

Authorised Version

COVID-19 Omnibus (Emergency Measures)
Act 2020
No. 11 of 2020

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Authorised Version



Victoria

COVID-19 Omnibus (Emergency Measures) Act 2020[†]

No. 11 of 2020

[Assented to 24 April 2020]

The Parliament of Victoria enacts:

Chapter 1—Preliminary

1 Purpose

The purpose of this Act is to temporarily amend certain Acts, and to temporarily empower the making of regulations, to modify the application of the law of Victoria in certain respects for the purpose of responding to the COVID-19 pandemic.

COVID-19 Omnibus (Emergency Measures) Act 2020
No. 11 of 2020

2 Commencement

This Act comes into operation on the day after the day on which it receives the Royal Assent.

Chapter 2—Temporary modification of the law by regulation

Part 2.1—Regulations temporarily modifying Justice Acts and laws

3 Definitions

In this Part—

Chief Health Officer has the same meaning as in section 3(1) of the **Public Health and Wellbeing Act 2008**;

court means any of the following—

- (a) the Supreme Court;
- (b) the County Court;
- (c) the Magistrates' Court;
- (d) the Children's Court;
- (e) the Coroners Court;

family violence interim order means an interim order within the meaning of the **Family Violence Protection Act 2008**;

family violence intervention order has the same meaning as in section 4 of the **Family Violence Protection Act 2008**;

head, of a court or tribunal, means—

- (a) for the Supreme Court—the Chief Justice;
- (b) for the County Court—the Chief Judge;
- (c) for the Magistrates' Court—the Chief Magistrate;
- (d) for the Children's Court—the President of the Children's Court;

- (e) for the Coroners Court—the State Coroner;
- (f) for VCAT—the President of VCAT;
- (g) for the Victims of Crime Assistance Tribunal—the Chief Magistrate;

IBAC Commissioner means the Commissioner within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**;

Inspector has the same meaning as in section 3(1) of the **Victorian Inspectorate Act 2011**;

integrity entity means—

- (a) the Chief Municipal Inspector; or
- (b) the Independent Broad-based Anti-corruption Commission; or
- (c) the Information Commissioner; or
- (d) the Judicial Commission of Victoria; or
- (e) the Ombudsman; or
- (f) the Public Interest Monitor; or
- (g) the Victorian Inspectorate;

integrity entity head means—

- (a) for the Independent Broad-based Anti-corruption Commission—the IBAC Commissioner; or
- (b) for the Judicial Commission of Victoria—the Board of the Judicial Commission of Victoria; or
- (c) for the Victorian Inspectorate—the Inspector;

Justice Act provision means a provision of an Act (other than the Charter of Human Rights and Responsibilities) that is a provision administered by any of the following Ministers, solely or jointly with another Minister—

- (a) the Attorney-General;
- (b) the Minister for Corrections;
- (c) the Minister for Police and Emergency Services;
- (d) the Minister for Victim Support;
- (e) the Minister for Youth Justice;

relevant applied law means a law applying as a law of this jurisdiction under a Justice Act provision;

specified order or instrument means—

- (a) a community work permit within the meaning of the **Fines Reform Act 2014**; or
- (b) a deferral of a sentence (however described) under the **Children, Youth and Families Act 2005**; or
- (c) a detention order within the meaning of the **Serious Offenders Act 2018**; or
- (d) an emergency detention order within the meaning of the **Serious Offenders Act 2018**; or
- (e) a fine conversion order within the meaning of the **Fines Reform Act 2014**; or
- (f) a fine default unpaid community work order within the meaning of the **Fines Reform Act 2014**; or

- (g) an interim supervision order within the meaning of the **Serious Offenders Act 2018**; or
- (h) an interim detention order within the meaning of the **Serious Offenders Act 2018**; or
- (i) a parole order or a youth parole order; or
- (j) a sentencing order (including a community correction order and drug treatment order under the **Sentencing Act 1991**); or
- (k) a supervision order within the meaning of the **Serious Offenders Act 2018**; or
- (l) an undertaking given under the **Sentencing Act 1991**;

temporary emergency provision means any of the following—

- (a) Part 6 of the **Bail Act 1977**;
- (b) Part 8.5A of the **Children, Youth and Families Act 2005**;
- (c) Part 10B of the **Corrections Act 1986**;
- (d) Part VIIA of the **County Court Act 1958**;
- (e) section 7A of the **Court Security Act 1980**;
- (f) Part 11 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;
- (g) Chapter 9 of the **Criminal Procedure Act 2009**;
- (h) Part IX of the **Evidence (Miscellaneous Provisions) Act 1958**;

- (i) Part 12A of the **Family Violence Protection Act 2008**;
- (j) Part 15A of the **Fines Reform Act 2014**;
- (k) Part 9 of the **Magistrates' Court Act 1989**;
- (l) Part 5A of the **Oaths and Affirmations Act 2018**;
- (m) Part 6A of the **Open Courts Act 2013**;
- (n) Part 11A of the **Personal Safety Intervention Orders Act 2010**;
- (o) Part 13 of the **Sentencing Act 1991**;
- (p) Part 7A of the **Supreme Court Act 1986**;
- (q) Part 6A of the **Victorian Civil and Administrative Tribunal Act 1998**;
- (r) any subordinate instrument made under or for the purposes of a provision mentioned in paragraphs (a) to (q);

tribunal means—

- (a) VCAT; or
- (b) the Victims of Crime Assistance Tribunal.

4 Regulations

- (1) The Governor in Council, on the recommendation of the Attorney-General, may make regulations that disapply, or modify the application of, a Justice Act provision, a provision of a subordinate instrument made under a Justice Act provision, a relevant applied law or a subordinate instrument made under a relevant applied law (other than a temporary emergency provision) that provides for or regulates any of the following matters—

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- (a) arrangements for or with respect to any proceeding in a court or tribunal, including a pre-trial proceeding;
- (b) the conduct of a proceeding in a court or tribunal;
- (c) arrangements for or with respect to any proceeding, inquiry or investigation being conducted or being carried out by an integrity entity;
- (d) a specified date or time frame that must be met;
- (e) the process applying to applications for bail;
- (f) the method or processes by which conditions of bail are monitored or enforced;
- (g) the method or processes by which a specified order or instrument is administered, monitored or enforced;
- (h) the process by which orders, judgments, rulings, reasons, determinations, decisions or findings of a court or tribunal are issued (including their certification and transmission);
- (i) the process by which a warrant is issued (including its certification and transmission);
- (j) the method or processes by which a warrant is enforced;
- (k) the process by which family violence intervention orders (including family violence interim orders) or family violence safety notices are issued (including their certification and transmission), and the method or processes by which they are monitored or enforced;

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Part 2.1—Regulations temporarily modifying Justice Acts and laws

- (l) the witnessing, execution or signing of legal documents such as affidavits, statutory declarations, deeds, powers of attorney, contracts or agreements, undertakings and wills;
 - (m) the process by which a document is given or issued;
 - (n) the service of documents;
 - (o) the certification of documents;
 - (p) the lodgment, submission or filing, or inspection, of documents.
- (2) Regulations under this section may—
- (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;
 - (c) confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies;
 - (d) apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time; or
 - (iii) as in force from time to time.
- (3) The Attorney-General may only recommend that regulations be made under this section if the Attorney-General is of the opinion that the regulations to be made on the recommendation are—

- (a) consistent with—
 - (i) any relevant advice given by the Chief Health Officer to the Minister administering the **Public Health and Wellbeing Act 2008** in relation to managing or responding to the COVID-19 pandemic; or
 - (ii) any relevant directions made by an authorised officer under Part 10 of the **Public Health and Wellbeing Act 2008** in relation to the COVID-19 pandemic; and
- (b) reasonable, in managing or responding to the COVID-19 pandemic—
 - (i) to protect the health, safety or welfare of persons in relation to the administration of justice or law; or
 - (ii) for the effective or efficient administration of justice or law; or
 - (iii) in relation to the conduct or carrying out of a proceeding, inquiry or investigation by an integrity entity.

5 Effect of regulations

- (1) Regulations made under section 4 have effect despite anything to the contrary in—
 - (a) any Act (other than this Act, the **Constitution Act 1975** or the Charter of Human Rights and Responsibilities); or
 - (b) any subordinate instrument; or
 - (c) any other law.
- (2) To avoid doubt, an Act or subordinate instrument has the force of law and any other law has effect subject to any regulation made under section 4.

6 Certain requirements under Subordinate Legislation Act 1994 disappplied

The following are not required for any proposed statutory rule that is to be made under section 4—

- (a) consultation under section 6 of the **Subordinate Legislation Act 1994**;
- (b) the preparation of a regulatory impact statement under section 7 of the **Subordinate Legislation Act 1994**.

7 Attorney-General to consult with relevant Ministers

- (1) This section applies if the Attorney-General is proposing to recommend the making of a regulation under section 4 that will disapply, or modify the application of, a Justice Act provision or a provision of a subordinate instrument made under a Justice Act provision that the Attorney-General—
 - (a) does not administer; or
 - (b) jointly administers with another Minister.
- (2) Before making the recommendation, the Attorney-General must consult with, as the case requires—
 - (a) the Minister who administers the Justice Act provision; or
 - (b) the Minister with whom the Attorney-General jointly administers the Justice Act provision.

8 Consent of heads of courts and tribunals required in relation to regulations that relate to courts and tribunals

- (1) This section applies if the Attorney-General is proposing to recommend the making of a regulation under section 4 that will disapply, or modify the application of, a Justice Act provision, a provision of a subordinate instrument made

under a Justice Act provision, a relevant applied law or a subordinate instrument made under a relevant applied law that provides for or regulates any matter set out in section 4(1) that relates to the conduct of proceedings, including pre-trial proceedings, in a court or tribunal.

- (2) The Attorney-General must not make the recommendation without the consent of the relevant head of the court or tribunal.

9 Consent of integrity entities and integrity entity heads required in relation to regulations that relate to integrity entities

- (1) This section applies if the Attorney-General is proposing to recommend the making of a regulation under section 4 that will disapply, or modify the application of, a Justice Act provision, a provision of a subordinate instrument made under a Justice Act provision, a relevant applied law or a subordinate instrument made under a relevant applied law that provides for or regulates any matter set out in section 4(1) that relates to an integrity entity.
- (2) The Attorney-General must not make the recommendation without the consent of, as the case requires, the integrity entity or the integrity entity head of the integrity entity to which the matter relates.

10 Regulations are disallowable by either House of Parliament

A regulation made under section 4 may be disallowed in whole or in part by either House of Parliament.

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Part 2.1—Regulations temporarily modifying Justice Acts and laws

11 Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement.

Note

Regulations in force immediately before the day that this Part is repealed are impliedly revoked on that day.

Part 2.2—Regulations temporarily modifying law relating to retail leases and non-retail commercial leases and licences

12 Definitions

In this Part—

commercial licence means a licence, sub-licence or agreement for a licence or sub-licence, whether or not in writing or partly in writing, and whether express or implied, under which a person has the right to occupy, non-exclusively, a part of premises for the sole or predominant purpose of carrying on a business at the occupied premises;

landlord, in relation to an eligible lease that is a commercial licence, includes the licensor (or sub-licensor) of that licence;

Note

An eligible lease is defined to include a non-retail commercial lease or licence which includes a commercial licence.

eligible lease—see section 13;

lease means a lease, sub-lease or an agreement for a lease or sub-lease, whether or not in writing or partly in writing, and whether express or implied;

non-retail commercial lease or licence—see section 14;

qualifies for the jobkeeper scheme has the same meaning as in section 789GC of the Fair Work Act 2009 of the Commonwealth;

retail lease means a lease of retail premises within the meaning of the **Retail Leases Act 2003**;

Small Business Commission means the Small Business Commission established under section 4 of the **Small Business Commission Act 2017**;

SME entity has the same meaning as in section 4 of the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020 of the Commonwealth;

tenant, in relation to an eligible lease that is a commercial licence, includes the licensee (or sub-licensee) of that licence;

Note

An eligible lease is defined to include a non-retail commercial lease or licence which includes a commercial licence.

turnover means turnover that is prescribed.

13 Meaning of *eligible lease*

- (1) An ***eligible lease*** is a retail lease or a non-retail commercial lease or licence—
 - (a) that is in effect on the day the first regulations made under section 15 come into operation; and
 - (b) under which the tenant is, on or after the commencement of the first regulations made under section 15—
 - (i) an SME entity; and
 - (ii) an employer who qualifies for the jobkeeper scheme and is a participant in the jobkeeper scheme.
- (2) An ***eligible lease*** does not include a retail lease or a non-retail commercial lease or licence, or a retail lease or a non-retail commercial lease or licence of a specified class, that is prescribed.

- (3) Despite subsection (1), a retail lease or a non-retail commercial lease or licence is not an *eligible lease* if—
- (a) the tenant under the retail lease or a non-retail commercial lease or licence is a member of a prescribed group of entities and the aggregate turnover of the prescribed group of entities exceeds the prescribed amount; or
 - (b) there is a relationship or connection between the tenant under the retail lease or a non-retail commercial lease or licence and another entity that is prescribed and the aggregate turnover of the tenant and the other entity exceeds the prescribed amount; or
 - (c) an entity has a prescribed method of control or influence, through the holding of a prescribed interest, right or power, in relation to acts or decisions relating to the ownership, management or affairs of a tenant under the retail lease or a non-retail commercial lease or licence that is a body corporate.

14 Meaning of *non-retail commercial lease or licence*

- (1) A *non-retail commercial lease or licence* is—
- (a) a lease of premises under which the premises are let for the sole or predominant purpose of carrying on a business at the premises; or
 - (b) a commercial licence.
- (2) A *non-retail commercial lease or licence* does not include a retail lease.

**15 Regulations modifying law relating to certain retail
leases and non-retail commercial leases and licences**

- (1) The Governor in Council, on the recommendation of the Minister for Small Business, may make regulations for or with respect to—
- (a) prohibiting the termination of an eligible lease;
 - (b) changing any period under—
 - (i) an eligible lease;
 - (ii) the **Crown Land (Reserves) Act 1978**, the **Land Act 1958**, the **Property Law Act 1958**, the **Retail Leases Act 2003**, the **Settled Land Act 1958** or the **Transfer of Land Act 1958** in relation to an eligible lease;
 - (iii) regulations made under the **Crown Land (Reserves) Act 1978**, the **Land Act 1958**, the **Property Law Act 1958**, the **Retail Leases Act 2003**, the **Settled Land Act 1958** or the **Transfer of Land Act 1958** in relation to an eligible lease—in which someone must or may do something;
 - (c) changing or limiting any other right of a landlord under an eligible lease under—
 - (i) that lease;
 - (ii) the **Crown Land (Reserves) Act 1978**, the **Land Act 1958**, the **Property Law Act 1958**, the **Retail Leases Act 2003**, the **Settled Land Act 1958** or the **Transfer of Land Act 1958**;

- (iii) regulations made under the **Crown Land (Reserves) Act 1978**, the **Land Act 1958**, the **Property Law Act 1958**, the **Retail Leases Act 2003**, the **Settled Land Act 1958** or the **Transfer of Land Act 1958**;
- (d) changing or limiting any other right a person who is a landlord under an eligible lease has under an agreement related to that eligible lease;
- (e) exempting a landlord or tenant under an eligible lease from having to comply with—
 - (i) an eligible lease;
 - (ii) the **Crown Land (Reserves) Act 1978**, the **Land Act 1958**, the **Property Law Act 1958**, the **Retail Leases Act 2003**, the **Settled Land Act 1958** or the **Transfer of Land Act 1958**;
 - (iii) regulations made under the **Crown Land (Reserves) Act 1978**, the **Land Act 1958**, the **Property Law Act 1958**, the **Retail Leases Act 2003**, the **Settled Land Act 1958** or the **Transfer of Land Act 1958**;
 - (iv) an agreement related to an eligible lease;
- (f) modifying the operation of an eligible lease or an agreement related to the eligible lease;
- (g) modifying the application, in relation to an eligible lease, of—
 - (i) the **Crown Land (Reserves) Act 1978**, the **Land Act 1958**, the **Property Law Act 1958**, the **Retail Leases Act 2003**, the **Settled Land Act 1958** or the **Transfer of Land Act 1958**;

- (ii) regulations made under the **Crown Land (Reserves) Act 1978**, the **Land Act 1958**, the **Property Law Act 1958**, the **Retail Leases Act 2003**, the **Settled Land Act 1958** or the **Transfer of Land Act 1958**;
- (iii) the common law;
- (h) extending the period during which an eligible lease is in effect;
- (i) deeming a provision of the regulations as forming part of an eligible lease;
- (j) imposing new obligations on landlords or tenants under an eligible lease, including requiring them to negotiate amendments to an eligible lease;
- (k) requiring landlords and tenants under an eligible lease who are in dispute about the terms of an eligible lease to participate in mediation arranged by the Small Business Commission;
- (l) requiring landlords and tenants under an eligible lease who are in dispute about the terms of an eligible lease to have a mediation certificate before commencing proceedings in VCAT or a court in relation to the dispute;
- (m) requiring a landlord or tenant under an eligible lease who are in dispute about the terms of an eligible lease to get leave of a court to commence a proceeding in relation to the dispute in the court;
- (n) the conduct of a mediation referred to in paragraph (k), including the payment of fees and expenses for the conduct of a mediation;

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non-retail commercial leases and licences

- (o) conferring jurisdiction on VCAT to hear and determine disputes about the terms of an eligible lease that is a retail lease;
 - (p) any matter or thing required or permitted to be prescribed or necessary to be prescribed to give effect to this Part.
- (2) Regulations made under subsection (1)(k) or (l) must not—
 - (a) require a landlord or tenant who are in dispute about the terms of an eligible lease to participate in mediation if either the landlord or tenant has commenced proceedings in VCAT or a court in relation to that dispute; or
 - (b) have the effect of preventing a landlord and tenant who are in dispute about the terms of an eligible lease from commencing proceedings in a court in relation to that dispute at any time.
- (3) Regulations under this section may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;
 - (c) confer a function or power or impose a duty on a specified person or body or class of persons or bodies;
 - (d) apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time; or
 - (iii) as in force from time to time;

- (e) impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (4) Regulations made under this section may have retrospective effect to a day not earlier than 29 March 2020.
- (5) The Minister for Small Business may only recommend that regulations be made under this section if the Minister is of the opinion that the regulations to be made on the recommendation are reasonably necessary for responding to the COVID-19 pandemic.

16 Minister for Jobs, Innovation and Trade to be consulted before recommendation is made for making of regulations

The Minister for Small Business must consult with the Minister for Jobs, Innovation and Trade before making a recommendation under section 15(1).

17 Effect of regulations

- (1) The following have effect subject to any regulations made under section 15—
 - (a) an eligible lease or any agreement relating to an eligible lease;
 - (b) the **Crown Land (Reserves) Act 1978**, the **Land Act 1958**, the **Property Law Act 1958**, the **Retail Leases Act 2003**, the **Settled Land Act 1958** and the **Transfer of Land Act 1958**;
 - (c) regulations made under the **Crown Land (Reserves) Act 1978**, the **Land Act 1958**, the **Property Law Act 1958**, the **Retail Leases Act 2003**, the **Settled Land Act 1958** and the **Transfer of Land Act 1958**;
 - (d) the common law.

- (2) To avoid doubt, any regulations made under section 15 that have retrospective effect to a particular day are taken always to have had effect on and after that day.

18 No compensation payable

No compensation is payable by the State in respect of loss, damage or injury of any kind suffered by any person as a result of, or arising out of, the making of a regulation under section 15.

19 Functions and powers of the Small Business Commission under this Part

- (1) The Small Business Commission has the following functions under this Part—
- (a) to make arrangements to facilitate the resolution by mediation, of disputes between landlords and tenants under an eligible lease about the terms of the lease;
 - (b) to monitor compliance with regulations made under section 15;
 - (c) to commence proceedings for offences against regulations made under section 15;
 - (d) despite section 5 of the **Small Business Commission Act 2017**, any other function that is prescribed.
- (2) In addition, despite section 5 of the **Small Business Commission Act 2017**, the Small Business Commission may also exercise any powers conferred on it under regulations under section 15.

20 Certain requirements under Subordinate Legislation Act 1994 disappplied

The following are not required for any proposed statutory rule that is to be made under section 15—

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non-retail commercial leases and licences

- (a) consultation under section 6 of the
Subordinate Legislation Act 1994;
- (b) the preparation of a regulatory impact
statement under section 7 of the
Subordinate Legislation Act 1994.

**21 Regulations are disallowable by either House of
Parliament**

Regulations made under section 15 may be
disallowed in whole or in part by either House of
Parliament.

22 Repeal of Part

This Part is **repealed** on the day that is 6 months
after its commencement.

Note

Regulations in force immediately before the day that this Part is
repealed are impliedly revoked on that day.

Chapter 3—Temporary amendments to Justice legislation

Part 3.1—Preliminary

23 Purpose of Chapter

The purpose of this Chapter is to amend various Acts in the Justice portfolio—

- (a) to make amendments of a temporary nature to deal with matters arising from the COVID-19 pandemic, including by providing for powers to implement temporary measures; and
- (b) to make other miscellaneous amendments.

Part 3.2—Amendment of Bail Act 1977

24 New Part 6 inserted

After section 34 of the **Bail Act 1977** insert—

"Part 6—Temporary measures in response to COVID-19 pandemic

34A Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (d) any other law.

34B Court official in the Children's Court

In section 27(1), *court official* means, in the case of the Children's Court, a registrar or deputy registrar of that Court.

34C Appearing or being brought before a court

- (1) If a provision of this Act requires that a person be brought before a court, that requirement is satisfied by either of the following persons appearing before the court—
 - (a) a legal practitioner representing the person; or
 - (b) another person empowered by law to appear for the person.
- (2) A person may appear before a court for the purposes of any provision of this Act—
 - (a) personally; or
 - (b) by a legal practitioner representing the person; or
 - (c) by another person empowered by law to appear for the person.
- (3) An appearance by audio visual link or audio link constitutes an appearance for the purposes of this Act.

34D Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 3.3—Amendment of Children, Youth and Families Act 2005

25 New Part 8.5A inserted

After Part 8.5 of the **Children, Youth and Families Act 2005**, insert—

'Part 8.5A—Temporary measures in response to COVID-19 pandemic

Division 1—Preliminary

600A Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or

(d) any other law.

Division 2—Youth Parole Board

600B Establishment of Youth Parole Board

Section 442(2)(a) of the **Children, Youth and Families Act 2005** has effect as if that section were omitted and the following section were substituted—

- "(a) a chairperson appointed by the Governor in Council on the nomination of the Attorney-General who is one of the following—
- (i) a judge of the County Court, a reserve judge of the County Court or a former judge of the County Court;
 - (ii) a magistrate within the meaning of section 3(1) of the **Magistrates' Court Act 1989**, a reserve magistrate within the meaning of that Act or a former magistrate;
 - (iii) an Australian lawyer of at least 10 years' standing; and"

600C Terms and conditions of office

Section 443(6) of the **Children, Youth and Families Act 2005** has effect as if that section were omitted and the following section were substituted—

- "(6) If a member who is a judge of the County Court or a reserve judge of the County Court, a magistrate or a reserve magistrate is removed from judicial office under Part IIIAA of the **Constitution Act 1975**, that person ceases to hold office as a member."

600D Alternate members

- (1) Section 444(1)(a) of the **Children, Youth and Families Act 2005** has effect as if that section were omitted and the following section were substituted—

"(a) up to 2 alternate members as alternate chairpersons for the Youth Parole Board on the nomination of the Attorney-General each of whom is one of the following—

- (i) a judge of the County Court, a reserve judge of the County Court or a former judge of the County Court;
- (ii) a magistrate within the meaning of section 3(1) of the **Magistrates' Court Act 1989**, a reserve magistrate within the meaning of that Act or a former magistrate;
- (iii) an Australian lawyer of at least 10 years' standing; and".

- (2) Section 444(1A) of the **Children, Youth and Families Act 2005** has effect as if that section were omitted and the following section were substituted—

"(1A) An alternate chairperson appointed under subsection (1)(a) is required to act as chairperson if—

- (a) the chairperson is absent from duty; or
- (b) the office of chairperson is vacant.".

600E Meetings of the Youth Parole Board

- (1) Sections 445(1), (2), (3) and (5) of the **Children, Youth and Families Act 2005** have effect as if the words "or an acting chairperson" were inserted after the words "the chairperson".
- (2) Section 445(4) of the **Children, Youth and Families Act 2005**, has effect as if the words "(including as an acting chairperson)" were inserted after the words "A female member".

