided in subsection (2), a party is not to be represented or assisted by another person during a conciliation proceeding.
- (2) A party may be represented or assisted by another person (the **representative**) who is not a legal practitioner if the representative is authorised by the party to do so and —
- (a) the party is not a natural person and the representative is an officer, employee or agent of the party; or
 - (b) the representative is —
 - (i) the agent of the owner or landlord of the premises the subject of the conciliation proceeding; and
 - (ii) licensed under the *Real Estate and Business Agents Act 1978*;
- or
- (c) the representative is a person employed or engaged by a non-profit association or similar body to act as an advocate for parties to applicable agreements; or
 - (d) the Commissioner is satisfied that —
 - (i) the party is unable to participate personally or is unable to present their views on their own behalf; and
 - (ii) another party to the conciliation proceeding would not be disadvantaged by the representation or assistance.

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

59. Completion of conciliation proceeding

- (1) This section applies if, in the opinion of the Commissioner, a conciliation proceeding has concluded or there is no further purpose in continuing with the conciliation proceeding.
- (2) If the conciliation proceeding did not result in an agreement between the parties on some or all of the matters the subject of the proceeding, the Commissioner must certify that no agreement has been reached on those matters.
- (3) The Commissioner must not make a certification under subsection (2) in relation to a matter if the submission about that matter has been withdrawn.
- (4) If the conciliation proceeding results in an agreement between the parties on some or all of the matters the subject of the proceeding, the Commissioner must certify that an agreement has been reached on those matters.
- (5) The Commissioner may certify that a party has not cooperated with the conciliation proceeding if the Commissioner is satisfied on reasonable grounds that this is the case.

60. Commissioner must make order to give effect to agreement reached during conciliation

- (1) If parties to a conciliation proceeding under this Part negotiate an agreement, the Commissioner must, if each of those parties consent, give effect to the agreement by order.
- (2) An order made under subsection (1) is final and binding on those parties.

Division 5 — Miscellaneous

61. Evidence of certain things inadmissible

- (1) Evidence of anything lawfully said or done in the course of a conciliation proceeding under this Part is not admissible in any proceeding before a court, tribunal or other body unless subsection (2) applies.
- (2) Evidence referred to in subsection (1) is admissible in a proceeding if —
 - (a) the parties to the conciliation proceeding consent to the admission of the evidence; or
 - (b) there is a dispute in the proceeding as to whether, for the purposes of section 60(1), the parties to the conciliation proceeding negotiated an agreement or consented to an order and the evidence is relevant to that dispute; or
 - (c) the proceeding is in relation to a failure by a person to comply with an order made under section 60(1).

62. Costs

If a person makes a relevant application (as defined in section 49(1)) to a competent court or tribunal in relation to a matter that has been the subject of a conciliation proceeding under this Part, the court or tribunal must, in considering whether to make an order in relation to costs, have regard to any certification made by the Commissioner under section 59(5).

63. Delegation of powers and duties in relation to conciliation

- (1) The Commissioner may delegate any power or duty of the Commissioner under this Part to a person —
 - (a) employed in the department of the Public Service principally assisting in the administration of the *Fair Trading Act 2010* whose duties consist of or include conducting conciliations under this Part; or

- (b) who is approved by the Commissioner as a person who may conduct conciliations under this Part.
- (2) The *Fair Trading Act 2010* section 60(2) to (5) applies to a delegation under subsection (1) as if it were a delegation under section 60(1) of that Act.

Part 5 — Miscellaneous

64. 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.

65. Powers of investigation under Act

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

Part 6 — Repeal

66. Repeal

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.

Part 7 — Transitional provisions

Division 1 — Preliminary

67. Terms used

In this Part —

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

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.

Division 2 — Provisions about events occurring before assent day

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

- (1) This section applies if —
 - (a) before 30 March 2020, a person gave a notice of termination under a tenancy Act in relation to a tenancy agreement; and
 - (b) the specified day in the notice of termination is during the emergency period.
- (2) Despite Part 2 —
 - (a) the notice of termination has effect under the tenancy Act; and
 - (b) the agreement may be terminated under the tenancy Act.