600F Transitional provision

- (1) On and from the commencement of Part 3.3 of the **COVID-19 Omnibus (Emergency Measures) Act 2020**, the Youth Parole Board is taken to be the same body as it was immediately before that commencement, despite the changes to the constitution or quorum of the Youth Parole Board made by that Part and no decision, matter or thing is to be affected because of those changes.
- (2) The members of the Youth Parole Board (including the chairperson and any alternate members) holding office immediately before the commencement of Part 3.3 of the **COVID-19 Omnibus (Emergency Measures) Act 2020** continue to hold office as members after that commencement on the same terms and conditions on which they held office as members immediately before that commencement.

Division 3—Pre-sentence reports

600G Application of Division

This Division applies if—

- (a) the Court or an appellate court finds a person guilty of an offence; and
- (b) the person is a child or other person under the age of 21 years to whom this Act applies; and
- (c) the Court or appellate court is proposing to sentence the person; and
- (d) the Court or appellate court—
 - (i) may or must order a pre-sentence report under this Act in respect of the person before passing sentence on that person; or
 - (ii) had ordered, but not received or considered, a pre-sentence report in respect of the person immediately before the commencement of the **COVID-19 Omnibus (Emergency Measures) Act 2020**.

600H Definition of *oral pre-sentence report*

In this Part—

oral pre-sentence report means a report given to the Court or appellate court by the Secretary to the Department of Justice and Community Safety (whether given in person, or by audio link or audio visual link within the meaning of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**) that sets out all or any of the following matters but no others—

- (a) the sources of information on which the report is based;

- (b) the circumstances of the offence of which the person has been found guilty;
- (c) any previous sentences in respect of the person involving the Secretary or the Secretary to the Department of Justice and Community Safety;
- (d) the family circumstances of the person;
- (e) the education of the person;
- (f) the employment history of the person;
- (g) the recreation and leisure activities of the person;
- (h) medical and health matters relating to the person.

600I Circumstances in which oral pre-sentence report may be given

- (1) The Secretary to the Department of Justice and Community Safety may give an oral pre-sentence report in respect of a person if—
 - (a) the Court or appellate court is satisfied that it is not reasonably practicable for a pre-sentence report to be prepared due to the impact of the COVID-19 pandemic; and
 - (b) subject to subsection (2), a previous pre-sentence report has been prepared in respect of the person during the 6 month period before the day on which the Court or appellate court proposes to order an oral pre-sentence report; and
 - (c) the person consents to the giving and consideration of an oral pre-sentence report instead of a pre-sentence report; and

- (d) the Secretary to the Department of Justice and Community Safety consents to the giving and consideration of an oral pre-sentence report instead of a pre-sentence report; and
 - (e) the Court or appellate court is satisfied that it is in the interests of justice to consider an oral pre-sentence report instead of a pre-sentence report in passing sentence on the person.
- (2) Subsection (1)(b) does not apply if the person is of or over the age of 20 years and 6 months on the day on which the Court or appellate court proposes to order an oral pre-sentence report.

600J Disclosure of contents of oral pre-sentence report

- (1) The Secretary to the Department of Justice and Community Safety, if it is reasonably practicable to do so before the giving of an oral pre-sentence report, must provide a summary of the information contained in that report to—
- (a) subject to subsection (3), the person who is the subject of the report; and
 - (b) the legal practitioner representing that person.
- (2) A summary referred to in subsection (1) may be provided in written or oral form.
- (3) The Secretary to the Department of Justice and Community Safety is not under subsection (1)(a) required to provide the person with a summary of any information contained in the oral pre-sentence report that the Secretary to the Department of Justice and Community Safety considers may be

prejudicial to the physical or mental health of the person.

- (4) A person who receives the summary of the information contained in an oral pre-sentence report under this section (part or all of which was not disclosed to the person who is the subject of the report because of subsection (3)) must not, unless otherwise directed by the Court or appellate court, disclose to the person who is the subject of the report any information contained in the summary or the part of the summary that was not sent to that person.

Penalty: 10 penalty units.

600K Hearing of oral pre-sentence report

- (1) The Court or appellate court (as the case requires) may on its own motion—
- (a) order the whole or any part of an oral pre-sentence report be given in closed court; or
 - (b) order that only persons or classes of persons specified by it may be present during the giving of the whole or any part of an oral pre-sentence report.
- (2) If any matter in an oral pre-sentence report is disputed by the person who is the subject of the report, the person who gave the oral pre-sentence report may be cross-examined on the contents of the report.

600L Interpretation of provisions relating to pre-sentence reports

- (1) Subject to subsection (3), the Court or appellate court (as the case requires) is taken to have ordered, received or considered (however described) a pre-sentence report

- under section 355, 358, 410, 412, 414, 416, 430I, 430M, 544, 551 or 571 if the Court or appellate court has ordered, heard or considered an oral pre-sentence report.
- (2) Subject to subsection (3), sections 355, 358, 410, 412, 414, 416, 430I, 430J, 430M, 544, 547, 548, 549, 551, 552, 571 and 573 apply to oral pre-sentence reports as if—
- (a) any reference to a pre-sentence report were a reference to an oral pre-sentence report; and
 - (b) any reference to the preparation or submission of a pre-sentence report were a reference to the giving of an oral pre-sentence report; and
 - (c) any reference to the author of a pre-sentence report were a reference to the Secretary to the Department of Justice and Community Safety.
- (3) Despite the operation of this Division, the Court or appellate court (as the case requires) must not order, receive or consider an oral pre-sentence report instead of a pre-sentence report under section 430I(3) or 571(3).
- (4) If, due to the operation of this Division, the Court or appellate court (as the case requires) orders, receives or considers an oral pre-sentence report instead of a pre-sentence report, the following provisions do not apply in relation to the proceeding for the purposes of which the oral pre-sentence report is ordered, received or considered—
- (a) section 430K;
 - (b) section 430L;
 - (c) section 550;

- (d) section 574;
- (e) section 575.

Division 4—Isolation

600M Isolation for detection, prevention or mitigation of COVID-19 or other infectious disease

- (1) Without limiting section 488, the Secretary or the officer in charge of a remand centre, youth residential centre or youth justice centre may authorise the isolation of a person detained in the centre, that is the placing of the person in a locked room separate to others and from the normal routine of the centre, for the purpose of—
 - (a) detecting COVID-19 or any other infectious disease; or
 - (b) preventing or mitigating the transmission of COVID-19 or any other infectious disease within the remand centre, youth residential centre or youth justice centre.
- (2) Isolation may be authorised under subsection (1) whether or not the person isolated is suspected of having, or has been diagnosed as having, COVID-19 or any other infectious disease.
- (3) If isolation is authorised under subsection (1), the Secretary must determine the period of isolation, not exceeding 14 consecutive days, being the minimum period of time that is required to detect, or prevent or mitigate the transmission of, COVID-19 or other infectious disease.

- (4) In determining the minimum period of time for the purposes of subsection (3), the Secretary may have regard to—
 - (a) any relevant current direction under the **Public Health and Wellbeing Act 2008** relating to COVID-19 or any other infectious disease; and
 - (b) any current recommendation made by, or current advice of, the Chief Health Officer, the Deputy Chief Health Officer or the Department of Health and Human Services relating to COVID-19 or any other infectious disease; and
 - (c) any other relevant medical or mental health advice relating to COVID-19 or any other infectious disease.
- (5) A person placed in isolation under subsection (1) must—
 - (a) be closely supervised and observed at intervals of not longer than 15 minutes; and
 - (b) receive medical and mental health support and treatment that the person reasonably requires.
- (6) If necessary, reasonable force may be used to place a person in isolation under this section.
- (7) The officer in charge of a remand centre, a youth residential centre or a youth justice centre must make sure that the following particulars of every use of isolation under this section are recorded in a register established for the purpose—

- (a) the name of the person isolated;
 - (b) the time and date the isolation commenced;
 - (c) the frequency of staff supervision and observation;
 - (d) the frequency of supervision and observation by a registered medical practitioner or other primary health service provider, or a medical, health or mental health expert;
 - (e) the time and date of release from isolation.
- (8) The Secretary may authorise isolation under subsection (1) in respect of a person on more than one occasion, and may determine a further minimum period of isolation in accordance with subsection (3) for each occasion.
- (9) In this section and section 600N—
infectious disease has the same meaning as in the **Public Health and Wellbeing Act 2008**.

600N Entitlements of person placed in isolation under section 600M

- (1) Subject to subsection (3), a person who is placed in isolation under section 600M is entitled to be temporarily removed from isolation to allow the person access to outdoors and to undertake outdoor recreation activities—
- (a) at least once each day; and
 - (b) for a reasonable period of time on each occasion that the person is temporarily removed.

- (2) Subject to subsection (3), a person who is placed in isolation under section 600M has, during the period of isolation, all the entitlements of a person detained in a remand centre, youth residential centre or youth justice centre that are set out in section 482(2).
- (3) The Secretary may determine not to give effect to an entitlement referred to in subsection (1) or (2), if the Secretary considers that it would not be reasonably safe to do so, or that the Secretary would not be reasonably able to do so, having regard to—
 - (a) any relevant current direction under the **Public Health and Wellbeing Act 2008** relating to COVID-19 or any other infectious disease; or
 - (b) any current recommendation made by, or current advice of, the Chief Health Officer, the Deputy Chief Health Officer, or the Department of Health and Human Services, relating to COVID-19 or any other infectious disease; or
 - (c) any other relevant medical or mental health advice relating to COVID-19 or any other infectious disease; or
 - (d) the interests of the security of the remand centre, youth residential centre or youth justice centre.
- (4) The period of isolation authorised under section 600M(1) continues to apply for any period that the person is temporarily removed from isolation under subsection (1).

600O Reporting on use of reasonable force to place person in isolation under section 600M

- (1) This section applies if an officer uses physical force to place a person in isolation under section 600M.
- (2) As soon as possible after taking the action, the officer must report the taking of the action to the officer in charge of the remand centre, youth residential centre or youth justice centre.
- (3) As soon as possible after receiving a report under subsection (2), the officer in charge must report the taking of the action by the officer to the Secretary.

Division 5—Other measures

600P Application of Parts IIA and IX of Evidence (Miscellaneous Provisions) Act 1958 in relation to expressions used in this Act

Parts IIA and IX of the **Evidence (Miscellaneous Provisions) Act 1958** apply as if a reference in that Act to a person appearing in or attending court included a reference to a person coming before a court under this Act, whether this Act refers to a person being "brought before", "produced before" or "present before" a court, or a similar expression, is used.

600Q Requirements relating to conciliation conferences and conciliation counselling

For the purposes of section 222 and 260, a convenor of a conciliation conference, or a person conducting conciliation counselling,

may conduct the conference or counselling by means of audio link or audio visual link.

600R Requirements relating to youth control order planning meetings and group conferences

For the purposes of sections 409T and 415, the convenor of a youth control order planning meeting or a group conference, having regard to the views of the people attending the planning meeting or group conference, may require one or more of them—

- (a) to attend by means of audio link or audio visual link; or
- (b) to participate by means of oral or written submissions.

600S Requirements relating to attendance at a youth justice unit

- (1) A person who is required under this Act or the regulations to attend a youth justice unit may attend the youth justice unit in any manner directed by the Secretary including, but not limited to, attending by means of audio link or audio visual link.
- (2) This section applies to attendance at any time while this section is in force, irrespective of when the requirement to attend was imposed.

600T Requirements relating to reporting

- (1) A person who is required under this Act or the regulations to report to the Secretary, a youth justice officer or a parole officer as a condition or requirement of a sentence or parole order may report in any manner directed by the Secretary, the youth justice officer or the parole officer as the case

requires including, but not limited to, reporting by means of audio link or audio visual link.

- (2) This section applies to reporting at any time while this section is in force, irrespective of when the requirement to report was imposed.

600U Requirements relating to certain interim accommodation proceedings

Despite sections 268, 269 and 270—

- (a) a notice in relation to a matter under any of those sections does not, despite any wording to the contrary in the notice—
 - (i) require a person to appear in person before the Court; or
 - (ii) require a person to cause another person to appear in person before the Court; and
- (b) the Court may deal with the matter in the absence of the person.

600V Location of Children's Court

The operation of section 505 other than section 505(1)(a) and 505(4) is suspended.

600W Place of hearing

- (1) The Court may order that a hearing be held at an appropriate place that is not the proper venue for the hearing if the Court considers that—
- (a) a timely hearing cannot be had at the proper venue for the hearing due to disruption caused by COVID-19; or

- (b) for any other reason it is appropriate that the hearing not be held at the proper venue.
- (2) In determining an appropriate place to hold a hearing for the purposes of subsection (1), the Court must first have regard to places closest to the proper venue for the hearing.

**600X Additional methods of service—
section 593**

- (1) In addition to the methods of service referred to in section 593(1), that subsection is taken to include the following alternative methods as to how a document must be served on a person—
 - (a) by delivering a copy of the document to the person by means of an electronic communication that is confirmed as having been received by the person;
 - (b) by sending by registered post a copy of the document, addressed to the person's authorised legal representative, to the place of business of the person's authorised legal representative;
 - (c) by leaving a copy of the document for that person—
 - (i) at the place of business of the person's authorised legal representative; and
 - (ii) with a person who apparently works there and who apparently is not less than 16 years of age;
 - (d) by delivering a copy of the document, addressed to the person's authorised legal representative, to the person's

authorised legal representative
personally;

- (e) by delivering a copy of the document to the person's authorised legal representative by means of an electronic communication that is confirmed as having been received by the person's authorised legal representative.
- (2) If a provision of this Act requires service to be in accordance with section 593 or requires service to be by registered post or personally or otherwise, service by a method referred to in subsection (1) is taken to satisfy the requirement.
- (3) In this section—
authorised legal representative of a person means a legal representative of the person who has been instructed by the person to receive documents on the person's behalf.

600Y Means of effecting personal service

For the purposes of section 593, a person may deliver a true copy or a copy of a document to another person personally by placing a true copy or a copy of the document, as the case requires, on a surface in the presence of the other person.

**600Z Additional methods of service—
section 594**

- (1) In addition to the methods of service referred to in section 594, that section is taken to include the following alternative methods as to how a notice of an application or hearing must be served on a recipient who is a child, a parent of a child or another person—

- (a) by delivering, not less than 5 days before the hearing date stated in the notice, a copy of the document to the recipient, by means of an electronic communication that is confirmed as having been received by the recipient;
- (b) by sending by registered post, not less than 14 days before the hearing date stated in the notice, a copy of the notice, addressed to the recipient's authorised legal representative, to the place of business of the recipient's authorised legal representative;
- (c) by leaving, not less than 5 days before the hearing date stated in the notice, a copy of the notice for the recipient—
 - (i) at the place of business of the recipient's authorised legal representative; and
 - (ii) with a person who apparently works there and who apparently is not less than 16 years of age;
- (d) by delivering , not less than 5 days before the hearing date stated in the notice, a copy of the notice, addressed to the recipient's authorised legal representative, to the recipient's authorised legal representative personally;
- (e) by delivering, not less than 5 days before the hearing date stated in the notice, a copy of the notice to the recipient's authorised legal representative by means of an electronic communication that is confirmed as having been received by

the recipient's authorised legal representative.

(2) In this section—

authorised legal representative of a recipient means a legal representative of the recipient who has been instructed by the recipient to receive documents on the recipient's behalf.

600ZA Requirements relating to bail justices

(1) The operation of the following provisions is suspended—

- (a) section 242(3);
- (b) section 247A(3).

(2) Sections 269 and 270 have effect as if—

- (a) the references to "a bail justice" in subsections 269(5) and (7) and 270(8) and (9) were omitted; and
- (b) the references to "24 hours" in subsections 269(5) and 270(8) were references to "one working day".

600ZB Application of Part 1.2 principles

(1) Subject to subsection (2), the principles in Part 1.2 do not apply to Part 8.5A.

(2) The principles in Part 1.2 apply to Division 5 of Part 8.5A, except to the extent that Division 5 relates to—

- (a) Chapter 5; or
- (b) Chapter 7 (in relation to a matter under Chapter 5).

(3) In this section a reference to Part 8.5A includes a reference to a decision or action under Part 8.5A.

Division 6—Repeal of Part

600ZC Repeal of Part

- (1) Divisions 3, 4 and 5 of this Part are **repealed** on the day that is 6 months after the commencement of this Part.
- (2) The remainder of this Part is **repealed** on the day that is 12 months after the commencement of this Part.'

Part 3.4—Amendment of Corrections Act 1986

26 New Part 10B inserted

After section 112D of the **Corrections Act 1986**
insert—

"Part 10B—Temporary measures in response to COVID-19 pandemic

Division 1—Preliminary

112E Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or

(d) any other law.

112F Definitions

In this Part—

infectious disease has the same meaning as in the **Public Health and Wellbeing Act 2008**;

officer means—

- (a) a person who is authorised by instrument under section 9A(1)(b); and
- (b) a person referred to in the definition of *officer* in section 14, other than paragraphs (c) and (d)(ii), (iii) and (iv) of that definition;

related health risks means any medical or psychiatric conditions or other health conditions of a prisoner that may contribute to, result from, or be connected to (whether directly or indirectly), a risk in relation to COVID-19 or any other infectious disease;

visitor has the same meaning as in section 33.

Division 2—Access to prisons

112G Secretary or Governor may prohibit or restrict visits for health and safety reasons

- (1) The Secretary or the Governor may by order prohibit a person from entering a prison as a visitor—
 - (a) for the safety, security or good order of a prison; or

- (b) for the health and safety of any person.
- (2) The Secretary or the Governor, for the safety, security or good order of a prison, or for the health and safety of any person, may—
 - (a) by order restrict the manner in which a person enters a prison as a visitor; or
 - (b) by order restrict the manner in which a visit is conducted; or
 - (c) order a visitor to leave the prison.
- (3) A person who disobeys an order under this section is guilty of an offence.
Penalty: 10 penalty units.
- (4) If a visitor disobeys an order to leave a prison under this section an officer may, if necessary, use reasonable force to compel the visitor to leave the prison.
- (5) An officer who uses force to compel a visitor to leave a prison must report the fact to the Secretary or the Governor as soon as possible.
- (6) An officer is not liable for injury or damage caused by the use of force in accordance with this section.

112H Secretary or Governor may permit visitor and prisoner communication

- (1) The Secretary or the Governor may permit communication between a visitor and prisoner by the following means—
 - (a) telephone;
 - (b) video conference;
 - (c) letters or parcels in accordance with Division 4A of Part 6;

- (d) any other means approved by the Governor;
 - (e) any prescribed means.
- (2) If a person is prohibited from entering a prison as a visitor under section 112G, the Secretary or the Governor, as far as practicable, may permit an alternative means of communication to the visitor and prisoner that is, as far as possible, similar to a visit.

Example

The Secretary or the Governor may provide a video conference facility to the visitor and prisoner if it is practicable to do so.

- (3) A permission under this section may be given subject to conditions to ensure the safety, security or good order of the prison.
- (4) The Secretary or the Governor may revoke a permission given under this section if the Secretary or the Governor (as the case requires) is satisfied the communication is contrary to the safety, security or good order of the prison.

112I Restricted visits by lawyers and their assistants

A lawyer or a person authorised by the lawyer to act on their behalf, acting in the course of the lawyer's practice, may only enter a prison and visit a prisoner if the Governor has permitted the visit to be conducted using—

- (a) physical barriers that prevent touching;
or
- (b) physical modifications to create distancing between the lawyer, the person authorised by the lawyer to act

on their behalf (if any) and the prisoner, that are necessary to prevent, contain or mitigate the risk of COVID-19 or related health risks.

Division 3—Mandatory quarantine of prisoners entering prison

112J Definition

In this Division—

mandatory quarantine means protective isolation quarantine for a period of up to 14 days referred to in section 112K(1).

112K Mandatory quarantine of prisoners entering prison

- (1) Subject to subsection (2), the Secretary or the Governor, in writing, may order all prisoners who are transferred from a police gaol (or other legal custody under Part 1A) to a prison to be held in protective isolation quarantine for a period of up to 14 days.
- (2) An order under subsection (1) must not be made in respect of a prisoner who is transferred from a prison to another prison.
- (3) If the Secretary or the Governor makes an order under this section, the Secretary or the Governor (as the case requires) must ensure that the prisoner to be held in mandatory quarantine is—
 - (a) advised of the reasons for mandatory quarantine; and
 - (b) given a copy of the order.

- (4) Before making an order under this section, the Secretary or the Governor (as the case requires) must consider the following—
 - (a) the safety, protection and welfare of the prisoner, including, if reasonably practicable, any vulnerability or health condition of the prisoner;
 - (b) the safety and welfare of any person;
 - (c) the safety, management, good order and security of the prison.
- (5) An officer may do anything necessary to give effect to an order under this section.

112L Transfer of prisoners in mandatory quarantine

- (1) During the period that a prisoner is to be held in mandatory quarantine, the Secretary or the Governor may, by instrument, direct the transfer of the prisoner—
 - (a) from one prison to another; or
 - (b) from one part of a prison to another part of a prison.
- (2) A prisoner may be transferred under subsection (1) more than once.

112M Mandatory quarantine in separate unit or cell etc.

A prisoner who is in mandatory quarantine must if practicable be held in a protective quarantine unit, cell or area in, or part of the prison separate from other units, cells or areas in, or parts of the prison.

112N Observation of prisoners in mandatory quarantine

- (1) An officer, when necessary, must observe a prisoner who is held in mandatory quarantine to ensure that the safe custody and welfare of the prisoner is maintained.
- (2) For the purposes of determining if it is necessary to observe a prisoner in subsection (1), the Secretary, the Governor or an officer must consider the following—
 - (a) the safety, protection and welfare of the prisoner, including, if reasonably practicable, any vulnerability or health condition of the prisoner;
 - (b) the safety, management, good order and security of the prison.

**Division 4—Restrictions on prisoners—
COVID-19**

112O Restriction of movement and placement of prisoners

- (1) The Secretary or the Governor, for the purposes of preventing, detecting or mitigating the risk of COVID-19 or related health risks in relation to a prison, prisoners, prison staff, visitors or any other person, may order any of the following—
 - (a) the separation, quarantine or isolation of a prisoner from some or all other prisoners;
 - (b) the establishment of separate cells, units, areas in, or parts of, the prison for occupancy by prisoners;

- (c) the prohibition or restriction of movement and placement of prisoners in one or more, or all, prisons—
 - (i) to secure part of a prison from entry, exit or use; or
 - (ii) to secure one or more prisons, or all prisons, from entry, exit or use.
- (2) An order under subsection (1)(c)—
 - (a) may order or direct that one or more prisoners are to return to or remain inside a cell, unit, area or part or group of cells, units, areas or parts as specified in the order; and
 - (b) may be subject to conditions to ensure the safety, security or good order of one or more, or all, prisons.
- (3) The period of an order under subsection (1) must not exceed the period necessary to prevent, detect or mitigate the risk of COVID-19 or related health risks in relation to a prison, prisoners, prison staff, visitors or any other person.
- (4) Before making an order under subsection (1), the Secretary or the Governor (as the case requires) must consider the following—
 - (a) the safety, protection and welfare of any prisoner;
 - (b) the safety, protection and welfare of any other person;
 - (c) the safety, management, good order and security of the prison.

- (5) Before making an order under subsection (1)(a), the Secretary or the Governor (as the case requires) must consider, as far as reasonably practicable, the following—
 - (a) any medical and psychiatric conditions of the prisoner;
 - (b) the vulnerability of the prisoner;
 - (c) any risk that the prisoner may pose to the prisoner's welfare or the welfare of any other person;
 - (d) if the prisoner has any physical limitations or a disability;
 - (e) the prisoner's cultural background.
- (6) If the Secretary or the Governor makes an order under subsection (1)(a), the Secretary or the Governor (as the case requires) must ensure that the prisoner to be separated, quarantined or isolated is—
 - (a) advised of the reasons for the separation, quarantine or isolation; and
 - (b) given a copy of the order.
- (7) An officer may do anything necessary to give effect to an order under this section.

112P Observation of prisoners in separation, quarantine or isolation

- (1) An officer, when necessary, must observe a prisoner who is held in separation, quarantine or isolation in accordance with an order under section 112O(1)(a), to ensure that the safe custody and welfare of the prisoner is maintained.

- (2) For the purposes of determining if it is necessary to observe a prisoner in subsection (1), the Secretary, the Governor or an officer must consider the following—
- (a) the safety, protection and welfare of the prisoner, including, if reasonably practicable, any vulnerability or health condition of the prisoner;
 - (b) the safety, management, good order and security of the prison.

112Q Transfer of separated, quarantined or isolated prisoners

- (1) During the period of an order under section 112O(1)(a), the Secretary or the Governor, by instrument, may direct the transfer of a prisoner who has been separated, quarantined or isolated—
- (a) from one prison to another; or
 - (b) from one part of a prison to another part of a prison.
- (2) A prisoner may be transferred under subsection (1) more than once.

Division 5—Assessment and treatment of prisoners—COVID-19

112R Examination, assessment and treatment of prisoners—COVID-19

- (1) The Secretary or the Governor, for the purposes of preventing, detecting or mitigating the risk of COVID-19 or related health risks in relation to a prison, prisoners, prison staff, visitors or any other person, may facilitate or arrange for a prisoner to be medically examined, assessed, tested or treated.

- (2) For the purposes of subsection (1), the Secretary, the Governor or an officer may give any directions to a prisoner that are necessary to—
- (a) medically examine, assess, test, or treat the prisoner; or
 - (b) transfer the prisoner for medical examination, assessment, testing or treatment to—
 - (i) another part of the prison in which the prisoner is detained; or
 - (ii) another prison; or
 - (iii) a hospital or any other medical facility, premises or place; or
 - (iv) a prescribed facility, premises or place.
- (3) Any medical examination, assessment, testing or treatment under this section may only be given to a prisoner if the prisoner has given informed consent to the examination, assessment, testing or treatment.

112S Meaning of *informed consent*

- (1) For the purposes of section 112R(3), a prisoner gives *informed consent* if the prisoner—
- (a) has the capacity to give informed consent to the medical examination, assessment, testing or treatment proposed; and
 - (b) has been given adequate information to enable the prisoner to make an informed decision; and

- (c) has given consent freely without undue pressure or coercion by any other person; and
 - (d) has not withdrawn consent or indicated any intention to withdraw consent.
- (2) For the purposes of subsection (1)(b), a prisoner has been given adequate information to make an informed decision if the prisoner has been given—
 - (a) an explanation of the proposed medical examination, assessment, testing or treatment including—
 - (i) the purpose of the medical examination, assessment, testing or treatment; and
 - (ii) the type, method and likely duration of the medical examination, assessment, testing or treatment; and
 - (b) an explanation of the advantages and disadvantages of the medical examination, assessment, testing or treatment, including information about the associated discomfort, risks and common or expected side effects of the medical examination, assessment, testing or treatment.

Division 6—General

112T Validation of actions and decisions

- (1) In this section—

relevant period means—

- (a) in relation to a purported exercise of a power or function under Division 2 of Part 6, the period

starting on 20 March 2020 and
ending on the day this Part comes
into operation; and

- (b) in relation to a purported exercise
of a power or function under
regulation 32 or 138 of the
Corrections Regulations 2019, the
period starting on 27 March 2020
and ending on the day this Part
comes into operation.

- (2) An action taken or purporting to be taken or
a decision, direction or order made or
purporting to be made by the Secretary, the
Governor, an officer or a delegate or
purported delegate of the Secretary or the
Governor in the purported exercise of a
power or function under a provision referred
to in the definition of *relevant period* in
subsection (1) during the relevant period has
and is taken always to have had, the same
force and effect as it would have had if this
Part had been in operation when the action
was taken or purporting to be taken or the
decision, direction or order was made or
purported to be made.
- (3) Any act or thing done or omitted to be done,
whether under a power conferred by or under
an enactment or otherwise, during or after
the relevant period in reliance on or in
relation to an action or decision, direction or
order referred to in subsection (2) has the
same effect, and gives rise to the same
consequences, and is to be regarded as
always having had the same effect and
having given rise to the same consequences,
as if this Part had been in operation when the
action was taken or purporting to be taken or

the decision, direction or order was made or purported to be made.

- (4) A right or liability conferred or imposed in relation to, or affected by an action or decision, direction or order referred to in subsection (2) is exercisable or enforceable, and is to be regarded as always having been exercisable or enforceable, as if this Part had been in operation when the action was taken or purported to be taken or the decision, direction or order was made or purported to be made.

112U Matters to which regard may be had in exercise of powers

In exercising a power under this Part, the Governor or the Secretary as the case requires may have regard to—

- (a) any relevant current direction under the **Public Health and Wellbeing Act 2008** relating to COVID-19 or any other infectious disease; and
- (b) any current recommendation made by, or current advice of, the Chief Health Officer, the Deputy Chief Health Officer or the Department of Health and Human Services relating to COVID-19 or any other infectious disease; and
- (c) any other relevant medical or mental health advice relating to COVID-19 or any other infectious disease.

Division 7—Repeal of Part

112V Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 3.5—Amendment of County Court Act 1958

Division 1—Temporary measures

27 New Part VIIA inserted

After Part VII of the **County Court Act 1958**
insert—

"Part VIIA—Temporary measures in response to COVID-19 pandemic

79B Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or

(d) any other law.

79C Court may decide issue without hearing

- (1) The court may decide any issue (other than a prescribed issue) in any proceeding, or determine any proceeding (other than a prescribed proceeding), entirely on the basis of written submissions and without the appearance of the parties—
 - (a) if the court is satisfied that it is in the interests of justice to do so; and
 - (b) whether or not the parties consent to the court doing so.
- (2) Subsection (1) does not apply to a criminal proceeding or an issue in a criminal proceeding.

Note

Section 420ZL of the **Criminal Procedure Act 2009** provides similarly for criminal proceedings. See also Division 4 of Part 5.5 of that Act.

- (3) In determining whether it is in the interests of justice to decide an issue or determine a proceeding entirely on the basis of written submissions and without the appearance of the parties, the court must have regard to—
 - (a) the nature of the issue or proceeding; and
 - (b) the right to a fair hearing; and
 - (c) whether the parties have had the opportunity to obtain legal advice; and
 - (d) whether the parties consent to the court doing so.

- (4) Nothing in this section affects any other power the court has to decide an issue or determine a proceeding entirely on the basis of written submissions and without the appearance of the parties.
- (5) A provision of this or any other Act that refers to the hearing of a matter applies, if the court is to make, or has made, a decision or determination under subsection (1) in relation to that matter, to the matter as dealt with without the appearance of the parties.

79D Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Division 2—Transitional provisions

28 New section 103A inserted

After section 103 of the **County Court Act 1958** insert—

"103A Transitional provisions—COVID-19 Omnibus (Emergency Measures) Act 2020

On and after the repeal of section 79C, that section continues to apply, despite its repeal, in relation to any issue or proceeding that the court—

- (a) has determined to decide or determine under that section entirely on the basis of written submissions and without the appearance of the parties; and
- (b) has not yet so decided or determined."

Part 3.6—Amendment of Court Security Act 1980

29 New section 7A inserted

After section 7 of the **Court Security Act 1980** insert—

"7A Temporary measures in response to COVID-19 pandemic

- (1) The purpose of this section is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This section applies despite anything to the contrary in—
 - (a) another section of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (d) any other law.

COVID-19 Omnibus (Emergency Measures) Act 2020
No. 11 of 2020

Part 3.6—Amendment of Court Security Act 1980

- (3) In addition to section 2(2), a reference in this Act to "the security, good order or management of the court premises" also includes—
- (a) the health of all persons who work at, attend or are in custody at the court premises during the COVID-19 pandemic; and
 - (b) the following of any relevant directions made by an authorised officer under Part 10 of the **Public Health and Wellbeing Act 2008** in relation to the COVID-19 pandemic at the court premises.
- (4) This section is **repealed** on the day that is 6 months after its commencement."

Part 3.7—Amendment of Crimes (Mental Impairment and Unfitness to be Tried) Act 1997

Division 1—Temporary measures

30 New Part 11 inserted

After Part 10 of the **Crimes (Mental Impairment
and Unfitness to be Tried) Act 1997** insert—

"Part 11—Temporary measures in response to COVID-19 pandemic

Division 1—Preliminary

91 Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or

- (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
- (iii) the **Constitution Act 1975**; or
- (d) any other law.

Division 2—Fitness to stand trial to be determined by judge alone

92 Question of a person's fitness to stand trial

The question of a person's fitness to stand trial is to be determined on the balance of probabilities by the court at an investigation into the fitness of the accused to stand trial.

Note

This overrides section 7(3)(b) which provides that the question is to be determined on the balance of probabilities by a jury empanelled for that purpose.

93 Procedure on investigation

- (1) Section 11 does not apply to an investigation into the fitness of an accused to stand trial. Instead, this section applies.
- (2) At an investigation into the fitness of an accused to stand trial, the court—
 - (a) must hear any relevant evidence and submissions put to the court by the prosecution and the defence; and
 - (b) if of the opinion that it is in the interests of justice to do so, may—
 - (i) call evidence on its own motion;
 - or

- (ii) require the accused to undergo an examination by a registered medical practitioner or registered psychologist; or
 - (iii) require the results of any such examination to be put before the court.
- (3) Nothing in subsection (2) prevents the application of Part 3.10 of the **Evidence Act 2008** to an investigation and, for the purposes of Part 3.10 of that Act, the investigation is taken to be a criminal proceeding.
- (4) Section 232A of the **Criminal Procedure Act 2009** applies to an investigation as if the investigation were a trial.
- (5) If the court finds that the accused is not fit to stand trial, the court must—
 - (a) determine, by reference to any relevant evidence and on the balance of probabilities, whether or not the accused is likely to become fit to stand trial within the next 12 months; and
 - (b) if the court determines that the accused is likely to become fit within the next 12 months—specify the period by the end of which the accused is likely to be fit to stand trial.
- (6) For the purposes of subsection (5), the court may call further evidence on its own motion.

94 Findings of investigation into fitness to stand trial

At an investigation into the fitness of an accused to stand trial, the court may find—

- (a) the accused is fit to stand trial; or
- (b) the accused is not fit to stand trial.

95 What happens after an investigation?

- (1) Section 12 does not apply in relation to an investigation into the fitness of an accused to stand trial. Instead, this section applies.
- (2) If the court finds that the accused is fit to stand trial, the trial must be commenced or resumed in accordance with usual criminal procedures, including any modifications to those procedures made by or under the **COVID-19 Omnibus (Emergency Measures) Act 2020**.
- (3) If the court finds that the accused is not fit to stand trial but determines that the accused is likely to become fit within the next 12 months, the court must adjourn the matter for the period specified under section 93(5)(b) and may—
 - (a) grant the accused bail; or
 - (b) subject to subsection (4), remand the accused in custody in an appropriate place for a specified period (not exceeding the period specified under section 93(5)(b)); or
 - (c) subject to subsection (5), remand the accused in custody in a prison for a specified period (not exceeding the period specified under section 93(5)(b)); or

- (d) make any other order the judge thinks appropriate.
- (4) The court must not remand an accused in custody in an appropriate place unless it has received a certificate under section 47 stating that the facilities or services necessary for that order are available.
- (5) The court must not remand an accused in custody in a prison unless it is satisfied that there is no practicable alternative in the circumstances.
- (6) If the court finds that the accused is not fit to stand trial and determines that the accused is not likely to become fit within the next 12 months, the court must hold a special hearing under Part 3 as soon as practicable (but within 6 months) and may—
 - (a) either—
 - (i) grant the accused bail; or
 - (ii) subject to subsections (4) and (5), remand the accused in custody as described in subsection (3)(b) or (c); and
 - (b) make any other order the court thinks appropriate.

96 Abridgment of adjournment

The applications referred to in section 13(1) may be made at any time during a period of adjournment under section 95(3).

97 What happens at the end of an adjournment?

- (1) For the purposes of section 14(1), a reference to an adjournment under section 12(2) refers instead to an adjournment under section 95(3).
- (2) Section 14(3) has no effect. Instead, subsection (3) applies.
- (3) If the judge extends the period of adjournment under section 14(2)(a), the judge may make any order referred to in section 95(3) or vary any order already made under that section (and for that purpose section 95(4) and (5) apply accordingly).

98 Appeal in relation to fitness to stand trial

A reference in section 14A(1) to a jury finding an accused unfit to stand trial refers instead to a court doing so.

99 Application of Juries Act 2000

In the **Juries Act 2000**, *criminal trial* does not include an investigation conducted in accordance with this Part.

Division 3—Special hearing by judge alone

100 Definition

In this Division—

special hearing by judge alone means a special hearing in respect of which an order under section 101 is made.

101 Court may order special hearing by judge alone

- (1) At any time before the commencement of a special hearing, the court may order that the special hearing be conducted by the judge alone, without a jury, if—
 - (a) the offence for which the special hearing is to be conducted is an offence under the law of Victoria; and
 - (b) the court considers that it is in the interests of justice to make the order.
- (2) The court may make an order under subsection (1)—
 - (a) on its own motion; or
 - (b) on application by the prosecution or an accused.
- (3) In determining whether to make an order under subsection (1), the court must have regard to the submissions, if any, of the prosecution.
- (4) However, the court may make an order under subsection (1) whether or not the prosecution consents to the making of the order.

102 Procedure at special hearing by judge alone

- (1) Section 16(2)(b) does not apply to a special hearing by judge alone.
- (2) Section 16(2)(f) does not apply to a special hearing by judge alone. Instead, subsection (3) applies.
- (3) Without limiting section 16(1), at a special hearing by judge alone, any alternative verdict that would be available if the special

hearing were a criminal trial is available to the judge.

- (4) Section 16(3) does not apply to a special hearing by judge alone.

103 Findings at special hearing by judge alone

- (1) The findings that, under section 17(1), are available to a jury at a special hearing are available to a judge at a special hearing by judge alone.
- (2) To make a finding under section 17(1)(c) the judge must be satisfied beyond reasonable doubt, on the evidence available, that the accused committed the offence charged or an offence available as an alternative.
- (3) A finding under section 17(1) made by a judge at a special hearing by judge alone has, for all purposes, the same effect as if it had been made by a jury.

104 Judgment in special hearing by judge alone

In a special hearing by judge alone, the judgment must include—

- (a) the principles of law applied by the judge; and
- (b) the facts on which the judge relied.

105 Effect of finding that accused committed offence charged or alternative offence

If, at a special hearing by judge alone, the judge makes a finding under section 17(1)(c), the judge must—

- (a) declare that the person is liable to supervision under Part 5; or

- (b) order the person to be released
unconditionally.

106 Mental impairment

In a special hearing by judge alone, the question whether a person was suffering from a mental impairment having the effect referred to in section 20(1) is to be determined by the judge on the balance of probabilities.

107 Application of Juries Act 2000

In the **Juries Act 2000**, *criminal trial* does not include a special hearing by judge alone.

108 Application of Jury Directions Act 2015

Section 4A of the **Jury Directions Act 2015** applies to a special hearing by judge alone.

**Division 4—Appeal from decision
regarding special hearing by judge alone**

**109 Meaning of *decision regarding special
hearing by judge alone***

In this Division—

*decision regarding special hearing by judge
alone* means—

- (a) a decision of the court to make an order under section 101; or
- (b) a decision of the court to refuse an application for an order under section 101.

**110 Right of appeal against decision regarding
special hearing by judge alone**

A party to a proceeding in which the court makes a decision regarding special hearing by judge alone may appeal to the Court of

Appeal against that decision if the Court of Appeal gives the party leave to appeal.

111 When leave to appeal may be given

- (1) Subject to subsection (2), the Court of Appeal may give leave to appeal against a decision regarding special hearing by judge alone only if the court is satisfied that it is in the interests of justice to do so.
- (2) The Court of Appeal must not give leave to appeal after the special hearing has commenced, unless the reasons for doing so clearly outweigh any disruption to the special hearing.

112 How appeal against decision regarding special hearing by judge alone is commenced

- (1) An appeal under section 110 is commenced by filing a notice of application for leave to appeal in accordance with the rules of court.
- (2) A copy of the notice of application for leave to appeal must be served on the respondent in accordance with section 392 or 394 of the **Criminal Procedure Act 2009** as the case requires within the time that is prescribed by the rules of court.

113 Adjournment of special hearing if leave to appeal given

- (1) If the Court of Appeal gives leave to appeal against a decision regarding special hearing by judge alone after the special hearing has commenced, the judge must adjourn the special hearing until the appeal has been determined.

- (2) If a jury has been empanelled, and it is reasonably practicable for the judge to adjourn the special hearing without discharging the jury, the judge must do so.

114 Determination of appeal

- (1) An appeal against a decision regarding special hearing by judge alone is to be determined on the basis of—
- (a) submissions made by the accused and the prosecution to the judge in relation to the decision; and
 - (b) if the Court of Appeal gives either party leave to make further submissions, those submissions.
- (2) On an appeal under section 110, the Court of Appeal—
- (a) may affirm or set aside the decision regarding special hearing by judge alone (the original decision); and
 - (b) if it sets aside a decision not to make an order under section 101, may make that order; and
 - (c) must remit the matter to the court that made the original decision for a special hearing.
- (3) After the Court of Appeal remits a matter to the originating court under subsection (2)(c)—
- (a) it may give directions concerning the manner of the special hearing, including—

- (i) a direction as to whether the special hearing is to be conducted by the same judge or a different judge; and
 - (ii) if the Court of Appeal set aside a decision to make an order under section 101, a direction that the special hearing be by jury; and
- (b) the originating court, whether constituted by the same judge or a different judge, must conduct the special hearing in accordance with the directions, if any.

115 Determination of appeal to be entered on record

The Registrar of Criminal Appeals of the Supreme Court must transmit the decision of the Court of Appeal to the court which made the decision regarding special hearing by judge alone and that court must enter the decision on the court record.

Division 5—Indemnity certificates and application of Appeal Costs Act 1998

116 Definitions

- (1) In this Division—

Appeal Costs Board means the Board within the meaning of the **Appeal Costs Act 1998**;

approved form has the same meaning as it has in the **Appeal Costs Act 1998**;

costs has the same meaning as it has in the **Appeal Costs Act 1998**.

- (2) For the purposes of this Division, a reference to an ***accused*** (whether as an appellant or as a respondent) includes a reference to the accused's litigation guardian or a person who is the accused's guardian within the meaning of the **Guardianship and Administration Act 2019**.

117 Application for indemnity certificate if appeal by accused is successful

- (1) If an appeal under section 110 by an accused is successful, the accused may apply to the Court of Appeal for, and the Court of Appeal may grant, an indemnity certificate in respect of—
- (a) the accused's own costs of the appeal; and
 - (b) any additional costs that the accused will pay, or will be ordered to pay, as a consequence of the orders made or set aside, or the directions given, by the Court of Appeal on the appeal.
- (2) An accused granted an indemnity certificate under subsection (1) is entitled to be paid by the Appeal Costs Board, on an application made to it by the accused in the approved form—
- (a) an amount equal to the accused's own costs of the appeal; and
 - (b) any additional costs that the accused pays, or is ordered to pay, as a consequence of the orders made or set aside, or the directions given, by the Court of Appeal on the appeal—
- that the Appeal Costs Board considers to have been reasonably incurred.

118 Application for indemnity certificate by respondent if appeal by prosecution

- (1) If the prosecution appeals under section 110, the respondent to that appeal may apply to the Court of Appeal for, and the Court of Appeal may grant, an indemnity certificate in respect of—
 - (a) the respondent's own costs of the appeal; and
 - (b) any additional costs that the respondent will pay, or will be ordered to pay, as a consequence of the orders made or set aside, or the directions given, by the Court of Appeal on the appeal.
- (2) A respondent granted an indemnity certificate under subsection (1) is entitled to be paid by the Appeal Costs Board, on an application made to it by the respondent in the approved form—
 - (a) an amount equal to the respondent's own costs of the appeal; and
 - (b) any additional costs that the respondent pays, or is ordered to pay, as a consequence of the orders made or set aside, or the directions given, by the Court of Appeal on the appeal—that the Appeal Costs Board considers to have been reasonably incurred.

119 Application of Appeal Costs Act 1998 to indemnity certificates under this Division

Part 6 of the **Appeal Costs Act 1998** applies to an indemnity certificate granted under this Division in the same way that it applies to an indemnity certificate granted under Part 2, 3 or 4 of that Act.

Division 6—Matters to be conducted without hearing

120 Court may determine certain matters without hearing

- (1) The court may decide any issue (other than a prescribed issue) in any of the following matters, or may determine any of the following matters (other than a prescribed matter), entirely on the basis of written submissions and without the appearance of the parties—
 - (a) a review of a custodial supervision order directed under section 27(2);
 - (b) an application under section 31 for variation or revocation of a custodial supervision order;
 - (c) a further review of a custodial supervision order directed under section 32(5) or 33(2);
 - (d) a major review of a supervision order under section 35;
 - (e) a review of a custodial supervision order directed under section 38ZI(2);
 - (f) an application under section 38ZN for the variation or revocation of either a custodial supervision order or a non-custodial supervision order;
 - (g) a further review of a custodial supervision order directed under section 38ZO(3);
 - (h) a further review of a non-custodial supervision order directed under section 38ZP(2).

- (2) If the court is to decide an issue or to determine a matter in accordance with subsection (1), a provision of this or any other Act that applies to the hearing of the matter applies to the issue being decided, or the matter being determined, in accordance with subsection (1).
- (3) Without limiting subsection (2)—
 - (a) a reference in this or any other Act to the court hearing a matter that is to be determined in accordance with this section, or in which there is an issue that is to be decided in accordance with this section, is taken to refer instead to the court's consideration of what determination or decision to make; and
 - (b) a reference in this or any other Act to the day of such a hearing is taken to refer to the day, as notified to the parties by the court, that the court will begin dealing with the issue or matter in accordance with this section.

Division 7—Transitional provisions

121 Transitional provision

- (1) An investigation into the fitness of an accused to stand trial is to be conducted in accordance with this Part irrespective of—
 - (a) when the question of the person's fitness was raised; and
 - (b) when the offence charged is alleged to have been committed; and
 - (c) when the criminal proceeding to which the investigation relates was commenced.

- (2) A special hearing is to be conducted in accordance with this Part irrespective of—
- (a) when the offence charged is alleged to have been committed; and
 - (b) when the criminal proceeding to which the special hearing relates was commenced; and
 - (c) when the accused was found unfit to stand trial.

Division 8—Repeal of Part

122 Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Division 2—Transitional provisions

31 Schedule 3 amended

After clause 16 of Schedule 3 to the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** insert—

"16A Transitional provision—COVID-19 Omnibus (Emergency Measures) Act 2020—investigations into fitness to stand trial

- (1) Despite the repeal of Part 11, an investigation into the fitness of an accused—
- (a) that, immediately before that repeal, was being conducted by the court, without a jury, in accordance with that Part; and

(b) in which the court had not yet made a finding—

is to continue, after that repeal, to be conducted by the court, without a jury, in accordance with that Part.

- (2) For the purposes of an investigation that continues in accordance with subsection (1), Part 11 continues to have effect despite its repeal.
- (3) After the conclusion of an investigation that was continued in accordance with subsection (1), sections 95, 96, 97 and 98 continue to apply in relation to that investigation despite their repeal.
- (4) Subject to this section, on and after the repeal of Part 11, a finding of a court, on an investigation conducted in accordance with that Part, that an accused was or was not fit to stand trial has, for all purposes, the same effect as a finding of a jury.

**16B Transitional provision—COVID-19
Omnibus (Emergency Measures)
Act 2020—special hearings**

- (1) Despite the repeal of Part 11, a special hearing by judge alone in which judgment was not delivered before that repeal may continue to be held by judge alone, without a jury, after that repeal.
- (2) For the purposes of a special hearing that continues in accordance with subsection (1), Part 11 continues to have effect despite its repeal.
- (3) On and after the repeal of section 103, a finding of a judge at a special hearing by judge alone has, for all purposes, the same effect as a finding of a jury.

COVID-19 Omnibus (Emergency Measures) Act 2020
No. 11 of 2020

Part 3.7—Amendment of Crimes (Mental Impairment and Unfitness to be
Tried) Act 1997

(4) Subsection (3) has effect despite the repeal of section 103.

(5) In this section—

special hearing by judge alone means a special hearing held in accordance with an order under section 101 as in force immediately before its repeal.

16C Transitional provision—COVID-19 Omnibus (Emergency Measures) Act 2020—special hearings

On and after the repeal of section 121, that section continues to apply, despite its repeal, in relation to any issue, application or review that a court—

- (a) has determined to decide or determine entirely on the basis of written submissions and without the appearance of the parties; and
- (b) has not yet so decided or determined."

Part 3.8—Amendment of Criminal Procedure Act 2009

Division 1—Temporary measures

32 New Chapter 9 inserted

After Chapter 8 of the **Criminal Procedure
Act 2009** insert—

"Chapter 9—Temporary measures in response to COVID-19 pandemic

Part 9.1—Preliminary

420A Purpose and effect of Chapter

- (1) The purpose of this Chapter is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Chapter applies despite anything to the contrary in—
 - (a) another Chapter of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or

- (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
- (iii) the **Constitution Act 1975**; or
- (d) any other law.

Part 9.2—Trial by judge alone

Division 1—Preliminary

420B Application of Part

This Part applies if—

- (a) an accused is committed for trial under Chapter 4; or
- (b) a direct indictment is filed against an accused.