69. Termination of tenancy agreements during pre-assent emergency period under tenancy Acts

- (1) This section applies if during the pre-assent emergency period either of the following occur (a *termination event*) —
- (a) vacant possession of the premises the subject of a tenancy agreement is given to the owner under a tenancy Act;
 - (b) a court or Tribunal orders the termination of a tenancy agreement under a tenancy Act.
- (2) The tenancy Act applies in relation to the termination event despite Part 2.

70. Termination under accommodation agreement during pre-assent emergency period

If a landlord or resident terminated an accommodation agreement in accordance with the agreement during the pre-assent emergency period, Part 3 does not have effect in relation to the termination.

71. Status of termination notice under accommodation agreement before 30 March 2020

- (1) This section applies if —
- (a) an accommodation agreement requires notice to be given before it can be terminated; and
 - (b) before 30 March 2020, the resident gives or is given notice that the right of occupancy is to be terminated in accordance with the accommodation agreement; and
 - (c) the termination is to take effect during the emergency period.
- (2) The termination of the resident's right of occupancy takes effect as if Part 3 were not enacted.

Division 3 — Other transitional provisions

72. 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.

73. 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.

74. 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.

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

75. Effect of termination notice given under this Act that takes effect after end of emergency period

- (1) This section applies if —
- (a) a person has been given a notice of termination before the end of the emergency period under —
 - (i) in relation to a tenancy agreement for a fixed term — section 20(1); or
 - (ii) Part 3 Division 2;and
 - (b) the specified day in the notice is a day after the end of the emergency period.
- (2) This Act applies in relation to the notice of termination and termination of the agreement after the end of the emergency period as if the termination occurred during the emergency period.

Division 4 — Transitional regulations

76. Transitional regulations

- (1) In this section —
- publication day***, for transitional regulations, means the day on which the transitional regulations are published in the *Gazette*;
- specified***, in relation to transitional regulations, means specified or described in the transitional regulations;

transitional matter —

- (a) means a matter that needs to be dealt with for the purposes of —
 - (i) effecting the transition to or from the provisions of this Act or to or from the emergency period; or
 - (ii) dealing with the interaction between this Act and a tenancy Act;
- and
- (b) includes a saving or application matter;

transitional regulations means regulations referred to in subsection (2).

- (2) 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.
- (3) Transitional regulations may provide that specified provisions of this Act and a tenancy Act —
 - (a) do not apply to or in relation to a specified matter; or
 - (b) apply with specified modifications to or in relation to any matter.
- (4) 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.

Part 8 — *Residential Tenancies Act 1987* amended

77. Act amended

This Part amends the *Residential Tenancies Act 1987*.

78. Section 82E amended

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

- (ba) the breach does not consist of, or relate to —
 - (i) a failure by the person to pay rent during the emergency period as defined in the *Residential Tenancies (COVID-19 Response) Act 2020* section 4 due to financial hardship caused by the economic effects of the COVID-19 pandemic; or
 - (ii) any other matter relating to the effects of the COVID-19 pandemic prescribed by regulations;

and

=====

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	45
assent day	2, 3(1)
boarder	3(1)
Commissioner	3(1)
deciding entity	19(1)
emergency period	3(1), 4
expiry day	12(1), 25(1)
former agreement	10(1), 23(1)
landlord	3(1)
lodger	3(1)
long-stay agreement	3(1)
maintenance term	11(1)
new agreement	10(1), 23(1)
notice of increase of rent	8(1)
outstanding rent	15(1), 28(1)
owner	3(1)
party	45
pre-assent emergency period	67
publication day	76(1)
relevant application	49(1)
relevant dispute	45, 46(1) and (2)
relevant relief	49(1)
remedial notice	19(3), 32(3)
remedial period	19(1), 32(1)
rent default notice	14(1), 27(1)
rent repayment agreement	14(1), 19(1), 27(1), 32(1)
representative	58(2)
resident	3(1)
residential tenancy agreement	3(1)
specified	76(1)
specified day	67
submission	45
tenancy	3(1)
tenancy Act	3(1)
tenancy agreement	3(1)
tenant	3(1)
termination event	69(1)

transitional matter	76(1)
transitional regulations.....	76(1)

© State of Western Australia 2020.

This work is licensed under a Creative Commons Attribution 4.0 International Licence (CC BY 4.0). To view relevant information and for a link to a copy of the licence, visit legislation.wa.gov.au.

Attribute work as: © State of Western Australia 2020.