420C Definition

In this Chapter—

trial by judge alone means a trial in respect of which an order under section 420D is made.

Division 2—Order for trial by judge alone

420D Court may order trial by judge alone

- (1) At any time except during trial, the court may order that one or more charges in an indictment be tried by the trial judge alone, without a jury, if—
 - (a) each charge is for an offence under the law of Victoria; and
 - (b) each accused consents to the making of the order; and

- (c) the court is satisfied that each accused has obtained legal advice on whether to give that consent, including legal advice on the effect of the order; and
 - (d) the court considers that it is in the interests of justice to make the order.
- (2) The court may make an order under subsection (1)—
 - (a) on its own motion; or
 - (b) on application by the prosecution or an accused.
- (3) In determining whether to make an order under subsection (1), the court must have regard to the submissions, if any, of the prosecution.
- (4) However, the court may make an order under subsection (1) whether or not the prosecution consents to the making of the order.

Division 3—Verdict and judgment

420E Verdict in trial by judge alone

- (1) In a trial by judge alone, the trial judge may make any decision that could have been made by a jury.
- (2) A decision made by a trial judge as described in subsection (1) has, for all purposes, the same effect as a verdict of a jury.

420F Judgment in trial by judge alone

In a trial by judge alone, the judgment must include—

- (a) the principles of law applied by the trial judge; and
- (b) the facts on which the trial judge relied.

**Division 4—Appeal from decision
regarding trial by judge alone**

420G Meaning of *decision regarding trial by judge alone*

In this Division—

decision regarding trial by judge alone
means—

- (a) a decision of the court to make an order under section 420D; or
- (b) a decision of the court to refuse an application for an order under section 420D.

420H Right of appeal against decision regarding trial by judge alone

A party to a proceeding in which the court makes a decision regarding trial by judge alone may appeal to the Court of Appeal against that decision if the Court of Appeal gives the party leave to appeal.

420I When leave to appeal may be given

- (1) Subject to subsection (2), the Court of Appeal may give leave to appeal against a decision regarding trial by judge alone only if the court is satisfied that it is in the interests of justice to do so.
- (2) The Court of Appeal must not give leave to appeal after the trial has commenced, unless the reasons for doing so clearly outweigh any disruption to the trial.

420J How appeal against decision regarding trial by judge alone is commenced

- (1) An appeal under section 420H is commenced by filing a notice of application for leave to appeal in accordance with the rules of court.
- (2) A copy of the notice of application for leave to appeal must be served on the respondent in accordance with section 392 or 394 as the case requires within the time that is prescribed by the rules of court.

420K Adjournment of trial if leave to appeal given

- (1) If the Court of Appeal gives leave to appeal against a decision regarding trial by judge alone after the trial has commenced, the trial judge must adjourn the trial until the appeal has been determined.
- (2) If a jury has been empanelled, and it is reasonably practicable for the trial judge to adjourn the trial without discharging the jury, the trial judge must do so.

420L Determination of appeal

- (1) An appeal against a decision regarding trial by judge alone is to be determined on the basis of—
 - (a) submissions made by the accused and the prosecution to the trial judge in relation to the decision; and
 - (b) if the Court of Appeal gives either party leave to make further submissions, those submissions.

- (2) On an appeal under section 420H, the Court of Appeal—
 - (a) may affirm or set aside the decision regarding trial by judge alone (the original decision); and
 - (b) if it sets aside a decision not to make an order under section 420D, may make that order; and
 - (c) must remit the matter to the court that made the original decision for trial.
- (3) If the Court of Appeal remits a matter to the originating court under subsection (2)(c)—
 - (a) it may give directions concerning the manner of the trial, including—
 - (i) a direction as to whether the trial is to be conducted by the same judge or a different judge; and
 - (ii) if the Court of Appeal set aside a decision to make an order under section 420D, a direction that the trial be by jury; and
 - (b) the originating court, whether constituted by the same judge or a different judge, must conduct the trial in accordance with the directions, if any.

420M Determination of appeal to be entered on record

The Registrar of Criminal Appeals of the Supreme Court must transmit the decision of the Court of Appeal to the court which made the decision regarding trial by judge alone and that court must enter the decision on the court record.

Division 5—Indemnity certificates and application of Appeal Costs Act 1998

420N Definitions

In this Division—

Appeal Costs Board means the Board within the meaning of the **Appeal Costs Act 1998**;

approved form has the same meaning as it has in the **Appeal Costs Act 1998**;

costs has the same meaning as it has in the **Appeal Costs Act 1998**.

420O Application for indemnity certificate if appeal by accused is successful

- (1) If an appeal under section 420H by an accused is successful, the accused may apply to the Court of Appeal for, and the Court of Appeal may grant, an indemnity certificate in respect of—
 - (a) the accused's own costs of the appeal; and
 - (b) any additional costs that the accused will pay, or will be ordered to pay, as a consequence of the orders made or set aside, or the directions given, by the Court of Appeal on the appeal.
- (2) An accused granted an indemnity certificate under subsection (1) is entitled to be paid by the Appeal Costs Board, on an application made to it by the accused in the approved form—
 - (a) an amount equal to the accused's own costs of the appeal; and

- (b) any additional costs that the accused pays, or is ordered to pay, as a consequence of the orders made or set aside, or the directions given, by the Court of Appeal on the appeal—

that the Appeal Costs Board considers to have been reasonably incurred.

420P Application for indemnity certificate by respondent if appeal by prosecution

- (1) If the prosecution appeals under section 420H, the respondent to that appeal may apply to the Court of Appeal for, and the Court of Appeal may grant, an indemnity certificate in respect of—
 - (a) the respondent's own costs of the appeal; and
 - (b) any additional costs that the respondent will pay, or will be ordered to pay, as a consequence of the orders made or set aside, or the directions given, by the Court of Appeal on the appeal.
- (2) A respondent granted an indemnity certificate under subsection (1) is entitled to be paid by the Appeal Costs Board, on an application made to it by the respondent in the approved form—
 - (a) an amount equal to the respondent's own costs of the appeal; and
 - (b) any additional costs that the respondent pays, or is ordered to pay, as a consequence of the orders made or set aside, or the directions given, by the Court of Appeal on the appeal—

that the Appeal Costs Board considers to have been reasonably incurred.

420Q Application of Appeal Costs Act 1998 to indemnity certificates under this Division

Part 6 of the **Appeal Costs Act 1998** applies to an indemnity certificate granted under this Division in the same way that it applies to an indemnity certificate granted under Part 2, 3 or 4 of that Act.

Division 6—Application of this Act to trial by judge alone

420R Decision whether to order trial by judge alone is not an interlocutory decision

A decision by a trial judge to make, or not to make, an order under section 420D is not an *interlocutory decision* for the purposes of this Act.

Note

Interlocutory decision is defined in section 3. Section 295 provides a right of appeal against interlocutory decisions.

420S Commencement of trial

- (1) A trial by judge alone commences when the accused pleads not guilty on arraignment before the trial judge.

Note

Section 210 sets out when a trial involving a jury commences.

- (2) Section 217 does not apply to a trial by judge alone.

420T Addresses to the trial judge instead of to the jury

- (1) In a trial by judge alone, the prosecutor's opening address under section 224 is to be presented to the trial judge.

- (2) In a trial by judge alone, the accused's response, under section 225, to the prosecutor's opening is to be presented to the trial judge.
- (3) In a trial by judge alone, the accused's opening address under section 231 is to be given to the trial judge.
- (4) In a trial by judge alone, an address under Division 7 of Part 5.7 is to be given to the trial judge.

420U Judge's directions to the jury

Section 238 does not apply to a trial by judge alone.

420V Judge directing that entries of guilty or not guilty be made

In a trial by judge alone, if the trial judge is to exercise a power under section 241(1) or (2), the requirement to discharge the jury from delivering a verdict on a charge does not apply.

420W When finding of guilt occurs

In a trial by judge alone, if the trial judge delivers a verdict finding an accused guilty of an offence, then at that moment the accused is found guilty of the offence.

Note

Section 253B sets out when a finding of guilt occurs in a trial involving a jury.

420X Appeals

- (1) On an appeal under section 274 against a conviction imposed in a trial by judge alone, the Court of Appeal must not exercise the power set out in section 277(1)(c) unless—

- (a) the appellant could have been found guilty of some other offence (*offence B*) instead of offence A (within the meaning of section 277); and
 - (b) the court is satisfied that the trial judge was or must have been satisfied of facts that prove the appellant was guilty of offence B.
- (2) On an appeal under section 274 against a conviction imposed in a trial by judge alone, the Court of Appeal must not exercise the power set out in section 277(1)(f) unless—
 - (a) the appellant could have been found guilty of some other offence (*offence B*) instead of offence A (within the meaning of section 277); and
 - (b) the court is satisfied—
 - (i) that the trial judge was or must have been satisfied of facts that prove the appellant did the acts or made the omissions that constitute offence B; and
 - (ii) that the appellant should have been found not guilty of offence B because of mental impairment.
- (3) On an appeal under section 326A against a conviction imposed in a trial by judge alone, the Court of Appeal must not exercise the power set out in section 326E(1)(c) unless—
 - (a) the appellant could have been found guilty of some other offence (*offence B*) instead of offence A (within the meaning of section 326E); and

- (b) the court is satisfied that the trial judge was or must have been satisfied of facts that prove the appellant was guilty of offence B.
- (4) On an appeal under section 326A against a conviction imposed in a trial by judge alone, the Court of Appeal must not exercise the power set out in section 326E(1)(f) unless
 - (a) the appellant could have been found guilty of some other offence (*offence B*) instead of offence A (within the meaning of section 326E); and
 - (b) the court is satisfied—
 - (i) that the trial judge was or must have been satisfied of facts that prove the appellant did the acts or made the omissions that constitute offence B; and
 - (ii) that the appellant should have been found not guilty of offence B because of mental impairment.

420Y Questions and evidence concerning complainant's sexual activities

Section 349(b) does not apply to a trial by judge alone.

420Z Effect of legal representation for cross-examination on reasoning of trial judge

- (1) Section 358 does not apply to a trial by judge alone. Instead, this section applies.
- (2) If, in a trial by judge alone, the accused is only legally represented for the cross-examination of a protected witness, the trial judge must—

- (a) have regard to the fact that it is routine practice for an unrepresented accused to obtain or be provided with legal representation for the cross-examination of a protected witness; and
- (b) draw no adverse inference against the accused as a result of the cross-examination not being conducted by the accused in person; and
- (c) give the cross-examination no greater or lesser weight as a result of the cross-examination not being conducted by the accused in person.

420ZA Special hearings under Division 6 of Part 8.2

- (1) In making a direction under section 370(1A) in a trial by judge alone, the court is not required to have regard to the matter set out in section 370(1B)(f).
- (2) Section 372(1)(ba) does not apply to a trial by judge alone.

Division 7—Application of other Acts to trial by judge alone

420ZB Crimes Act 1958

- (1) Nothing in the **Crimes Act 1958** affects the power of the trial judge, in a trial by judge alone, to return a verdict of not guilty because of mental impairment on a charge of murder of a child.

Note

Section 6(3) of the **Crimes Act 1958** provides similarly for trials by jury.

- (2) If a provision of the **Crimes Act 1958** specified in subsection (3) requires or permits a jury to take an action set out in the provision on being satisfied (or not satisfied) as described in the provision, the effect of that provision in a judge alone trial is that it requires or permits the trial judge to take that action on being satisfied (or not satisfied) as described in the provision.
- (3) The specified provisions are—
- (a) section 6B(1) and (2); and
 - (b) section 49J(7); and
 - (c) section 77C; and
 - (d) section 88A; and
 - (e) section 93(2); and
 - (f) section 325(2); and
 - (g) section 422(1) and (2); and
 - (h) section 422A(1) and (1A); and
 - (i) section 426; and
 - (j) section 427(1) and (2); and
 - (k) section 428; and
 - (l) section 429; and
 - (m) section 435.

420ZC Crimes (Mental Impairment and Unfitness to be Tried) Act 1997

- (1) Section 16(1) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**, in requiring a special hearing is to be conducted as nearly as possible as if it were a criminal trial, does not permit an order under section 420D to be made in respect of a special hearing.

Note

Section 101 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** provides for a court to order that a special hearing be conducted by the judge alone, without a jury.

- (2) In a trial by judge alone, the question whether a person was suffering from a mental impairment having the effect referred to in section 20(1) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** is to be determined by the trial judge on the balance of probabilities.
- (3) Section 21(4) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** does not apply to a trial by judge alone. Subsection (4) applies instead.
- (4) In a trial by judge alone, if the prosecution and the defence agree, at any time before the trial judge retires to consider the verdict, that the proposed evidence establishes the defence of mental impairment, the trial judge may hear the evidence and—
 - (a) if satisfied that the evidence establishes the defence of mental impairment, may direct that a verdict of not guilty because of mental impairment be recorded; or
 - (b) if not so satisfied, the trial by judge alone is to continue.
- (5) Section 22(2) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** does not apply to a trial by judge alone. Subsection (6) applies instead.

(6) If, in a trial by judge alone—

- (a) there is admissible evidence that raises the question of mental impairment; and
- (b) the trial judge finds the accused not guilty—

the verdict of the trial judge must specify whether or not the trial judge finds the accused not guilty because of mental impairment.

420ZD Family Violence Protection Act 2008

(1) Section 125A(4) of the **Family Violence Protection Act 2008** does not apply to a trial by judge alone for an offence against section 125A(1) of that Act. Subsection (2) applies instead.

(2) If, on a trial by judge alone for an offence against section 125A(1) of the **Family Violence Protection Act 2008**, the trial judge—

- (a) is not satisfied that the accused is guilty of that offence; but
- (b) is satisfied that the accused engaged in conduct which constitutes an offence against section 37 or 123 of that Act during the period described in section 125A(2)(b) of that Act—

the trial judge must acquit the accused of the offence against section 125A(1) of that Act but may find the accused guilty of the offence against section 37 or 123 of that Act and the accused is liable to punishment accordingly.

420ZE Juries Act 2000

In the **Juries Act 2000**, *criminal trial* does not include a trial by judge alone.

420ZF Jury Directions Act 2015

Section 4A of the **Jury Directions Act 2015** applies to a trial by judge alone.

420ZG Public Prosecutions Act 1994

Sections 47 and 49 of the **Public Prosecutions Act 1994** do not apply in relation to a verdict returned in a trial by judge alone.

Division 8—Transitional provisions

420ZH Transitional provision

The court may make an order under section 420D in respect of a charge in an indictment irrespective of—

- (a) when the offence charged is alleged to have been committed; and
- (b) when the criminal proceeding to which the indictment relates was commenced.

Part 9.3—Other procedural measures

420ZI Definitions

The definition of *attend* in section 3, also means, in relation to a person, to appear or be brought before the court by audio link or audio visual link, if authorised or required to do so under Division 3 or 4 of Part IX of the **Evidence (Miscellaneous Provisions) Act 1958**.

420ZJ Power to adjourn proceeding

- (1) If a court has adjourned the hearing of a criminal proceeding under section 331(1) to a particular time and has remanded the accused in custody, the court may order that the accused be brought at any time before then to another place specified in the order where facilities exist to enable the accused to appear before the court by audio link in accordance with Part IX of the **Evidence (Miscellaneous Provisions) Act 1958**, in order that the hearing may be held or continued.
- (2) Subsection (1) operates in addition to section 331(6), and not instead of it.

420ZK Attendance for ground rules hearings by audio visual link or audio link

- (1) Subject to this section, a person who is required by section 389D to attend a ground rules hearing must do so by either—
 - (a) appearing by audio visual link in accordance with the applicable requirements; or
 - (b) appearing by audio link in accordance with the applicable requirements—and not by being physically present in court.
- (2) The *applicable requirements* are as follows—
 - (a) for an accused appearing by audio visual link—the requirements set out in section 42R of the **Evidence (Miscellaneous Provisions) Act 1958**;
 - (b) for any other person appearing by audio visual link—the technical requirements set out in section 42G(1) of that Act;

- (c) for any person appearing by audio link—the technical requirements set out in section 42G(2) of that Act.
- (3) The person must be physically present if—
 - (a) it is not reasonably practicable for the person to appear by audio visual link in accordance with the applicable requirements; and
 - (b) it is also not reasonably practicable for the person to appear by audio link in accordance with the applicable requirements.
- (4) The person must be physically present if the court gives the person a direction to that effect.
- (5) Before giving a direction under subsection (4), the court must consider whether—
 - (a) physical attendance is required in the interests of justice; and
 - (b) physical attendance would affect the court's case management generally; and
 - (c) it is reasonably practicable for the person to appear by audio visual link, or audio link, in accordance with the applicable requirements; and
 - (d) there are any public health concerns associated with physical attendance.

420ZL Court may decide issue without hearing

- (1) Subject to subsection (2), the court may decide any issue in a criminal proceeding, other than a prescribed issue, entirely on the basis of written submissions and without the appearance of the parties—

- (a) if the court is satisfied that it is in the interests of justice to do so; and
 - (b) whether or not the parties consent to the court doing so.
- (2) Subsection (1) does not empower the court to decide an issue referred to in section 199(1)(a), (b), (c) or (d) before trial entirely on the basis of written submissions and without the appearance of the parties.

Note

Section 201 provides for those issues to be decided before trial on the basis of written submissions and without the appearance of the parties.

- (3) In determining whether it is in the interests of justice to decide an issue entirely on the basis of written submissions and without the appearance of the parties, the court must have regard to—
 - (a) the right of an accused to be present at their trial; and
 - (b) the right of an accused to a fair hearing; and
 - (c) the nature of the issue; and
 - (d) whether the accused or the offender (as the case requires) has had the opportunity to obtain legal advice; and
 - (e) whether the parties consent to the court doing so.
- (4) Nothing in this section affects any other power the court has to decide an issue entirely on the basis of written submissions and without the appearance of the parties.

- (5) A provision of this or any other Act that refers to the hearing of a matter applies, if the court is to make, or has made, a decision under subsection (1) in relation to that matter, to the matter as dealt with without the appearance of the parties.

420ZM Modified provisions for personal service

- (1) Section 391(2)(b) has effect as if the words "if the person does not accept a copy" were omitted.
- (2) For the purposes of section 391(2)(c), a person may satisfy the requirement to leave a copy of a document with another person by putting a copy of the document down in the presence of the other person and telling the person the nature of the document.
- (3) For the purposes of section 391(4), personal service of a document is also effected by delivering a copy of the document by means of fax or email to a legal representative of the person who—
- (a) has consented to receiving documents on the person's behalf by fax or email; and
 - (b) has provided a fax or email address to the prosecution or informant in the matter in respect of which the legal representative is representing the person.

Part 9.4—Repeal of Chapter

420ZN Repeal of Chapter

This Chapter is **repealed** on the day that is 6 months after its commencement."

Division 2—Transitional provisions

33 New sections 454A and 454B inserted

After section 454 of the **Criminal Procedure Act 2009** insert—

"454A Transitional provision—COVID-19 Omnibus (Emergency Measures) Act 2020

- (1) Despite the repeal of Chapter 9, a trial by judge alone in which judgment was not delivered before that repeal may continue to be so held by judge alone, without a jury, after that repeal.
- (2) For the purposes of a trial that continues in accordance with subsection (1), Chapter 9 continues to have effect despite its repeal.
- (3) On and after the repeal of Chapter 9, Chapter 6 applies to an appeal that relates to a trial by judge alone in the same way that it applies to an appeal that relates to a trial by jury.
- (4) On and after the repeal of section 420E, a verdict of a trial judge on a trial by judge alone has, for all purposes, the same effect as a verdict of a jury.
- (5) Subsection (4) has effect despite the repeal of section 420E.
- (6) In this section—

trial by judge alone means a trial held in accordance with an order under section 420D as in force immediately before its repeal.

**454B Transitional provision—COVID-19
Omnibus (Emergency Measures)
Act 2020—deciding issues without a
hearing**

On and after the repeal of section 420ZL,
that section continues to apply, despite its
repeal, in relation to any issue that a court—

- (a) has determined to decide entirely on the
basis of written submissions and
without the appearance of the parties;
and
- (b) has not yet so decided."

Part 3.9—Amendment of Evidence (Miscellaneous Provisions) Act 1958

Division 1—Temporary measures

34 New Part IX inserted

After Part VIII of the **Evidence (Miscellaneous Provisions) Act 1958** insert—

"Part IX—Temporary measures in response to COVID-19 pandemic

Division 1—Preliminary

167 Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or

- (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
- (iii) the **Constitution Act 1975**; or
- (d) any other law.

Division 2—Definitions

168 Definitions

In this Part—

accused has the same meaning as in the **Criminal Procedure Act 2009**;

appear has the same meaning as in Part IIA;

appropriate persons has the same meaning as in Part IIA;

audio link has the same meaning as in Part IIA;

audio visual link has the same meaning as in Part IIA;

child has the same meaning as in Part IIA;

court point has the same meaning as in Part IIA;

remote point means the place where the accused is located;

victim has the same meaning as in Part IIA.

169 Meaning of *exceptional circumstances*

For the purposes of this Part and Part IIA, *exceptional circumstances* includes, but is not limited to—

- (a) a state of emergency declared under section 198 of the **Public Health and Wellbeing Act 2008** in an area where an accused is required to appear before

a court or required to transit through in order to appear before a court; or

- (b) a state of disaster declared under section 23 of the **Emergency Management Act 1986** in an area where an accused is required to appear before a court or required to transit through in order to appear before a court.

Division 3—Further provisions concerning persons other than accused

170 Practice directions, statements or notes

- (1) A senior judicial officer of a court may from time to time issue practice directions, statements or notes relating to the exercise by the court of its discretion in relation to the making of a direction under section 42E(1).
- (2) In this section—
senior judicial officer has the same meaning as in section 42Q(2).

171 Power to direct an appearance etc. by audio visual link or audio link subject to any practice directions, statements or notes

The exercise of the power conferred on a court to make a direction referred to in section 42E(1) is subject to any practice directions, statements or notes issued under section 170.

172 Special provisions applicable to certain proceedings involving children—appearance by audio link in exceptional circumstances

- (1) Section 42F(7) has no effect.

- (2) A court must not make a direction under section 42E(1) that a child appear before, or give evidence or make a submission to, the court by audio link unless it is satisfied that exceptional circumstances apply.

173 Technical requirements

The requirements imposed under section 42G(1)(c) or (2)(c) must not be inconsistent with any provision of this Part.

**Division 4—Further provisions
concerning appearances of accused**

**174 Appearance of adult accused before
Magistrates' Court**

- (1) The reference to a proceeding in section 42JA(1), for which an accused referred to in that subsection is required to appear, or be brought, before the Magistrates' Court by audio visual link, includes a plea hearing or a sentencing hearing.
- (2) Unless the Magistrates' Court makes a direction under section 42L(1), an accused referred to in section 42JA(2) who, were it not for this section, would be required by section 42JA(2) to appear, or be brought, physically before the Magistrates' Court on a proceeding referred to in section 42JA(2)(b) or (c)—
- (a) is not required to appear, or be brought, physically before the Magistrates' Court; and
 - (b) is instead required to appear before the Magistrates' Court by audio visual link.
- (3) Section 42JA(3) has no effect.

- (4) Unless the Magistrates' Court makes a direction under section 42L(1), an accused, other than a child, who has been taken into custody and who is required to be brought before a bail justice or the Magistrates' Court within a reasonable time of being taken into custody to be dealt with according to law is, if being brought before the Magistrates' Court, required to be brought before it by audio visual link.

175 Appearance of adult accused before court other than Magistrates' Court

Unless the court makes a direction under section 42L(1), an accused referred to in section 42K(2) who, were it not for this section, would be required by section 42K(2) to appear, or be brought, physically before the court for a matter referred to in section 42K(2)(c), (d) or (e)—

- (a) is not required to appear, or be brought, physically before the court; and
- (b) instead may appear before the court by audio visual link.

176 Making of direction for physical appearance in section 42JA(1) or 42K(1) proceedings

The reference in section 42L(1) to a proceeding in which, by virtue of section 42JA(1) or 42K(1), physical appearance of an accused would not otherwise be required, is taken to also include a reference to a proceeding in which, by virtue of section 174(2) or (4) or 175, physical appearance of the accused would not otherwise be required.

177 Making of direction for physical appearance in section 42JA(1) or 42K(1)—additional matters to consider

In determining whether to make a direction under 42L(1), in addition to the matters set out in section 42L(1)(a) and (b), the court must also take into consideration—

- (a) the impact of requiring a physical appearance by the accused on the court's case management generally; and
- (b) any risk to public health by requiring a physical appearance by the accused, including any risks involved in transporting the accused between the accused's place of custody and the court.

178 Address to the court by a victim under section 42M(8) or 42P(9)

An address to the court by a victim under section 42M(8) or 42P(9) may be given—

- (a) in person; or
- (b) if the court makes a direction under section 42E(1)—
 - (i) by audio visual link; or
 - (ii) by audio link.

179 Appearance before court of accused who is a child

- (1) Section 42O(b) has no effect.
- (2) The requirement in section 42O, that an accused who is a child is to appear, or be brought, physically before the court (unless the court otherwise directs) applies whether or not the accused is being held in custody.

180 Court may direct child accused to appear by audio visual link in certain circumstances

Without limiting section 42P(7), a court, on its own initiative, may direct that a child referred to in section 42O appear before it by audio visual link, if the court is satisfied that the appearance by audio visual link is—

- (a) necessary for the purposes of the court's case management generally; and
- (b) consistent with the interests of justice; and
- (c) reasonably practicable in the circumstances.

181 Audio link appearance by accused in custody in certain circumstances

- (1) An accused referred to in section 42JA(1) who is required, in accordance with that section or section 174(2), to appear, or be brought, before the Magistrates' Court by audio visual link may appear by audio link instead if the Magistrates' Court makes a direction under subsection (5).
- (2) An accused referred to in section 174(4) who is required, in accordance with that section, to appear, or be brought, before the Magistrates' Court by audio visual link may appear by audio link instead if the Magistrates' Court makes a direction under subsection (5).
- (3) An accused referred to in section 42K(1) who, in accordance with that section or section 175, is permitted to appear, or be brought, before a court other than the Magistrates' Court by audio visual link may

- appear by audio link instead if the court makes a direction under subsection (5).
- (4) If a direction is made under one of the following provisions for an accused to appear by audio visual link, the accused may appear by audio link instead if the court makes a direction under subsection (5)—
- (a) section 42M(1) or (7);
 - (b) section 42MA;
 - (c) section 42P(1) or (7);
 - (d) section 180.
- (5) A court may make a direction for the purposes of subsections (1) to (4), if it is satisfied—
- (a) that it is not reasonably practicable to use an audio visual link in the circumstances; and
 - (b) that the appearance of the accused by audio link is consistent with the interests of justice; and
 - (c) that the technical requirements specified in section 182 are met or can be reasonably met.
- (6) In determining whether the appearance of an accused by audio link is consistent with the interests of justice, a court must take into consideration—
- (a) the effect of such an appearance on the accused's ability to comprehend the proceeding; and
 - (b) whether the accused is self-represented; and

- (c) whether the accused consents to appearing by audio link in the circumstances.

182 Technical requirements for audio link appearance by accused

- (1) The technical requirements for an audio link by which an accused appears before a court are as follows—
 - (a) both the court point and remote point are equipped with facilities that—
 - (i) enable all appropriate persons at the court point to hear the accused—
 - (A) enter a plea to a charge; or
 - (B) give evidence; or
 - (C) make a submission; and
 - (ii) enable all appropriate persons at the remote point to hear all appropriate persons at the court point; and
 - (b) the court point and the remote point must be equipped with facilities that, in accordance with any rules of court, enable private communication to take place (at any time during the hearing or any adjournment of the hearing or at any time on the day of a hearing shortly before or after the hearing) between the accused and any legal practitioner at the court point representing the accused in the proceeding and documents to be transmitted between both points by those persons; and

- (c) any requirements prescribed by rules of court for or with respect to the following—
 - (i) the form of audio link;
 - (ii) the equipment, or class of equipment, used to establish the link;
 - (iii) the standard, or speed, of transmission;
 - (iv) the quality of communication;
 - (v) any other matter relating to the link; and
 - (d) any requirements imposed by the presiding judge or magistrate.
- (2) Requirements imposed by the presiding judge or magistrate under subsection (1)(d) must not be inconsistent with any provision in this Part or Part IIA or any rules of court.

183 Arraignment

- (1) An accused who appears before a court for arraignment by audio link in accordance this Division must be taken for all purposes to be at the bar of the court.
- (2) An accused who appears before a court for arraignment by audio visual link in accordance with this Division must be taken for all purposes to be at the bar of the court.

184 Protection of communication between accused and legal representative

Section 42S applies to a communication by audio link or audio visual link, or a document transmitted, between an accused and the accused's legal representative in accordance with this Division.

Division 5—General

185 Application of Surveillance Devices Act 1999

Section 42T applies to a communication by audio link or audio visual link, or a document transmitted, between an accused and the accused's legal representative under this Part as if the words "this Part" were substituted by the words "Part IX".

186 Putting documents to a remote person

Section 42U applies to the examination of a person by audio visual link or audio link in accordance with this Part.

187 Application of law about witnesses, etc.

Section 42W applies to a person appearing before, or giving evidence or making a submission to, the court in accordance with this Part as if the words "Division 2 or 3" were substituted by the words "Division 3 or 4 of Part IX".

Division 6—Application of this Part to other Acts

188 Children, Youth and Families Act 2005

In section 530(5) of the **Children, Youth and Families Act 2005**, the reference to an audio visual link within the meaning of Part IIA of this Act is taken also include a reference to an audio visual link or audio link in accordance with Part IX of this Act.

189 Sentencing Act 1991

In section 104B(7) of the **Sentencing Act 1991**, the definition of *attend* also means, in relation to a person, to appear or

be brought before the court by audio visual link or audio link, if authorised or required to do so under Division 4 of Part IX of this Act.

190 References to Part IIA in other Acts

- (1) A reference in a provision of any other Act (other than a provision exempted by subsection (3)) to a Division of Part IIA of this Act is taken to include a reference to Part IX of this Act.
- (2) A reference in a provision of any other Act (other than a provision exempted by subsection (3)) to the whole of Part IIA of this Act is taken to include a reference to Part IX of this Act.
- (3) For the purposes of subsections (1) and (2), the exempted provisions are—
 - (a) section 530(5) of the **Children, Youth and Families Act 2005**; and
 - (b) the definition of *attend* in section 104B(7) of the **Sentencing Act 1991**; and
 - (c) the definition of *attend* in section 3 of the **Criminal Procedure Act 2009**; and
 - (d) section 331(6)(b) of the **Criminal Procedure Act 2009**.

Notes

- 1 Section 530(5) of the **Children, Youth and Families Act 2005** is dealt with by section 188 of this Act.
- 2 The provision set out in subsection (3)(b) is dealt with by section 189 of this Act.
- 3 The provisions set out in subsection (3)(c) and (d) are dealt with by sections 420ZI and 420ZJ, respectively, of the **Criminal Procedure Act 2009**.

Division 7—Repeal of this Part

191 Repeal of this Part

This Part is **repealed** on the day that is 6 months after its commencement."

Division 2—Transitional provisions

35 New section 166A inserted

After section 166 of the **Evidence (Miscellaneous Provisions) Act 1958** insert—

"166A Transitional provision—COVID-19 Omnibus (Emergency Measures) Act 2020

- (1) Despite the repeal of Part IX, any order or direction made under that Part continues to apply after that repeal until the end of the hearing or proceeding in respect of which the order or direction was made, subject to any further order or direction of the court.
- (2) For the purposes of an order or direction that continues in accordance with subsection (1), Part IX continues to have effect despite its repeal."

Part 3.10—Amendment of Family Violence Protection Act 2008

36 New Part 12A inserted

After Part 12 of the **Family Violence Protection Act 2008** insert—

"Part 12A—Temporary measures in response to COVID-19 pandemic

Division 1—Preliminary

207A Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or

(d) any other law.

Division 2—Temporary measures

207B Extension of interim extension orders

A reference in section 107(2) or (4) to 28 days is taken to be a reference to 3 months.

Division 3—Repeal of Part

207C Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 3.11—Amendment of Fines Reform Act 2014

37 New Part 15A inserted

After Part 15 of the **Fines Reform Act 2014**,
insert—

"Part 15A—Temporary measures in response to COVID-19 pandemic

Division 1—Preliminary

185A Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or

(d) any other law.

Division 2—Temporary measures

185B Time served orders and section 171C orders

- (1) This section applies if a person is unable to make a request that the Director apply for a time served order, or an order under section 171C, in respect of the person as a result of matters relating to the COVID-19 pandemic.
- (2) The person may make the request as soon as reasonably practicable after it becomes possible for the person to do so, whether or not the person is in custody at the time of making the request.
- (3) The Director may apply for the time served order or the order under section 171C, as the case requires, whether or not the person is in custody at the time of making the application.

185C Extended period for registration

Section 17 applies as if each reference to 6 months in that section were instead a reference to 12 months.

Division 3—Repeal of Part

185D Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 3.12—Amendment of Magistrates' Court Act 1989

38 New Part 9 inserted

After Part 8 of the **Magistrates' Court Act 1989**
insert—

"Part 9—Temporary measures in response to COVID-19 pandemic

151 Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (d) any other law.

152 Additional powers of registrars—criminal proceedings

- (1) Section 21(1)(c) does not apply. Subsections (2) and (3) apply instead.
- (2) A registrar has power to abridge or extend the bail of a person who has been granted bail in relation to a criminal proceeding.
- (3) The power under subsection (2) may be exercised in respect of a person who has been granted bail—
 - (a) either—
 - (i) on a day on which the person's criminal proceeding is listed before the Court; or
 - (ii) on any other day; and
 - (b) either in the presence or absence of the person.
- (4) A registrar has power to adjourn a criminal proceeding.
- (5) A registrar has power to abridge or extend the adjournment of a criminal proceeding.
- (6) A registrar has power to otherwise change the time or place at which a criminal proceeding is listed before the Court.
- (7) The powers under subsection (4), (5) and (6) may be exercised—
 - (a) either—
 - (i) on a day on which the criminal proceeding is listed before the Court; or
 - (ii) on any other day; and

- (b) either in the presence or absence of the parties.
- (8) A registrar may exercise a power conferred by this section—
 - (a) on the application of a party; or
 - (b) on the registrar's own initiative.
- (9) Nothing in this section empowers a registrar to vary the amount or conditions of bail.

153 Remand for more than 8 days

- (1) Section 82 has no effect. This section applies instead.
- (2) The Court must not remand an accused in custody for a period of more than 8 clear days unless—
 - (a) both the accused and the informant consent; or
 - (b) the accused does not consent but—
 - (i) the accused is not a child or an Aboriginal person within the meaning of the **Bail Act 1977**; and
 - (ii) the Court does not consider that the person is a vulnerable adult within the meaning of the **Bail Act 1977**; and
 - (iii) the Court is satisfied that it is not reasonably practicable to have the matter return to the Court within 8 days; and
 - (iv) the Court is satisfied that the longer period of remand is consistent with the interests of justice.

- (3) The Court may consider a person to be a vulnerable adult even if the Court cannot identify the particular impairment referred to in section 3AAAA of the **Bail Act 1977**.
- (4) If—
- (a) an accused has been granted bail; and
 - (b) the proceeding has been adjourned for a period of more than 8 clear days; and
 - (c) the accused has not yet been released on bail—
- the remand warrant must direct the person applicable under subsection (5), or any person into whose custody the accused is transferred, to bring the accused before the Court at the end of 8 clear days (unless in the meantime the accused is released on bail).
- (5) The direction in the remand warrant is to be to—
- (a) the Secretary to the Department of Justice and Community Safety; or
 - (b) the Chief Commissioner of Police; or
 - (c) the Secretary to the Department of Health and Human Services—
- as the case requires.
- (6) For the purposes of subsection (4), the accused must be brought—
- (a) before the Court as authorised or required under—
 - (i) Division 3 of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**; or

(ii) Part IX of the **Evidence
(Miscellaneous Provisions)
Act 1958**; or

(b) before—

- (i) if a venue of the Court is prescribed for the purposes of this section, that venue; or
- (ii) otherwise, the venue of the Court prescribed for the purposes of section 82.

(7) Subsection (1), in providing that section 82 has no effect, does not affect—

- (a) the power of the Governor in Council to make regulations prescribing a venue of the Court for the purposes of section 82(3); or
- (b) the validity of any such regulations.

154 Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 3.13—Amendment of Oaths and Affirmations Act 2018

39 New Part 5A inserted

After Part 5 of the **Oaths and Affirmations Act 2018** insert—

"Part 5A—Temporary measures in response to COVID-19 pandemic

Division 1—Preliminary

49A Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or

(iii) the **Constitution Act 1975**; or

(d) any other law.

Division 2—Temporary measures

49B Electronic signatures and initials

A requirement under this Act that a deponent or an authorised affidavit taker sign or initial an affidavit, jurat or other document may be satisfied by the deponent or the authorised affidavit taker signing or initialling the affidavit, jurat or other document by electronic means.

49C Requirement that a thing be done in the presence of another person

A requirement under this Act that a deponent or an authorised affidavit taker do a thing in relation to an affidavit in each other's presence may be satisfied by the deponent and the authorised affidavit taker doing the thing by means of audio link or audio visual link.

49D Requirements relating to original documents

A requirement under this Act that an authorised affidavit taker sign or initial the original copy of an affidavit, jurat or other document may be satisfied by the authorised affidavit taker signing or initialling a scanned hard copy or an electronic copy of the affidavit, jurat or other document.

49E Requirements if a thing is done electronically or by means of audio link or audio visual link

- (1) This section applies in relation to an affidavit if any of the following applies—
 - (a) the affidavit, jurat or other document is signed or initialled by the deponent by electronic means;
 - (b) both the deponent and the authorised affidavit taker do a thing in relation to the affidavit by means of audio link or audio visual link;
 - (c) the authorised affidavit taker signs or initials a scanned hard copy or an electronic copy of the affidavit, jurat or other document.
- (2) The authorised affidavit taker must, in addition to stating the matters referred to in section 27(1)(a), state the following in the jurat—
 - (a) that the affidavit, as signed and notated by the authorised affidavit taker, was signed or initialled by the deponent by electronic means;
 - (b) that specified things in respect of the affidavit were done by means of audio link or audio visual link;
 - (c) that the affidavit, jurat or other document is a scanned hard copy or an electronic copy, not an original.

49F Inability to comply with requirements

If a court considers that it is desirable, in the interests of justice, to admit a purported affidavit in evidence in particular

proceedings, the court may do so if the court is satisfied that—

- (a) compliance with the requirements of this Act (including as modified by this Part) in relation to the purported affidavit was not reasonably practicable; and
- (b) the purported affidavit states the reasons why compliance with those requirements was not reasonably practicable.

49G Definitions

For the purposes of this Part—

audio link has the same meaning as in the **Evidence (Miscellaneous Provisions Act) 1958**;

audio visual link has the same meaning as in the **Evidence (Miscellaneous Provisions Act) 1958**.

Division 3—Repeal of Part

49H Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 3.14—Amendment of Open Courts Act 2013

40 New Part 6A inserted

After Part 6 of the **Open Courts Act 2013**
insert—

"Part 6A—Temporary measures in response to COVID-19 pandemic

Division 1—Preliminary

33A Purpose of Part

The purpose of this Part is to temporarily
change the operation of this Act in response
to the COVID-19 pandemic.

33B Guiding principles

It is the intention of Parliament that this Part
be administered and interpreted having
regard to—

- (a) the importance of open justice; and
- (b) the fact that the COVID-19 pandemic
poses challenges to the ongoing
administration of justice; and
- (c) the need for interim measures to enable
the ongoing administration of justice
during the COVID-19 pandemic.

33C Definitions

In this Part—

head of a jurisdiction means—

- (a) in the case of the Supreme Court,
the Chief Justice;
- (b) in the case of the County Court,
the Chief Judge;

- (c) in the case of the Magistrates' Court, the Chief Magistrate;
- (d) in the case of the Coroners Court, the State Coroner;
- (e) in the case of VCAT, the President of VCAT;
- (f) in the case of any other prescribed court or tribunal, the prescribed person;

MAP order has the meaning given by section 33D.

Division 2—MAP orders

33D What is a MAP order?

A **MAP order** is a modified access and procedure order, being an order that does any of the following things in relation to a proceeding or hearing for which it is made—

- (a) requires that the proceeding or hearing must be held—
 - (i) with or without the appearance of the parties; or
 - (ii) by audio visual link or audio link;
- (b) permits a specified person, or a person of a specified class, to be present (whether in person, or by audio visual link or audio link) for the whole or part of the proceeding or hearing;
- (c) prohibits a specified person, or a person of a specified class, from being present (whether in person, or by audio visual link or audio link) for the whole or part of the proceeding or hearing;

- (d) confers on the presiding judicial officer or member discretion regarding the matters described in paragraph (a), (b) or (c);
- (e) specifies the conditions applying to a discretion described in paragraph (d) (including by specifying the circumstances in which the discretion may be exercised).

33E Making of MAP orders

- (1) The head of a jurisdiction may make a MAP order for a specified proceeding or hearing, or a specified class of proceeding or hearing, in their jurisdiction.
- (2) The head of a list of a court or tribunal may make a MAP order for a specified proceeding or hearing, or a specified class of proceeding or hearing, in their list.
- (3) In making a MAP order, the head of a jurisdiction or the head of a list must—
 - (a) consider the guiding principles in section 33B; and
 - (b) consider any directions made by an authorised officer under Part 10 of the **Public Health and Wellbeing Act 2008** in relation to the COVID-19 pandemic; and
 - (c) be satisfied that the contents of the MAP order are required to maintain public health during the COVID-19 pandemic.

33F Effect of MAP orders

- (1) A MAP order has effect despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) the provisions of any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) provisions inserted into another Act by the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iv) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) provisions inserted into another Act by the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iv) the **Constitution Act 1975**; or
 - (d) any other law.
- (2) Subject to section 33H, a MAP order is taken to be an order of the court or tribunal in a proceeding or hearing to which the MAP order applies.

33G Conflicting MAP orders

If there is any inconsistency between a MAP order made by a head of a jurisdiction and a MAP order made by a head of a list within that jurisdiction, the MAP order made by the head of jurisdiction prevails to the extent of the inconsistency.

33H Exemptions to MAP orders

The head of a jurisdiction or the head of a list may grant an exemption from compliance with a MAP order, or part of a MAP order, made by the head, at the request of a presiding judicial officer or member for a specific proceeding or hearing.

33I Validity of proceedings or hearings

A failure to comply with a MAP order in a proceeding or hearing does not affect the validity of anything done in, or the outcome of, the proceeding or hearing.

33J Division does not prevent making of other orders

Nothing in this Division prevents the making of any order under another Part of this Act.

Division 3—Application of rules of law relating to open justice

33K Certain measures do not breach rules of law relating to open justice

- (1) To avoid doubt, the doing of any of the following things by a court or tribunal does not breach any rule of law relating to open justice—

- (a) instead of holding a proceeding or hearing in a court room or hearing room that is open to the public—
 - (i) arranging or providing a contemporaneous audio or audio visual broadcast of the proceeding or hearing to the public; or
 - (ii) arranging or providing an audio or audio visual recording of the proceeding or hearing within a reasonable time after the conclusion of the proceeding or hearing to—
 - (A) the public generally; or
 - (B) a member of the public on request; or
 - (iii) in the case of the Supreme Court, the County Court or the Coroners Court, arranging or providing a transcript of the proceeding or hearing within a reasonable time after the conclusion of the proceeding or hearing to—
 - (A) the public generally; or
 - (B) a member of the public on request; or
- (b) instead of handing down or delivering a judgment in a court room or hearing room that is open to the public—
 - (i) giving the parties notice that the judgment is to be handed down or delivered as described in subparagraphs (ii) and (iii); and

- (ii) sending the judgment to the parties by electronic communication (within the meaning of the **Electronic Transactions (Victoria) Act 2000**); and
- (iii) making the judgment available to—
 - (A) the public generally; or
 - (B) a member of the public on request.
- (2) However, nothing in subsection (1) permits the publication of information in connection with a proceeding if that publication is contrary to a prohibition or restriction imposed by or under this or any other Act.
- (3) In this section—
judgment includes the following—
 - (a) reasons;
 - (b) an order (including a final order);
 - (c) a ruling;
 - (d) a finding;
 - (e) a decision;
 - (f) a determination.

Division 4—Repeal of Part

33L Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 3.15—Amendment of Personal Safety Intervention Orders Act 2010

41 New Part 11A inserted

After Part 11 of the **Personal Safety Intervention
Orders Act 2010** insert—

"Part 11A—Temporary measures in response to COVID-19 pandemic

Division 1—Preliminary

181A Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or

- (iii) the **Constitution Act 1975**; or
- (d) any other law.

Division 2—Temporary measures

181B Extension of interim extension orders

A reference in section 84(2) or (4) to 28 days is taken to be a reference to 3 months.

Division 3 —Repeal of Part

181C Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 3.16—Amendment of Sentencing Act 1991

42 New Part 13 inserted

After Part 12 of the **Sentencing Act 1991**
insert—

"Part 13—Temporary measures in response to COVID-19 pandemic

Division 1—Preliminary

170 Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or

- (iii) the **Constitution Act 1975**; or
- (d) any other law.

Division 2—Electronic monitoring requirements

171 Magistrates' Court may attach electronic monitoring requirement to community correction order

Section 48LA applies to the Magistrates' Court in the same way that it applies to any other court which attaches a monitored condition to a community correction order.

172 Magistrates' Court may vary community correction order to attach electronic monitoring requirement

If dealing with a community correction order under section 48M(2), the Magistrates' Court may attach an electronic monitoring requirement to a monitored condition irrespective of when the order was made.

173 Transitional provision—COVID-19 Omnibus (Emergency Measures) Act 2020

Section 171 applies to the sentencing of a person on or after the commencement of this Part, irrespective of when the offence was committed or when the offender was found guilty of that offence.

Division 3—Pre-sentence reports

174 Application of Division

This Division applies if—

- (a) a court finds a person guilty of an offence; and
- (b) the person is a young offender; and

- (c) the court is proposing to sentence the young offender and is considering making a youth justice centre order or youth residential centre order; and
- (d) the court—
 - (i) may or must order a pre-sentence report in respect of the young offender under this Act before passing sentence on the young offender; or
 - (ii) had ordered, but not received or considered, a pre-sentence report in respect of the person immediately before the commencement of the **COVID-19 Omnibus (Emergency Measures) Act 2020**.

175 Definition of *oral pre-sentence report*

In this Division—

oral pre-sentence report means a report given to the court by the Secretary (whether given in person, or by audio link or audio visual link within the meaning of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**) that sets out all or any of the following matters, which, on investigation, appear to the Secretary to be relevant to the sentencing of the young offender and are readily ascertainable to the Secretary—

- (a) the age of the young offender;

- (b) the social history and background of the young offender;
- (c) the medical and psychiatric history of the young offender;
- (d) any alcohol, drug and any other substance history disclosed by the young offender;
- (e) the educational background of the young offender;
- (f) the employment history of the young offender;
- (g) the circumstances of any other offences of which the young offender has been found guilty and which are known to the court;
- (h) the extent to which the young offender is complying with any sentence currently in force in respect of the young offender;
- (i) any special needs of the young offender;
- (j) any other services that address the risk of recidivism from which the young offender may benefit;
- (k) any courses, programs, treatment, therapy or other assistance that could be available to the young offender and from which the young offender may benefit;
- (l) any other information that the Secretary believes is relevant and appropriate.

176 Circumstances in which oral pre-sentence report may be given

- (1) The Secretary may give an oral pre-sentence report in respect of a young offender if—
 - (a) the court is satisfied that it is not reasonably practicable for a pre-sentence report to be prepared due to the impact of the COVID-19 pandemic; and
 - (b) subject to subsection (2), a previous pre-sentence report has been prepared in respect of the young offender during the 6 month period before the day on which the court proposes to order an oral pre-sentence report; and
 - (c) the young offender consents to the giving and consideration of an oral pre-sentence report instead of a pre-sentence report; and
 - (d) the Secretary consents to the giving and consideration of an oral pre-sentence report instead of a pre-sentence report; and
 - (e) the court is satisfied that it is in the interests of justice to consider an oral pre-sentence report instead of a pre-sentence report in passing sentence on the young offender.
- (2) Subsection (1)(b) does not apply to a person who is of or over the age of 20 years and 6 months on the day on which the court proposes to order an oral pre-sentence report.

177 Distribution of oral pre-sentence report

The Secretary, if it is reasonably practicable to do so before the giving of an oral pre-sentence report, must provide a summary of the information contained in that report to—

- (a) the prosecutor; and
- (b) any legal practitioner representing the young offender; and
- (c) if the court has so directed, the young offender; and
- (d) any other person that the court considers appropriate.

178 Disputed contents of oral pre-sentence report

If the whole or any part of an oral pre-sentence report is disputed by the prosecution or defence, the court must not take the report or the part in dispute (as the case requires) into consideration when determining sentence unless the party that disputed the contents of the report has been given the opportunity—

- (a) to lead evidence on the disputed matters; and
- (b) to cross-examine the person who gave the report on its contents.

179 Interpretation of provisions relating to pre-sentence reports

- (1) The court is taken to have ordered, received or considered (however described) a pre-sentence report under section 8A, 10AA, 32 or 83A if the court has ordered, heard or considered an oral pre-sentence report.

- (2) Sections 8A, 8B, 10AA, 32 and 83A apply to oral pre-sentence reports as if—
 - (a) any reference to a pre-sentence report were a reference to an oral pre-sentence report; and
 - (b) any reference to the preparation or submission of a pre-sentence report were a reference to the giving of an oral pre-sentence report; and
 - (c) any reference to the author of a pre-sentence report were a reference to the Secretary.
- (3) If, due to the operation of this Part, the court orders, receives or considers an oral pre-sentence report instead of a pre-sentence report, the following provisions do not apply in relation to the proceeding for the purposes of which the oral pre-sentence report is ordered, received or considered—
 - (a) section 8C;
 - (b) section 8D.

Division 4—Repeal of Part

180 Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 3.17—Amendment of Supreme Court Act 1986

Division 1—Temporary measures

43 New Part 7A inserted

After Part 7 of the **Supreme Court Act 1986**
insert—

"Part 7A—Temporary measures in response to COVID-19 pandemic

Division 1—Purpose and effect of Part

129A Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or

(ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or

(iii) the **Constitution Act 1975**; or

(d) any other law.

Division 2—Temporary measures

129B Court may decide issue without hearing

- (1) The Court may decide any issue (other than a prescribed issue) in any proceeding, or determine any proceeding (other than a prescribed proceeding), entirely on the basis of written submissions and without the appearance of the parties—
- (a) if the Court is satisfied that it is in the interests of justice to do so; and
 - (b) whether or not the parties consent to the Court doing so.

Note

This power does not apply to criminal proceedings—see the definition of *proceeding* in section 3(1). Section 420ZL of the **Criminal Procedure Act 2009** provides similarly for criminal proceedings. See also Division 4 of Part 5.5 of that Act.

- (2) In determining whether it is in the interests of justice to decide an issue or determine a proceeding entirely on the basis of written submissions and without the appearance of the parties, the Court must have regard to—
- (a) the nature of the issue or proceeding; and

- (b) the right to a fair hearing; and
 - (c) whether the parties have had the opportunity to obtain legal advice; and
 - (d) whether the parties consent to the court doing so.
- (3) Nothing in this section affects any other power the Court has to decide an issue or determine a proceeding entirely on the basis of written submissions and without the appearance of the parties.
- (4) A provision of this or any other Act that refers to the hearing of a matter applies, if the Court is to make, or has made, a decision or determination under subsection (1) in relation to that matter, to the matter as dealt with without the appearance of the parties.

129C Additional method of making Rules of Court

In addition to the manner of making Rules of Court specified in section 26, the Judges of the Court may exercise the power to make Rules of Court by means of a majority of Judges of the Court (not including any reserve Judge, Associate Judge or reserve Associate Judge) agreeing to the proposed Rules.

Division 3—Repeal of Part

129D Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Division 2—Transitional provisions

44 New section 156A inserted

After section 156 of the **Supreme Court Act 1986** insert—

"156A Transitional provisions—COVID-19 Omnibus (Emergency Measures) Act 2020

On and after the repeal of section 129B, that section continues to apply, despite its repeal, in relation to any issue or proceeding that the Court—

- (a) has determined to decide or determine under that section entirely on the basis of written submissions and without the appearance of the parties; and
- (b) has not yet so decided or determined."

Part 3.18—Amendment of Victorian Civil and Administrative Tribunal Act 1998

45 New Part 6A inserted

After Part 6 of the **Victorian Civil and
Administrative Tribunal Act 1998** insert—

"Part 6A—Temporary measures in response to COVID-19 pandemic

Division 1—Purpose and effect of Part

158A Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or

- (iii) the **Constitution Act 1975**; or
- (d) any other law.

Division 2—Temporary measures

158B Power to make rules

- (1) Section 157(1) of the **Victorian Civil and Administrative Tribunal Act 1998** has effect as if the words ", at a meeting," were omitted.
- (2) If VCAT makes Rules at a meeting (including a meeting held by remote means) the quorum requirements specified in Division 2 apply.
- (3) VCAT may decide the procedures for making Rules other than at a meeting.

Division 3—Repeal of Part

158C Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Chapter 4—Amendment of Residential Tenancies Act 1997

Part 4.1—Temporary measures relating to residential tenancies

46 New Part 16 inserted

After Part 15 of the **Residential Tenancies
Act 1997** insert—

"Part 16—COVID-19 temporary measures

Division 1—Preliminary

534 Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or

(ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or

(iii) the **Constitution Act 1975**; or

(d) any other law.

535 When does this Part have effect?

This Part has effect and is taken always to have had effect on and after 29 March 2020.

Note

This Part is only in effect for a temporary period—see section 615.

536 Definitions

In this Part—

Chief Health Officer means the person appointed under section 20 of the **Public Health and Wellbeing Act 2008**;

COVID-19 reason—see section 537;

database operator has the same meaning as in Part 10A;

emergency powers has the same meaning as it has in section 3(1) of the **Public Health and Wellbeing Act 2008**;

family violence has the same meaning as in the **Family Violence Protection Act 2008**;

personal violence means the following—

- (a) prohibited behaviour within the meaning of the **Personal Safety Intervention Orders Act 2010**;
- (b) stalking within the meaning of the **Personal Safety Intervention Orders Act 2010**;

public health risk powers has the same meaning as it has in section 3(1) of the **Public Health and Wellbeing Act 2008**;

recognised non-local DVO means a non-local DVO that is a recognised DVO under the **National Domestic Violence Order Scheme Act 2016**;

Residential Tenancies Dispute Resolution Scheme has the meaning given by section 597.

537 When is a person unable to comply with a term, provision or obligation because of a COVID-19 reason?

For the purposes of this Part, a person is unable to comply with, or it is not reasonably practicable for a person to comply with, a term, provision or obligation because of a **COVID-19 reason** if—

- (a) the person is ill (whether or not the illness is COVID-19); or
- (b) the person is unable to comply with, or it is not reasonably practicable for the person to comply with, the term, provision or obligation as a result of the person's compliance with any of the following—
 - (i) the exercise of emergency powers by the Chief Health Officer or a person who is an authorised officer under the **Public Health and Wellbeing Act 2008**;
 - (ii) the exercise of public health risk powers by the Chief Health Officer or a person who is an authorised officer under the

**Public Health and Wellbeing
Act 2008;**

- (iii) the exercise of a power or the giving of a direction under section 24(2) of the **Emergency Management Act 1986** by the Minister administering that Act;
- (iv) a recommendation that is publicly announced by the State or made by the Chief Health Officer in relation to the COVID-19 pandemic; or
- (c) the person is unable to comply with, or it is not reasonably practicable for the person to comply with, the term, provision or obligation without suffering severe hardship; or
- (d) the person is unable to comply with, or it is not reasonably practicable for the person to comply with, the term, provision or obligation as a result of any exceptional circumstances in relation to the COVID-19 pandemic.

538 What is reasonable and proportionate?

For the purposes of determining whether it is reasonable and proportionate to make an order under section 549, 551, 559, 561, 569, 571, 582 or 584, the Tribunal must have regard to the following—

- (a) the nature, frequency and duration of the conduct of the tenant, resident or site tenant which led to the notice to vacate being given, including whether the conduct is a recurring breach of obligations under a tenancy agreement, residency right or site agreement;

- (b) whether the breach is trivial;
- (c) whether the breach was caused by the conduct of any person other than the tenant, resident or site tenant;
- (d) whether the tenant, resident or site tenant has made an application for a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order and—
 - (i) if an application has been made, whether a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order has been made and whether the notice or order is still in force; and
 - (ii) if a notice or order was made, whether it included an exclusion condition; and
 - (iii) any other matter in relation to family violence or personal violence the Tribunal considers relevant;
- (e) whether the breach has been remedied as far as is practicable;
- (f) whether the tenant, resident or site tenant has, or will soon have, capacity to remedy the breach and comply with any obligations under the tenancy agreement, residency right or site agreement, as the case requires;
- (g) the effect of the conduct of the tenant, resident or site tenant on others as a tenant, resident or site tenant;

- (h) whether any other order or course of action is reasonably available instead of making the order sought;
- (i) as the case requires, the behaviour of the landlord, the landlord's agent, the rooming house owner, the caravan park owner, the caravan owner or the site owner;
- (j) any other matter the Tribunal considers relevant.

Note

In relation to orders made under sections 593 and 595, section 498ZZHA sets out what the Tribunal must have regard to for the purposes of determining what is reasonable and proportionate to make a possession order in relation to an SDA enrolled dwelling.

Division 2—Tenancy agreements

539 Suspension of rent increases—tenancy agreements

- (1) A landlord must not increase rent payable under a tenancy agreement.
- (2) A landlord must not give a notice of a proposed rent increase under section 44(1) to a tenant.

540 Reduction in rent and payment plans—tenancy agreements

- (1) On an application of a tenant under a tenancy agreement, the Tribunal may make an order—
 - (a) reducing the rent payable under the tenancy agreement for a period specified in the order; or

- (b) that the tenant enter into and abide by a payment plan to pay the rent or a reduced amount of rent, and any outstanding arrears of rent, under the tenancy agreement for a period specified in the order.
- (2) If the Tribunal makes an order under subsection (1), the Tribunal may also make an order varying any of the terms of the agreement as necessary because of the reduction of the rent or the payment plan.
- (3) The Tribunal may cancel or amend an order under this section.
- (4) If the Tribunal makes an order under subsection (1)(b), the Tribunal must specify the terms of the payment plan.

541 Landlord must allow payment of rent by Centrepay

- (1) Without limiting how rent is paid, a landlord or the landlord's agent must permit a tenant to pay rent by the following payment methods—
 - (a) the bill paying service known as Centrepay administered by the Department of Human Services of the Commonwealth;
 - (b) any other prescribed payment method.
- (2) Despite subsection (1), a landlord or the landlord's agent is not required to permit a tenant to pay rent by Centrepay if the Department of Human Services of the Commonwealth has advised the landlord that the landlord is not eligible to use the payment service.

- (3) Subsection (1) does not apply to the Director of Housing or the Director's agent.

542 No breach of duty or term if COVID-19 reason—tenancy agreement

- (1) A tenant or landlord, who would have breached a term of a tenancy agreement or a relevant duty provision but for this section, is taken not to have breached the term or provision if the tenant or landlord was unable to comply with, or it was not reasonably practicable for the tenant or landlord to comply with, that term or provision because of a COVID-19 reason.

- (2) In this section—

relevant duty provision means section 89 or any provision of Division 5 of Part 2.

543 Reduction in fixed term tenancy agreement

- (1) On the application of a party to a fixed term tenancy agreement, the Tribunal may make an order—
- (a) reducing the term of the agreement by a period stated in the order; and
 - (b) making any variations to the terms of the agreement that are necessary because of the reduction of the term.
- (2) The Tribunal may only make an order under this section if it is satisfied that the severe hardship which the applicant would suffer if the term of the agreement were not reduced would be greater than the severe hardship which the other party to the agreement would suffer if the term were reduced.

- (3) Without limiting subsection (2), the Tribunal may be satisfied that the applicant would suffer severe hardship if the applicant—
- (a) is excluded from the rented premises the subject of the agreement under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order; or
 - (b) is a protected person under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order and is seeking to reduce the term of the agreement to protect their own safety or the safety of their children.

544 No notices to vacate—tenancy agreements

- (1) A landlord or mortgagee in respect of rented premises must not give a tenant a notice to vacate rented premises under Subdivision 4 of Division 1 of Part 6 and any notice purportedly given is of no effect.
- (2) Section 267(3) applies as if it included a reference to this Division.

Note

Section 267 provides for the rights of an owner where a landlord under a tenancy agreement is not the owner.

545 When a tenant can give notice of intention to vacate—tenancy agreements

- (1) A tenant must not give a landlord a notice of intention to vacate rented premises under Subdivision 3 of Division 1 of Part 6 unless—

- (a) the tenant requires special or personal care and needs to vacate the rented premises in order to obtain that care; or
 - (b) the tenant has received a written offer of public housing from the Director of Housing; or
 - (c) the tenant requires temporary crisis accommodation and needs to vacate the rented premises in order to obtain that accommodation; or
 - (d) the tenant, who is an SDA resident, has been given a notice under section 498DA; or
 - (e) the tenant is suffering severe hardship.
- (2) A tenant referred to in subsection (1)(a), (b), (c) or (e) may give a landlord a notice of intention to vacate rented premises under a fixed term tenancy agreement specifying a termination date that is on or after the end of the term of the tenancy agreement if the period between the date on which the notice is given and the termination date is not less than 14 days.
- (3) A tenant referred to in subsection (1)(a), (b), (c) or (e) may give a landlord a notice of intention to vacate rented premises under a periodic tenancy specifying a termination date that is not less than 14 days after the date on which the notice is given.
- (4) A tenant referred to in subsection (1)(d) may give a landlord who is, or was, an SDA provider, a notice of intention to vacate a premises that is, or was, an SDA enrolled dwelling, specifying a termination date that is not less than 14 days after the date on which the notice is given.

546 Tenants not liable for compensation or lease break fees, charges etc

- (1) Despite any Act or law to the contrary (other than the **Constitution Act 1975** or the Charter of Human Rights and Responsibilities), a tenant is not liable to compensate a landlord for loss suffered by the landlord as a result of the early termination of a tenancy agreement, or to pay any lease break fee (however described) in relation to the early termination of a tenancy agreement, if—
- (a) the tenant has given a notice of intention to vacate to the landlord under Subdivision 3 of Division 1 of Part 6; and
 - (b) the tenant—
 - (i) is a tenant referred to in section 545(1)(a), (b), (c), (d) or (e); or
 - (ii) is excluded from the rented premises the subject of the agreement under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order; or
 - (iii) is a protected person under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order and is seeking to reduce the term of the agreement to protect their own safety or the safety of their children; or

- (iv) is suffering severe hardship; and
 - (c) the tenant vacated the premises on or after the termination date specified in the notice.
- (2) The Tribunal must not make an order under Part 5 directing a tenant to pay compensation to a landlord for loss suffered by the landlord as a result of the early termination of a tenancy agreement, including for the loss of rent that would have been payable under the tenancy agreement if it had not been terminated, if—
- (a) the tenant has given a notice of intention to vacate to the landlord under Subdivision 3 of Division 1 of Part 6; and
 - (b) the tenant—
 - (i) is a tenant referred to in section 545(1)(a), (b), (c), (d) or (e); or
 - (ii) is excluded from the rented premises the subject of the agreement under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order; or
 - (iii) is a protected person under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order and is seeking to reduce the term of the agreement to protect their own safety or the safety of their children; or
 - (iv) is suffering severe hardship; and
-

- (c) the tenant vacated the premises on or after the termination date specified in the notice.

547 Terminations—tenancy agreements

- (1) A tenancy agreement does not terminate unless—
 - (a) the Tribunal makes an order under section 233B or 549(1); or
 - (b) it is terminated under—
 - (i) section 217; or
 - (ii) section 218; or
 - (iii) section 219(1), by reason of the tenant having given a notice of intention to vacate the rented premises that the tenant was entitled to give under section 546 and the tenant vacating the premises on or after the termination date specified in the notice; or
 - (iv) section 220; or
 - (v) section 221; or
 - (vi) section 224; or
 - (vii) section 225; or
 - (viii) section 226; or
 - (ix) section 228; or
 - (x) any other prescribed provision.

- (2) Section 216 applies as if it also included a reference to this Division.

Note

Section 216 provides that despite any Act or law to the contrary, a tenancy agreement does not terminate and must not be terminated except in accordance with Division 1 of Part 6 or Part 7 or 8.

548 Application to Tribunal for order to terminate

- (1) Subject to the Residential Tenancies Dispute Resolution Scheme, a landlord under a tenancy agreement or a mortgagee in respect of rented premises may apply to the Tribunal for an order terminating the tenancy agreement.
- (2) A landlord must not make an application to the Tribunal to terminate a tenancy agreement under section 374.
- (3) A person may also make an application under section 232 if an order terminating the tenancy agreement under section 549 has been made in respect of the premises.

549 Tribunal may terminate tenancy agreement in certain circumstances

- (1) On an application under section 548, the Tribunal may make an order terminating a tenancy agreement if satisfied—
- (a) as to any of the matters set out in subsection (2); and
 - (b) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 538, to make the order taking into account the interests of, and the

impact on, each of the following in making the order—

- (i) the landlord or mortgagee in respect of the rented premises;
- (ii) the tenant;
- (iii) any co-tenants or other residents;
- (iv) any neighbours or any other person who may be, or who has been, affected by the acts of the tenant.

(2) For the purposes of subsection (1), the matters are—

- (a) that the tenant or the tenant's visitor has, by act or omission, intentionally or recklessly caused serious damage to the premises, including to any safety equipment or to any common areas; or
- (b) that the tenant or the tenant's visitor has, by act or omission, endangered the safety of—
 - (i) occupiers of neighbouring premises; or
 - (ii) the landlord or the landlord's agent; or
 - (iii) a contractor or employee of a person referred to in subparagraph (ii); or
- (c) that the tenant or any other person occupying or jointly occupying the rented premises has seriously threatened or intimidated—
 - (i) the landlord or the landlord's agent; or

- (ii) a contractor or employee of a person referred to in subparagraph (i); or
- (d) that the tenant has failed to comply with an order of the Tribunal under section 212; or
- (e) that the tenant has been given a notice to leave the rented premises under section 368; or
- (f) that the tenant has used the rented premises, or permitted their use, for any purpose that is illegal at common law or under an Act; or
- (g) if the Director of Housing is the landlord, that the tenant has, on the rented premises or in a common area, illegally—
 - (i) trafficked or attempted to traffick a drug of dependence; or
 - (ii) supplied a drug of dependence to a person under 18 years of age; or
 - (iii) possessed a preparatory item with the intention of using the item for the purpose of trafficking in a drug of dependence; or
 - (iv) possessed, without lawful excuse—
 - (A) a tablet press; or
 - (B) a precursor chemical; or
 - (v) intentionally caused another person to traffick in a drug of dependence by threatening to harm that person or another person or by using violence

- against that person or another person; or
- (vi) intentionally permitted another person to use those premises or the common area for—
 - (A) trafficking in a drug of dependence; or
 - (B) cultivating a drug of dependence; or
- (vii) cultivated or attempted to cultivate a narcotic plant; or
- (h) if the landlord is the Director of Housing, that the tenant has committed an indictable offence that is prescribed for the purposes of section 250B(1) on the rented premises or in a common area; or
- (i) that the tenant has failed to comply with the tenant's obligations under the tenancy agreement or the Act, including by not paying rent, in circumstances where the tenant could comply with the obligations without suffering severe hardship; or
- (j) that the landlord has—
 - (i) engaged an agent to sell the rented premises; or
 - (ii) prepared or entered into a contract of sale for the rented premises; or
- (k) if the landlord is the Director of Housing, that—
 - (i) the landlord intends to repair, renovate, rebuild or demolish the rented premises; and

- (ii) the landlord has obtained all consents and permits (however described) that are necessary for the repair, renovation or rebuilding or demolition, as the case requires; and
- (iii) it is not reasonably practicable for the repair, renovation, rebuilding or demolition to be carried out unless the tenancy agreement is terminated; or
- (l) that the rented premises—
 - (i) are unfit for human habitation; or
 - (ii) are destroyed totally or to such an extent as to be rendered unsafe; or
- (m) if the landlord is a public statutory authority engaged in the provision of housing, that the authority was induced to enter the tenancy agreement by a statement by the tenant—
 - (i) which related to a matter on which eligibility to rent the premises depended; and
 - (ii) which the tenant knew to be false or misleading; or
- (n) that the tenant has assigned or sub-let or purported to assign or sub-let the whole or any part of the premises without the landlord's consent; or
- (o) that the premises are, immediately after the termination date, to be occupied—
 - (i) by the landlord; or

- (ii) in the case of a landlord who is an individual, by the landlord's partner, son, daughter, parent or partner's parent or another person who normally lives with the landlord and is wholly or substantially dependent on the landlord; or
- (p) if the premises are the property of a public statutory authority authorised to acquire land compulsorily for its purposes, that immediately after the termination date the premises are required for a public purpose; or
- (q) if the landlord is a public statutory authority engaged in the provision of housing, that—
 - (i) the rented premises are only available to be let to persons who meet the eligibility criteria for housing published by the public statutory authority in the Government Gazette; and
 - (ii) the tenant ceases to meet one or more of the eligibility criteria; or
- (r) that—
 - (i) the Tribunal has made an order under section 71E excluding a pet from the rented premises; and
 - (ii) at least 14 days have passed since the order took effect; and
 - (iii) the tenant has not complied with the order; or

- (s) if the landlord is the Director of Housing, that—
 - (i) the rented premises were provided as transitional housing within the meaning of section 262A(3); and
 - (ii) the Director of Housing, under section 262A(4), published requirements for tenants of transitional housing to seek alternative accommodation; and
 - (iii) the tenant has unreasonably refused to seek alternative accommodation provided, or refused a reasonable offer of alternative accommodation made, in accordance with those requirements; or
 - (t) any other prescribed matter.
- (3) If the Tribunal makes an order under subsection (1) and does not make a possession order under subsection (4)—
- (a) the Tribunal must specify the date on which the tenancy agreement terminates; and
 - (b) the tenancy agreement terminates at the end of that day.
- (4) If the Tribunal makes an order under subsection (1), the Tribunal may also make a possession order requiring a tenant to vacate rented premises if satisfied—
- (a) that any resident who is entitled to a period of notice under section 289A has been given the required notice; and

- (b) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 538, to make a possession order taking into account the interests of, and the impact on, each of the following in making the possession order—
 - (i) the landlord or mortgagee in respect of the rented premises;
 - (ii) the tenant;
 - (iii) any co-tenants or other residents;
 - (iv) any neighbours or any other person who may be, or who has been, affected by the acts of the tenant.
- (5) If a possession order is made under this section, the tenancy agreement terminates at the end of the day before the day on which possession of the rented premises is delivered up to the landlord.
- (6) The Tribunal must not make an order under subsection (1) on the ground that the tenant has failed to comply with the tenant's obligations under the tenancy agreement or the Act, including by not paying rent, if the tenant is unable to comply with, or it is not reasonably practicable for the tenant to comply with, those obligations because of a COVID-19 reason.
- (7) For the purposes of Division 4 of Part 7, a possession order made under this section is taken to have been made under Division 1 of Part 7.
- (8) Section 264(1) applies as if that section also included a reference to an order made under this section on the basis that the Tribunal is

satisfied of a matter in subsections (2)(j) and (o) of this section.

(9) In this section—

cultivate, *narcotic plant* and *traffick* have the same meanings as in section 70(1) of the **Drugs, Poisons and Controlled Substances Act 1981**;

drug of dependence, *substance* and *supply* have the same meanings as in section 4(1) of the **Drugs, Poisons and Controlled Substances Act 1981**;

precursor chemical means a prescribed precursor chemical within the meaning of section 71D of the **Drugs, Poisons and Controlled Substances Act 1981**;

preparatory item means a substance, material, equipment or document containing instructions relating to the preparation, cultivation or trafficking of a drug of dependence.

550 When can a landlord or mortgagee apply for a possession order?

- (1) A landlord or a mortgagee in respect of rented premises may apply to the Tribunal for a possession order for rented premises if—
- (a) the Tribunal has made an order under section 549(1) terminating the tenancy agreement and has not made an order under section 549(4); and
 - (b) the tenant has not delivered up vacant possession of the premises by the end of the termination date specified in the order under section 549(1).

- (2) A landlord must not apply to the Tribunal for a possession order for rented premises under section 322, 335 or 337(3).
- (3) A mortgagee in respect of rented premises must not apply to the Tribunal for a possession order for the rented premises under section 325.

**551 Tribunal may make possession order—
tenancy agreements**

- (1) On an application under section 550, the Tribunal must make a possession order requiring a tenant to vacate rented premises on the day specified in the order if the Tribunal is satisfied—
 - (a) that the tenant is still in possession of the rented premises after the termination date specified in the order under section 549; and
 - (b) that any resident who is entitled to a period of notice under section 289A has been given the required notice; and
 - (c) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 538, to make a possession order taking into account the interests of, and the impact on, each of the following in making the possession order—
 - (i) the landlord or mortgagee in respect of the rented premises;
 - (ii) the tenant;
 - (iii) any co-tenants or other residents;

- (iv) any neighbours or any other person who may be, or who has been, affected by the acts of the tenant.
- (2) For the purposes of Division 4 of Part 7, a possession order made under this section is taken to have been made under Division 1 of Part 7.

Division 3—Residency rights in rooming houses

552 Suspension of rent increases—rooming houses

- (1) A rooming house owner must not increase rent payable in respect of a room.
- (2) A rooming house owner must not give a notice of a proposed rent increase under section 101(1) to a resident.

553 Reduction in rent and payment plans—rooming houses

- (1) On an application of a resident in respect of a room in a rooming house, the Tribunal may make an order—
 - (a) reducing the rent payable for the room for a period specified in the order; or
 - (b) that the resident enter into and abide by a payment plan to pay the rent or a reduced amount of rent, and any outstanding arrears of rent, for the room for a period specified in the order.
- (2) If the Tribunal makes an order under subsection (1), the Tribunal may also make an order varying any of the terms of the residency right as necessary because of the reduction of the rent or the payment plan.

- (3) The Tribunal may cancel or amend an order under this section.
- (4) If the Tribunal makes an order under subsection (1)(b), the Tribunal must specify the terms of the payment plan.

554 Rooming house owner must allow payment of rent by Centrepay

- (1) Without limiting how rent is paid, a rooming house owner or that person's agent must permit a resident to pay rent by the following payment methods—
 - (a) the bill paying service known as Centrepay administered by the Department of Human Services of the Commonwealth;
 - (b) any other prescribed payment method.
- (2) Despite subsection (1), a rooming house owner or that person's agent is not required to permit a resident to pay rent by Centrepay if the Department of Human Services of the Commonwealth has advised the rooming house owner that the rooming house owner is not eligible to use the payment service.
- (3) Subsection (1) does not apply to the Director of Housing or the Director's agent.

555 No breach of duty or term if COVID-19 reason—rooming houses

- (1) A resident or rooming house owner, who would have breached a relevant duty provision but for this section, is taken not to have breached the term or provision if the resident or rooming house owner was unable to comply with, or it was not reasonably practicable for the resident or rooming house

owner to comply with, that term or provision because of a COVID-19 reason.

(2) In this section—

relevant duty provision means section 140 or any provision of Division 5 of Part 3.

556 No notices to vacate—rooming houses

A rooming house owner or rooming house mortgagee must not give a resident a notice to vacate a room under Subdivision 3 of Division 2 of Part 6 and any notice purportedly given is of no effect.

557 Terminations—residency rights in rooming houses

A residency right in respect of a room does not end unless—

- (a) the Tribunal makes an order under section 559(1); or
- (b) it is ended under—
 - (i) section 269(a); or
 - (ii) section 271; or
 - (iii) section 272; or
 - (iv) any other prescribed provision.

558 Application to Tribunal for order to end residency right in respect of a room

- (1) Subject to the Residential Tenancies Dispute Resolution Scheme, a rooming house owner or a rooming house mortgagee may apply to the Tribunal for an order ending a residency right in respect of a room.
- (2) A rooming house owner must not make an application to the Tribunal to terminate a residency right under section 374.

**559 Tribunal may end residency right in
rooming houses in certain circumstances**

- (1) On an application under section 558, the Tribunal may make an order ending a residency right or tenancy agreement in respect of a room if satisfied—
 - (a) as to any of the matters set out in subsection (2); and
 - (b) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 538, to make the order taking into account the interests of, and the impact on, each of the following in making the order—
 - (i) the rooming house owner or rooming house mortgagee;
 - (ii) the resident;
 - (iii) any other residents;
 - (iv) any other residents or any other person who may be, or who has been, affected by the acts of the resident.
- (2) For the purposes of subsection (1), the matters are—
 - (a) that the resident or the resident's visitor has, by act or omission, intentionally or recklessly caused serious damage to any part of the rooming house, including to any safety equipment or to any common areas; or

- (b) that the resident or the resident's visitor has, by act or omission, endangered the safety of—
 - (i) another resident of the rooming house; or
 - (ii) occupiers of neighbouring properties; or
 - (iii) the rooming house owner or the owner's agent; or
 - (iv) a contractor or employee of a person referred to in subparagraph (iii); or
- (c) that the resident has seriously threatened or intimidated—
 - (i) the rooming house owner or the owner's agent; or
 - (ii) a contractor or employee of a person referred to in subparagraph (i); or
- (d) that the resident or the resident's visitor seriously interrupts the quiet and peaceful enjoyment of the rooming house by other residents; or
- (e) that the resident has failed to comply with an order of the Tribunal under section 212; or
- (f) that the resident has been given a notice to leave the rooming house under section 368; or
- (g) that the resident has used the room, or permitted the use of the room by any of the resident's visitors, for any purpose that is illegal at common law or under an Act; or

- (h) that the resident has failed to comply with the resident's obligations under the residency right, including by not paying rent, in circumstances where the resident could comply with the obligations without suffering severe hardship; or
- (i) that the rooming house owner has—
 - (i) engaged an agent to sell the rooming house; or
 - (ii) prepared or entered into a contract of sale for the rooming house; or
- (j) that—
 - (i) the rooming house owner intends to repair, renovate, reconstruct or demolish the rooming house immediately after the termination date; and
 - (ii) the rooming house owner has obtained all necessary permits and consents to carry out the work; and
 - (iii) the work cannot be properly carried out unless the resident vacates the rooming house; or
- (k) the rooming house owner is the Director of Housing and—
 - (i) the room was provided as transitional housing; and
 - (ii) the Director of Housing, under this section, has published requirements for residents of transitional housing to seek alternative accommodation; and

- (ii) the resident has unreasonably refused to seek alternative accommodation in accordance with those requirements or has refused a reasonable offer of alternative accommodation made in accordance with those requirements; or
 - (l) any other prescribed matter.
- (3) If the Tribunal makes an order under subsection (1) and does not make an order under subsection (4)—
 - (a) the Tribunal must specify the date on which the residency right ends; and
 - (b) the residency right ends at the end of that day.
- (4) If the Tribunal makes an order under subsection (1), the Tribunal may also make a possession order requiring a resident to vacate the room and rooming house if satisfied—
 - (a) that any resident who is entitled to a period of notice under section 289A has been given the required notice; and
 - (b) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 538, to make a possession order taking into account the interests of, and the impact on, each of the following in making the possession order—
 - (i) the rooming house owner or rooming house mortgagee;
 - (ii) the resident;
 - (iii) any other residents;

- (iv) any other residents or any other person who may be, or who has been, affected by the acts of the resident.
- (5) If the Tribunal makes a possession order under subsection (4)—
 - (a) the Tribunal must specify the date on which the residency right ends; and
 - (b) the residency right ends at the end of that day.
- (6) The Tribunal must not make an order under subsection (1) on the ground that the resident has failed to comply with the resident's obligations under the Act, including by not paying rent, if the resident is unable to comply with, or it is not reasonably practicable for the resident to comply with, those obligations because of a COVID-19 reason.
- (7) For the purposes of Division 4 of Part 7, a possession order made under this section is taken to have been made under Division 1 of Part 7.

560 When can a rooming house owner or rooming house mortgagee apply for a possession order?

- (1) A rooming house owner or a rooming house mortgagee may apply to the Tribunal for a possession order for a room if—
 - (a) the Tribunal has made an order under section 559(1) ending the residency right and has not made an order under section 559(4); and

- (b) the resident fails to vacate the room by the end of the termination date specified in the order under section 559(1).
- (2) A rooming house owner must not apply to the Tribunal for a possession order for rented premises under section 323.
- (3) A rooming house mortgagee must not apply to the Tribunal for a possession order under section 325.

**561 Tribunal may make possession order—
rooming houses**

- (1) On an application under section 560, the Tribunal must make a possession order requiring a resident to vacate a room and rooming house on the day specified in the order if the Tribunal is satisfied—
 - (a) that the resident has not vacated the room and rooming house after the termination date specified in the order under section 559; and
 - (b) that any resident who is entitled to a period of notice under section 289A has been given the required notice; and
 - (c) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 538, to make a possession order taking into account the interests of, and the impact on, each of the following in making the possession order—
 - (i) the rooming house owner or rooming house mortgagee;
 - (ii) the resident;
 - (iii) any other residents;

- (iv) any other residents or any other person who may be, or who has been, affected by the acts of the resident.
- (2) For the purposes of Division 4 of Part 7, a possession order made under this section is taken to have been made under Division 1 of Part 7.

Division 4—Residency rights in caravan parks

562 Suspension of rent or hiring charge increases—caravan parks

- (1) A caravan park owner or caravan owner must not increase rent or a hiring charge payable in respect of a site or caravan.
- (2) A caravan park owner or caravan owner must not give a notice of a proposed rent or hiring charge increase under section 152(1) or (2) to a resident.

563 Reduction in rent or hiring charge and payment plans—caravan parks

- (1) On an application of a resident in respect of a site or caravan in a caravan park, the Tribunal may make an order—
 - (a) reducing the rent or a hiring charge payable for the site or caravan for a period specified in the order; or
 - (b) that the resident enter into and abide by a payment plan to pay the rent or hiring charge, or a reduced amount of the rent or hiring charge, and any outstanding arrears of rent or the hiring charge, for the site or caravan for a period specified in the order.

- (2) If the Tribunal makes an order under subsection (1), the Tribunal may also make an order varying any of the terms of the residency right as necessary because of the reduction of the rent or hiring charge or the payment plan.
- (3) The Tribunal may cancel or amend an order under this section.
- (4) If the Tribunal makes an order under subsection (1)(b), the Tribunal must specify the terms of the payment plan.

564 Caravan park owners and caravan owners must allow payment of rent or hiring charge by Centrepay

- (1) Without limiting how rent or a hiring charge is paid, a caravan park owner or a caravan owner or that person's agent must permit a resident to pay rent or a hiring charge by the following payment methods—
 - (a) the bill paying service known as Centrepay administered by the Department of Human Services of the Commonwealth;
 - (b) any other prescribed payment method.
- (2) Despite subsection (1), a caravan park owner or caravan owner or that person's agent is not required to permit a resident to pay rent or a hiring charge by Centrepay if the Department of Human Services of the Commonwealth has advised the caravan park owner or caravan owner that the caravan park owner or caravan owner is not eligible to use the payment service.
- (3) Subsection (1) does not apply to the Director of Housing or the Director's agent.

565 No breach of duty or term if COVID-19 reason—caravan parks

- (1) A resident, caravan park owner or caravan owner, who would have breached a relevant duty provision but for this section, is taken not to have breached the provision if the resident, caravan park owner or caravan owner was unable to comply with, or it was not reasonably practicable for the resident, caravan park owner or caravan owner to comply with, that provision because of a COVID-19 reason.
- (2) In this section—
relevant duty provision means section 204 or any provision of Division 5 of Part 4.

566 No notices to vacate—caravan parks

A caravan park owner, caravan owner, caravan park mortgagee or caravan mortgagee must not give a resident a notice to vacate a caravan or site under Subdivision 3 of Division 3 of Part 6 and any notice purportedly given is of no effect.

567 Terminations—residency rights in caravan parks

A residency right in respect of a site or caravan in a caravan park does not end unless—

- (a) the Tribunal makes an order under section 317AB or 569(1); or
- (b) it is ended under—
- (i) section 291(a); or
 - (ii) section 292; or
 - (iii) section 293; or

(iv) section 294; or

(v) any other prescribed provision.

568 Application to Tribunal for order to end residency right in respect of a caravan park

- (1) Subject to the Residential Tenancies Dispute Resolution Scheme, a caravan park owner, caravan owner, caravan park mortgagee or caravan mortgagee may apply to the Tribunal for an order ending a residency right in respect of a site or caravan.
- (2) A caravan park owner or caravan owner must not make an application to the Tribunal to terminate a residency right under section 374.

569 Tribunal may end residency right in caravan parks in certain circumstances

- (1) On an application under section 568, the Tribunal may make an order ending a residency right in respect of a site or caravan in a caravan park if satisfied—
 - (a) as to any of the matters set out in subsection (2); and
 - (b) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 538, to make the order taking into account the interests of, and the impact on, each of the following in making the order—
 - (i) the caravan park owner, caravan owner, caravan park mortgagee or caravan mortgagee;
 - (ii) the resident;

- (iii) any other residents;
 - (iv) any other residents or any other person who may be, or who has been, affected by the acts of the resident.
- (2) For the purposes of subsection (1), the matters are—
- (a) that the resident or the resident's visitor has, by act or omission, intentionally or recklessly caused serious damage to—
 - (i) the site; or
 - (ii) the caravan park, including any common areas; or
 - (iii) any facility in the caravan park, including to any safety equipment; or
 - (b) that the resident or the resident's visitor has, by act or omission, endangered the safety of—
 - (i) any person or property in the caravan park; or
 - (ii) the caravan park owner or the owner's agent; or
 - (iii) a contractor or employee of a person referred to in subparagraph (ii); or
 - (c) that the resident has seriously threatened or intimidated—
 - (i) the caravan park owner or the owner's agent; or
 - (ii) a contractor or employee of a person referred to in subparagraph (i); or

- (d) that the resident or the resident's visitor seriously interrupts the quiet and peaceful enjoyment of the caravan park by other occupiers; or
- (e) that the resident has failed to comply with an order of the Tribunal under section 212; or
- (f) that the resident has been given a notice to leave the caravan park under section 368; or
- (g) that the resident has used the site or the caravan, or permitted the use of the site or the caravan, for any purpose that is illegal at common law or under an Act; or
- (h) that the resident has failed to comply with the resident's obligations under the residency right, including by not paying rent or a hiring charge, in circumstances where the resident could comply with the obligations without suffering severe hardship; or
- (i) that the caravan owner has—
 - (i) engaged an agent to sell the caravan; or
 - (ii) prepared or entered into a contract of sale for the caravan; or
- (j) the caravan park is to be closed; or
- (k) the caravan owner intends to—
 - (i) occupy the caravan himself or herself; or
 - (ii) make it available for occupation by his or her partner, son, daughter, parent or partner's

parent or another person who normally lives with the caravan owner and is wholly or substantially dependent on the caravan owner; or

- (l) any other prescribed matter.
- (3) If the Tribunal makes an order under subsection (1) and does not make an order under subsection (4)—
 - (a) the Tribunal must specify the date on which the residency right ends; and
 - (b) the residency right ends at the end of that day.
- (4) If the Tribunal makes an order under subsection (1), the Tribunal may also make a possession order requiring a resident to vacate the site or caravan if satisfied that, in the circumstances of the particular application, it is reasonable and proportionate having regard to section 538, to make a possession order taking into account the interests of, and the impact on, each of the following in making the possession order—
 - (a) the caravan park owner, caravan owner, caravan park mortgagee or caravan mortgagee;
 - (b) the resident;
 - (c) any other residents;
 - (d) any other residents or any other person who may be, or who has been, affected by the acts of the resident.

- (5) If the Tribunal makes a possession order under subsection (4)—
 - (a) the Tribunal must specify the date on which the residency right ends; and
 - (b) the residency right ends at the end of that day.
- (6) The Tribunal must not make an order under subsection (1) on the ground that the resident has failed to comply with the resident's obligations under the Act, including by not paying rent or a hiring charge, if the resident is unable to comply with, or it is not reasonably practicable for the resident to comply with, those obligations because of a COVID-19 reason.
- (7) For the purposes of Division 4 of Part 7, a possession order made under this section is taken to have been made under Division 1 of Part 7.

570 When can a caravan park owner, caravan owner, caravan park mortgagee or caravan mortgagee apply for a possession order?

- (1) A caravan park owner, caravan owner, caravan park mortgagee or caravan mortgagee may apply to the Tribunal for a possession order for a caravan or site if—
 - (a) the Tribunal has made an order under section 569(1) ending the residency right and has not made an order under section 569(4); and
 - (b) the resident fails to vacate the caravan or site by the end of the termination date specified in the order under section 569.

- (2) A caravan park owner or caravan owner must not apply to the Tribunal for a possession order for a site or caravan under section 324.
- (3) A caravan park mortgagee or caravan mortgagee must not apply to the Tribunal for a possession order for a site or caravan under section 325.

**571 Tribunal may make possession order—
caravan parks**

- (1) On an application under section 570, the Tribunal must make a possession order requiring a resident to vacate a caravan or site on the day specified in the order if the Tribunal is satisfied—
 - (a) that the resident has not vacated the caravan or site after the termination date specified in the order under section 569; and
 - (b) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 538, to make a possession order taking into account the interests of, and the impact on, each of the following in making the possession order—
 - (i) the caravan park owner, caravan owner, caravan park mortgagee or caravan mortgagee;
 - (ii) the resident;
 - (iii) any other residents;
 - (iv) any other residents or any other person who may be, or who has been, affected by the acts of the resident.

- (2) For the purposes of Division 4 of Part 7, a possession order made under this section is taken to have been made under Division 1 of Part 7.

Division 5—Site agreements

572 Suspension of rent increases—Part 4A parks

- (1) A site owner must not increase rent payable under a site agreement.
- (2) A site owner must not give a notice of a proposed rent increase under section 206V(1) to a site tenant.

573 Reduction in rent and payment plans—site agreements

- (1) On an application of a site tenant under a site agreement, the Tribunal may make an order—
- (a) reducing the rent payable under the site agreement for a period specified in the order; or
 - (b) that the site tenant enter into and abide by a payment plan to pay the rent or a reduced amount of rent, and any outstanding arrears of rent, under the site agreement for a period specified in the order.
- (2) If the Tribunal makes an order under subsection (1), the Tribunal may also make an order varying any of the terms of the agreement as necessary because of the reduction of the rent or the payment plan.
- (3) The Tribunal may cancel or amend an order under this section.

- (4) If the Tribunal makes an order under subsection (1)(b), the Tribunal must specify the terms of the payment plan.

574 Site owners must allow payment of rent by Centrepay

- (1) Without limiting how rent is paid, a site owner or that person's agent must permit a site tenant to pay rent by the following payment methods—
- (a) the bill paying service known as Centrepay administered by the Department of Human Services of the Commonwealth;
 - (b) any other prescribed payment method.
- (2) Despite subsection (1), a site owner or that person's agent is not required to permit a site tenant to pay rent by Centrepay if the Department of Human Services of the Commonwealth has advised the site owner that the site owner is not eligible to use the payment service.
- (3) Subsection (1) does not apply to the Director of Housing or the Director's agent.

575 No breach of duty or term if COVID-19 reason—site agreements

- (1) A site tenant or site owner, who would have breached a term of a site agreement or a relevant duty provision but for this section, is taken not to have breached the term or provision if the site tenant or site owner was unable to comply with, or it was not reasonably practicable for the site tenant or site owner to comply with, that term or provision because of a COVID-19 reason.

(2) In this section—

relevant duty provision means
section 206ZZM or any provision of
Division 5 or 6 of Part 4A.

576 Reduction in fixed term site agreement

- (1) On the application of a party to a fixed term site agreement, the Tribunal may make an order—
- (a) reducing the term of the agreement by a period stated in the order; and
 - (b) making any variations to the terms of the agreement that are necessary because of the reduction of the term.
- (2) The Tribunal may only make an order under this section if it is satisfied that the severe hardship which the applicant would suffer if the term of the agreement were not reduced would be greater than the severe hardship which the other party would suffer if the term were reduced.
- (3) Without limiting subsection (2), the Tribunal may be satisfied that the applicant would suffer severe hardship if the applicant—
- (a) is excluded from the Part 4A site the subject of the site agreement under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order; or
 - (b) is a protected person under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order and is seeking to reduce the term of the agreement to

protect their own safety or the safety of their children

577 No notices to vacate—Part 4A parks

A site owner or a mortgagee in respect of a Part 4A park must not give a site tenant a notice to vacate a Part 4A site under Subdivision 4 of Division 3A of Part 6 and any notice purportedly given is of no effect.

578 When a site tenant can give notice of intention to vacate—site agreements

- (1) A site tenant must not give a site owner a notice of intention to vacate a Part 4A site under Subdivision 3 of Division 3A of Part 6 unless—
 - (a) the site tenant requires special or personal care and needs to vacate the Part 4A site in order to obtain that care; or
 - (b) the site tenant has received a written offer of public housing from the Director of Housing; or
 - (c) the site tenant requires temporary crisis accommodation and needs to vacate the Part 4A site in order to obtain that accommodation; or
 - (d) the site tenant is suffering severe hardship.
- (2) A site tenant referred to in subsection (1)(a) to (d) may give a site owner a notice of intention to vacate a Part 4A site under a fixed term site agreement specifying a termination date that is not less than 14 days after the date on which the notice is given, irrespective of the date of the end of the fixed term.

- (3) A site tenant referred to in subsection (1)(a) to (d) may give a site owner a notice of intention to vacate a Part 4A site under a periodic site agreement specifying a termination date that is not less than 14 days after the date on which the notice is given.

579 Site tenants not liable for compensation or lease break fees, charges etc

- (1) Despite any Act or law to the contrary (other than the **Constitution Act 1975** or the Charter of Human Rights and Responsibilities), a site tenant is not liable to compensate a site owner for loss suffered by the site owner as a result of the early termination of a site agreement, or to pay any lease break fee (however described) in relation to the early termination of a site agreement, if—
- (a) the site tenant has given a notice of intention to vacate to the site owner under Subdivision 3 of Division 3A of Part 6; and
 - (b) the site tenant—
 - (i) is a site tenant referred to in section 578(1)(a), (b), (c) or (d); or
 - (ii) is excluded from the Part 4A site the subject of the site agreement under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order; or

- (iii) is a protected person under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order and is seeking to reduce the term of the site agreement to protect their own safety or the safety of their children; or
 - (iv) is suffering severe hardship; and
 - (c) the site tenant vacated the premises on or after the termination date specified in the notice.
- (2) The Tribunal must not make an order under Part 5 directing a site tenant to pay compensation to a site owner for loss suffered by the site owner as a result of the early termination of a site agreement, including for the loss of rent that would have been payable under the site agreement if it had not been terminated, if—
 - (a) the site tenant has given a notice of intention to vacate to the site tenant under Subdivision 3 of Division 3A of Part 6; and
 - (b) the site tenant—
 - (i) is a site tenant referred to in section 578(1)(a), (b), (c) or (d); or
 - (ii) is excluded from the Part 4A site the subject of the site agreement under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order; or

- (iii) is a protected person under a family violence intervention order, non-local DVO made by a court that is a recognised DVO or personal safety intervention order and is seeking to reduce the term of the site agreement to protect their own safety or the safety of their children; or
- (iv) is suffering severe hardship; and
- (c) the site tenant vacated the premises on or after the termination date specified in the notice.

580 Terminations—site agreements in Part 4A parks

- (1) A site agreement does not terminate unless—
 - (a) the Tribunal makes an order under section 317N or 582(1); or
 - (b) it is terminated under—
 - (i) section 317B; or
 - (ii) section 317C; or
 - (iii) section 317D, by reason of the site tenant having given a notice of intention to vacate the Part 4A site that the site tenant was entitled to give under section 578 and the site tenant vacating the Part 4A site on or after the termination date specified in the notice; or
 - (iv) section 317E; or
 - (v) section 317H; or
 - (vi) section 317I; or

(vii) section 317J; or

(viii) any other prescribed provision.

- (2) Section 317A applies as if it also included a reference to this Division.

Note

Section 317A provides that despite any Act or law to the contrary, a site agreement does not terminate and must not be terminated except in accordance with Division 3A of Part 6 or Part 7 or 8.

581 Application to Tribunal for order to terminate site agreement

- (1) Subject to the Residential Tenancies Dispute Resolution Scheme, a site owner under a site agreement or a mortgagee in respect of a Part 4A park may apply to the Tribunal for an order terminating the site agreement.
- (2) A site owner must not make an application to the Tribunal to terminate a site agreement under section 374.

582 Tribunal may terminate site agreements in Part 4A parks in certain circumstances

- (1) On an application under section 581, the Tribunal may make an order terminating a site agreement in respect of a Part 4A park if satisfied—
- (a) as to any of the matters set out in subsection (2); and
 - (b) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 538, to make the order taking into account the interests of, and the impact on, each of the following in making the order—

- (i) the site owner or mortgagee in respect of the Part 4A park;
 - (ii) the site tenant;
 - (iii) any co-tenants or other site tenants;
 - (iv) any neighbours or any other person who may be, or who has been, affected by the acts of the site tenant.
- (2) For the purposes of subsection (1), the matters are—
 - (a) that the site tenant or the site tenant's visitor has, by act or omission, intentionally or recklessly caused serious damage to—
 - (i) the Part 4A site; or
 - (ii) the Part 4A park, including any common areas; or
 - (iii) any facility in the Part 4A park, including to any safety equipment; or
 - (b) that the site tenant or the site tenant's visitor has, by act or omission, endangered the safety of—
 - (i) any person in the Part 4A park; or
 - (ii) the site owner or the owner's agent; or
 - (iii) a contractor or employee of a person referred to in subparagraph (ii); or

- (c) that the site tenant or another person residing in the Part 4A site occupied by the site tenant has seriously threatened or intimidated—
 - (i) the site owner or the owner's agent; or
 - (ii) a contractor or employee of a person referred to in subparagraph (i); or
- (d) that the site tenant or the site tenant's visitor seriously interrupts the quiet and peaceful enjoyment of the Part 4A park by other occupiers; or
- (e) that the site tenant has failed to comply with an order of the Tribunal under section 212; or
- (f) that the site tenant has been given a notice to leave the Part 4A park under section 368; or
- (g) that the site tenant has used the Part 4A dwelling on the Part 4A site, or permitted its use, for any purpose that is illegal at common law or under an Act; or
- (h) that the site tenant has failed to comply with the site tenant's obligations under the site agreement or the Act, including by not paying rent, in circumstances where the site tenant could comply with the obligations without suffering severe hardship; or
- (i) that the site tenant has assigned or sub-let or purported to assign or sub-let the whole or any part of the Part 4A site without the site owner's consent; or

- (j) that the Part 4A park is to be closed; or
 - (k) any other prescribed matter.
- (3) If the Tribunal makes an order under subsection (1) and does not make a possession order under subsection (4)—
 - (a) the Tribunal must specify the date on which the site agreement terminates; and
 - (b) the site agreement terminates at the end of that day.
- (4) If the Tribunal makes an order under subsection (1), the Tribunal may also make a possession order requiring a site tenant to vacate the Part 4A site if satisfied that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 538, to make a possession order taking into account the interests of, and the impact on, each of the following in making the possession order—
 - (a) the site owner or mortgagee in respect of the Part 4A park;
 - (b) the site tenant;
 - (c) any co-site tenants or other residents;
 - (d) any neighbours or any other person who may be, or who has been, affected by the acts of the site tenant.
- (5) If a possession order is made under this section, the site agreement terminates at the end of the day before the day on which possession of the Part 4A site is delivered up to the site owner.

- (6) The Tribunal must not make an order under subsection (1) on the ground that the site tenant has failed to comply with the site tenant's obligations under the site agreement or the Act, including by not paying rent, if the site tenant is unable to comply with, or it is not reasonably practicable for the site tenant to comply with, those obligations because of a COVID-19 reason.
- (7) For the purposes of Division 4 of Part 7, a possession order made under this section is taken to have been made under Division 1 of Part 7.

583 When can a site owner or mortgagee apply for a possession order?

- (1) A site owner or a mortgagee in respect of a Part 4A park may apply to the Tribunal for a possession order for a Part 4A site if—
 - (a) the Tribunal has made an order under section 582(1) terminating the site agreement and has not made an order under section 582(4); and
 - (b) the site tenant fails to vacate the Part 4A site by the end of the termination date specified in the order under section 582(1).
- (2) A site owner must not apply to the Tribunal for a possession order for Part 4A site under section 324A.
- (3) A mortgagee in respect of a Part 4A park must not apply to the Tribunal for a possession order for a Part 4A park under section 325.

**584 Tribunal may make possession order—
Part 4A parks**

- (1) On an application under section 583, the Tribunal must make a possession order requiring a resident to vacate a Part 4A site on the day specified in the order if the Tribunal is satisfied—
 - (a) that the site tenant has not vacated the Part 4A site after the termination date specified in the order under section 582; and
 - (b) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 538, to make a possession order taking into account the interests of, and the impact on, each of the following in making the possession order—
 - (i) the site owner;
 - (ii) the site tenant or mortgagee in respect of the Part 4A park;
 - (iii) any co-site tenants or other residents;
 - (iv) any neighbours or any other person who may be, or who has been, affected by the acts of the site tenant.
- (2) For the purposes of Division 4 of Part 7, a possession order made under this section is taken to have been made under Division 1 of Part 7.
- (3) Section 390A applies as if it also included a reference to a possession order made under this Division.

Division 6—SDA residency agreements

585 Suspension of rent increases—SDA residency agreements

- (1) An SDA provider must not increase rent payable under an SDA residency agreement.
- (2) An SDA provider must not give a notice of a proposed rent increase under section 498ZB(1).

586 Reduction in rent and payment plans—SDA residency agreements

- (1) On an application of an SDA resident under an SDA residency agreement, the Tribunal may make an order—
 - (a) reducing the rent payable under the SDA residency agreement for a period specified in the order; or
 - (b) that the SDA resident enter into and abide by a payment plan to pay the rent or a reduced amount of rent, and any outstanding arrears of rent, under the SDA residency agreement for a period specified in the order.
- (2) If the Tribunal makes an order under subsection (1), the Tribunal may also make an order varying any of the terms of the agreement as necessary because of the reduction of the rent or the payment plan.
- (3) The Tribunal may cancel or amend an order under this section.
- (4) If the Tribunal makes an order under subsection (1)(b), the Tribunal must specify the terms of the payment plan.

587 SDA provider must allow payment of rent by Centrepay

- (1) Without limiting how rent is paid, an SDA provider or that person's agent must permit an SDA resident to pay rent by the following payment methods—
 - (a) the bill paying service known as Centrepay administered by the Department of Human Services of the Commonwealth;
 - (b) any other prescribed payment method.
- (2) Despite subsection (1), an SDA provider or that person's agent is not required to permit an SDA resident to pay rent by Centrepay if the Department of Human Services of the Commonwealth has advised the SDA provider that the SDA provider is not eligible to use the payment service.
- (3) Subsection (1) does not apply to the Director of Housing or the Director's agent.

588 No breach of duty or term if COVID-19 reason—SDA residency agreements

- (1) An SDA resident or SDA provider, who would have breached a term of an SDA residency agreement or a relevant duty provision but for this section, is taken not to have breached the term or provision if the SDA resident or SDA provider was unable to comply with, or it was not reasonably practicable for the SDA resident or SDA provider to comply with, that term or provision because of a COVID-19 reason.

(2) In this section—

relevant duty provision means section 498Y
or any provision of Division 4 of
Part 12A.

589 No notices to vacate—SDA residency agreements

An SDA provider or a mortgagee of an SDA enrolled dwelling must not give an SDA resident a notice to vacate an SDA enrolled dwelling under Division 10 of Part 12A.

590 Terminations—SDA residency agreements

An SDA residency agreement does not terminate unless—

- (a) the Tribunal makes an order under section 593(1); or
- (b) it is terminated under—
 - (i) section 498ZW(1)(a), (c), (d), (e), (f), (g) or (k); or
 - (ii) any other prescribed provision.

591 Notice of temporary relocation

- (1) An SDA provider may give an SDA resident a written notice of temporary relocation from an SDA enrolled dwelling in the following circumstances—
 - (a) the SDA resident has, by act or omission, endangered the safety of other SDA residents or staff at the SDA enrolled dwelling;
 - (b) the SDA resident has caused serious disruption to the proper use and enjoyment of the SDA enrolled dwelling by other SDA residents;

- (c) the SDA resident is a danger to themselves and the SDA resident can no longer be appropriately supported in the SDA enrolled dwelling;
 - (d) the SDA resident has caused serious damage or destroyed any part of the SDA enrolled dwelling;
 - (e) the SDA resident has used the SDA enrolled dwelling for a purpose that is illegal at common law or under an Act;
 - (f) the SDA resident has failed to comply with an order of the Tribunal under section 498ZS;
 - (g) the SDA resident has failed to comply with the SDA resident's obligations under the SDA residency agreement or the Act, including by not paying rent, in circumstances where the SDA resident could comply with the obligations without suffering financial distress;
 - (h) the SDA enrolled dwelling is to be sold or offered for sale with vacant possession;
 - (i) any other prescribed circumstance.
- (2) A notice of temporary relocation—
- (a) has effect immediately from the time it is given or from the time specified in the notice of temporary relocation; and
 - (b) must specify a relocation period ending not more than 90 days after the date on which the notice has effect.
- (3) An SDA provider must not give a notice of temporary relocation on a ground specified in subsection (1)(d) to an SDA resident if any of the following have significantly
-

contributed to the serious damage or destruction caused—

- (a) fair wear and tear;
 - (b) accidental damage;
 - (c) the reasonable use of the SDA enrolled dwelling;
 - (d) the reasonable use of any aids, equipment, fixtures and fittings used in the SDA enrolled dwelling;
 - (e) the act or omission of a person who is not the SDA resident;
 - (f) any behaviour arising from the SDA resident's disability including circumstances aggravating to the SDA resident's disability or emotional wellbeing;
 - (g) a failure by a person to implement or comply with the SDA resident's support plan or NDIS behaviour support plan;
 - (h) the unauthorised use of a restrictive practice within the meaning of the **Disability Act 2006**;
 - (i) circumstances suggesting that the SDA resident has been subjected to abuse or neglect.
- (4) The SDA provider must notify the Chief Executive Officer of the NDIA, the Public Advocate and the Director of the details of a notice of temporary relocation within 24 hours of the notice being given to an SDA recipient.

Penalty: 60 penalty units.

- (5) The SDA provider must notify the Public Advocate and the Director of the details of a notice of temporary relocation within 24 hours of the notice being given to a CoS supported accommodation client.

Penalty: 60 penalty units.

- (6) If a notice of temporary relocation is given on the grounds specified in subsection (1)(a), (b), (c) or (e), the SDA provider must take reasonable steps to notify the SDA resident's Supported Independent Living provider as soon as possible.
- (7) During the relocation period specified under subsection (2), the SDA resident is excluded from the SDA enrolled dwelling as specified in the notice of temporary relocation and is to be relocated by the SDA provider in alternative accommodation that is suitable for the SDA resident for the duration of the temporary relocation period specified in the notice under subsection (2).
- (8) An SDA provider must not use the area or room that was exclusively occupied by the SDA resident for another SDA resident during the relocation period specified in the notice of temporary relocation except—
- (a) for emergency purposes; or
 - (b) on a short term basis for the purpose of providing short-term accommodation to a carer of a person with a disability.
- (9) At the expiry of a notice of temporary relocation, an SDA provider or mortgagee may make an application to the Tribunal for an order terminating the SDA residency agreement.

- (10) During the period that an SDA resident is relocated to alternative accommodation, including another SDA enrolled dwelling, the SDA resident is to be taken to be accommodated in emergency or transitional housing.
- (11) The SDA provider must take reasonable steps to resolve the matter giving rise to the issue of the notice of temporary relocation as soon as is reasonably possible in the circumstances.
- (12) The taking of reasonable steps to resolve the matter giving rise to the issue of the notice of temporary relocation does not affect the continued application of that matter as the ground for the issue of the notice of temporary relocation.

592 Application to Tribunal for order to terminate SDA residency agreement

- (1) Subject to the subsection (2), an SDA provider under an SDA residency agreement or a mortgagee may apply to the Tribunal for an order terminating the SDA residency agreement.
- (2) An SDA provider or mortgagee must not make an application under subsection (1) unless—
 - (a) a temporary relocation notice was validly issued under section 591 based on a ground specified in subsection (1) of that section; and
 - (b) the temporary relocation notice was given at least 24 hours previously.

593 Tribunal may terminate SDA residency agreements in certain circumstances

- (1) On an application under section 592, the Tribunal may make an order terminating an SDA residency agreement if satisfied—
 - (a) of one of the following—
 - (i) that in relation to a ground specified in subsection (2)(a), (b), (c), (d) or (e), the conduct specified in that ground is likely to reoccur;
 - (ii) that in relation to a ground specified in subsection (2)(d) or (f), the circumstances specified in section 498ZX(4A) did not contribute to the serious damage or destruction caused, or the failure to comply with an order;
 - (iii) that a ground specified in subsection (2)(g), (h), (i), (j) or (k) has been met; and
 - (b) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 498ZZHA, to make the order.
- (2) For the purposes of subsection (1), the matters are—
 - (a) that the SDA resident has, by act or omission, endangered the safety of other SDA residents or staff at the SDA enrolled dwelling; or
 - (b) that the SDA resident has caused serious disruption to the proper use and enjoyment of the SDA enrolled dwelling by other SDA residents; or

- (c) that the SDA resident is a danger to themselves and the SDA resident can no longer be appropriately supported in the SDA enrolled dwelling; or
- (d) that the SDA resident has caused serious damage or destroyed any part of the SDA enrolled dwelling; or
- (e) that the SDA resident has used the SDA enrolled dwelling for a purpose that is illegal at common law or under an Act; or
- (f) that the SDA resident has failed to comply with an order of the Tribunal under section 498ZS; or
- (g) that the SDA resident has failed to comply with the SDA resident's obligations under the SDA residency agreement or the Act, including by not paying rent, in circumstances where the SDA resident could comply with the obligations without suffering financial distress; or
- (h) that the SDA enrolled dwelling is to be sold or offered for sale with vacant possession; or
- (i) if the SDA provider is the Director of Housing, that the SDA provider intends to repair, renovate or reconstruct the SDA enrolled dwelling immediately after the termination date and has obtained all necessary permits and consents to carry out the work and the work cannot be properly carried out unless the SDA resident vacates the SDA enrolled dwelling; or

- (j) if the SDA provider is the Director of Housing, the SDA provider intends to demolish the SDA enrolled dwelling immediately after the termination date and has obtained all necessary permits and consents to carry out the demolition and the demolition cannot be properly carried out unless the SDA resident vacates the SDA enrolled dwelling; or
 - (k) any other prescribed matter.
- (3) If the Tribunal makes an order under subsection (1) and does not make an order under subsection (4)—
 - (a) the Tribunal must specify the date on which the SDA residency agreement terminates; and
 - (b) the SDA residency agreement terminates at the end of that day.
- (4) If the Tribunal makes an order under subsection (1), the Tribunal may also make a possession order requiring an SDA resident to vacate the SDA enrolled dwelling if satisfied that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 498ZZHA, to make a possession order.
- (5) If a possession order is made under this section, the SDA residency agreement terminates at the end of the day before the day on which possession of the SDA enrolled dwelling is delivered up to the SDA provider.

- (6) The Tribunal must not make an order under subsection (1) on the ground that the SDA resident has failed to comply with the SDA resident's obligations under the SDA residency agreement or the Act, including by not paying rent, if the SDA resident is unable to comply with, or it is not reasonably practicable for the SDA resident to comply with, those obligations because of a COVID-19 reason.
- (7) For the purposes of Division 11 of Part 12A, a possession order made under this section is taken to have been made under that Division.
- (8) If the Tribunal makes an order under subsection (1) in respect of an SDA residency agreement with an SDA recipient, the SDA provider must notify the Chief Executive Officer of the NDIA, the Public Advocate and the Director of the order within 24 hours of the order being made.
Penalty: 60 penalty units.
- (9) If the Tribunal makes an order under subsection (1) in respect of an SDA residency agreement with a CoS supported accommodation client, the SDA provider must notify the Public Advocate and the Director of the order within 24 hours of the order being made.
Penalty: 60 penalty units.
- (10) If the Tribunal made the order under subsection (1) based on a ground specified in subsection (2)(a), (b), (c) or (d), the SDA provider must take reasonable steps to notify the SDA resident's Supported Independent Living provider as soon as possible.

594 When can an SDA provider or mortgagee apply for a possession order?

- (1) An SDA provider or a mortgagee of an SDA enrolled dwelling may apply to the Tribunal for a possession order for an SDA enrolled dwelling if—
 - (a) the Tribunal has made an order under section 593(1) terminating the SDA residency agreement and has not made an order under section 593(4); and
 - (b) the SDA resident has not delivered up vacant possession of the SDA enrolled dwelling by the end of the termination date specified in the order under section 593(1).
- (2) An SDA provider must not apply to the Tribunal for a possession order under section 498ZZE.
- (3) A mortgagee of an SDA enrolled dwelling must not apply to the Tribunal for a possession order under section 498ZZF.

595 Tribunal may make possession order—SDA residency agreements

- (1) On an application under section 594, the Tribunal must make a possession order requiring an SDA resident to vacate an SDA enrolled dwelling on the day specified in the order if the Tribunal is satisfied—
 - (a) that the SDA resident has not delivered up vacant possession of the SDA enrolled dwelling after the termination date specified in the order under section 593; and

- (b) that in the circumstances of the particular application, it is reasonable and proportionate having regard to section 498ZZHA, to make the order.
- (2) For the purposes of Division 11 of Part 12A, a possession order made under this section is taken to have been made under that Division.
- (3) Section 498ZZP(1) applies as if it also included a reference to a possession order under this Division.

Division 7—Residential tenancies databases

596 Listing cannot be made in relation to certain breaches

- (1) A landlord or database operator must not list personal information about a person in a residential tenancy database under section 439E if—
 - (a) the landlord or database operator would, but for this section, be entitled to list the personal information about the person on a database under section 439E; and
 - (b) the person has only breached the tenancy agreement because of the non-payment of rent; and
 - (c) the person was unable to comply with the person's obligations to pay the rent because of a COVID-19 reason.
- (2) In this section *database*, *database operator*, *landlord*, *personal information*, *tenancy agreement* and *tenant* have the same meaning as they have in section 439A.

Division 7A—Further matters to be considered by Tribunal

596A Further matters to be considered by Tribunal

- (1) In calculating an amount of compensation payable on an application under section 210 or 210B for early termination of a tenancy agreement by the tenant, or of a site agreement by the site tenant, the Tribunal must—
 - (a) determine advertising costs and reletting fees (if any) incurred by the landlord or the site owner (as the case requires) on a basis that is proportionate to the actual cost of securing the tenant or the site tenant; and

Example

A tenant has lived in rented premises under a tenancy agreement, on terms including a 12 month fixed term, rent of \$500 per week and a reletting fee of \$500. The tenant notifies the property manager that the tenant will terminate the tenancy agreement 6 months before the end of the fixed term. The property manager advertises the rented premises for rent immediately and finds a new tenant. The advertising costs were \$250. The new tenant enters the premises one week after the previous tenant vacates the premises. The landlord's costs of advertising and reletting fees are \$1000, which is the sum of one week's rent (\$500), the reletting fee pro-rated for 6 months of the unexpired term of the agreement (\$250) and advertising costs (\$250).

- (b) determine the amount of compensation for loss of rent (if any) by taking into account what loss could reasonably have been mitigated by the landlord or the site owner (as the case requires) by

promptly reletting the rented premises or the Part 4A site; and

- (c) have regard to any severe hardship the tenant or the site tenant would have been expected to suffer due to an unforeseen change in circumstances, if the tenancy agreement or site agreement had continued; and
- (d) not award any compensation for loss of future rent to the landlord, or the site owner (as the case requires), if the landlord or the site owner served a notice to vacate on the tenant or the site tenant, unless the notice was served because the tenant or the site tenant terminated or repudiated the tenancy agreement or the site agreement; and
- (e) determine compensation payable after a tenant or a site tenant has given the landlord or the site owner a notice of intention to vacate under section 237, 237A or 317T.

Note

Section 242 applies to advanced payments of rent by a tenant to a landlord after the rented premises have been abandoned by the tenant.

- (2) If the Tribunal is determining an application under section 210 in respect of a claim by a landlord for unpaid rent in a tenancy agreement for a fixed term of more than 5 years that has been terminated early, the Tribunal may not award an amount of compensation in excess of a maximum of one month's rent under the agreement for each 12 month period of the unexpired term of the agreement.

Division 8—Residential Tenancies Dispute Resolution Scheme

597 Definitions

In this Division—

chief dispute resolution officer means the person appointed under section 598(2);

commencement means the day on which this Division commences;

eligible agreement means the following—

- (a) a tenancy agreement;
- (b) an SDA residency agreement;
- (c) a site agreement;

eligible dispute means a dispute about any of the following—

- (a) a matter arising in relation to an eligible agreement or a residency right;
- (b) an alleged breach of an eligible agreement or a breach of a duty in respect of a residency right;
- (c) an alleged breach of a provision of this Act or the regulations in relation to an eligible agreement or a residency right;

Residential Tenancies Dispute Resolution Scheme means the Scheme prescribed by regulations made under section 603(1).

598 Chief dispute resolution officer

- (1) The office of chief dispute resolution officer is established.
- (2) The Director may appoint a person employed under Part 3 of the **Public Administration Act 2004** to be the chief dispute resolution officer.

599 Functions of the chief dispute resolution officer

- (1) The functions of the chief dispute resolution officer are—
 - (a) to administer the Residential Tenancies Dispute Resolution Scheme;
 - (b) such other functions as are prescribed by the regulations.
- (2) The chief dispute resolution officer has—
 - (a) the powers necessary and convenient for the performance of the chief dispute resolution officer's functions; and
 - (b) such other powers as are prescribed by the regulations.

600 Delegation

- (1) The chief dispute resolution officer may delegate any of the powers or functions of the chief dispute resolution officer to a prescribed person.
- (2) The chief dispute resolution officer may give general directions to a delegate in relation to the exercise of any of the powers or functions delegated by the chief dispute resolution officer.

601 Protection against liability

- (1) Neither the chief dispute resolution officer nor a delegate of the chief dispute resolution officer is personally liable for acts or omissions done in good faith—
 - (a) in the performance of a function or the exercise of a power under this Act; or
 - (b) in the reasonable belief that the act or omission was in the performance of a function or the exercise of a power under this Act.
- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to chief dispute resolution officer or a delegate attaches instead to the State.

602 Jurisdiction of Supreme Court

Nothing in this Division is to be taken to limit the jurisdiction of the Supreme Court in relation to any matter arising from the operation of this Division (including the operation of regulations under this Division).

603 Regulations may prescribe a Residential Tenancies Dispute Resolution Scheme

- (1) The Governor in Council, on the recommendation of the Minister, may make regulations prescribing a scheme called the Residential Tenancies Dispute Resolution Scheme (the *Scheme*) in relation to resolving eligible disputes for the purposes of responding to the COVID-19 pandemic.
- (2) Without limiting subsection (1), sections 604 and 605 set out matters that may be prescribed by regulations under that subsection.

- (3) The Minister may make a recommendation under subsection (1) only if the Minister is of the opinion that the regulations proposed to be made on the recommendation are reasonable to protect the health, safety or welfare of persons in relation to the administration of justice or for the effective and efficient administration of justice.
- (4) Regulations under this section may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;
 - (c) confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies;
 - (d) apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time; or
 - (iii) as in force from time to time.

604 Regulations may prescribe functions of chief dispute resolution officer and matters relating to eligible disputes

- (1) Regulations under section 603(1) may prescribe the functions of the chief dispute resolution officer in relation to the Scheme including, but not limited to—
 - (a) conducting mediation or conciliation in relation to eligible disputes;
 - (b) making orders that are binding on the parties to eligible disputes (whether the parties consent to the making of orders or otherwise);

- (c) specifying processes relating to making applications in relation to eligible disputes;
 - (d) specifying processes for dealing with and deciding applications in relation to eligible disputes, including the criteria to be applied for the purposes of deciding applications;
 - (e) providing for the separation or combination of applications in relation to eligible disputes;
 - (f) issuing guidelines relating to the Scheme including, but not limited to, guidelines about the suitability of specified kinds of eligible disputes for mediation or conciliation;
 - (g) issuing rules relating to practice and procedure in respect of the Scheme.
- (2) Regulations under section 603(1) may—
- (a) require the parties to an eligible dispute to comply with one or more of the following before an application may be made to VCAT in relation to the eligible dispute—
 - (i) undertake an assessment by the Director or the chief dispute resolution officer;
 - (ii) participate in mediation or conciliation conducted by the chief dispute resolution officer;
 - (b) confer a right to make an application for an order in relation to an eligible dispute to one or both of the following—

- (i) the chief dispute resolution officer;
- (ii) VCAT;
- (c) prescribe the procedures to be followed in relation to applications for orders in relation to eligible disputes;
- (d) prescribe the manner in which applications that are able to be made to both VCAT and the chief dispute resolution officer are to be dealt with as between VCAT and the chief dispute resolution officer;
- (e) require specified persons to refer specified eligible disputes to—
 - (i) the chief dispute resolution officer to be dealt with under the Scheme;
 - or
 - (ii) VCAT.

605 Regulations may empower chief dispute resolution officer to make orders, etc.

- (1) Regulations under section 603(1) may empower the chief dispute resolution officer to make specified orders including, but not limited to, orders that—
 - (a) change, limit or prevent the exercise or enforcement of any right a landlord, an SDA provider or a site owner has—
 - (i) under an eligible agreement; or
 - (ii) under this Act;
 - (iii) at common law in respect of an eligible agreement;

- (b) change, limit or prevent the exercise or enforcement of any residency right in relation to a rooming house owner, a caravan park owner or a caravan owner under this Act, or any right at common law in respect of an eligible residency right;
- (c) change, limit or prevent the exercise or enforcement of any right a tenant, SDA resident or site tenant has under an eligible agreement;
- (d) change, limit or prevent the exercise or enforcement of any residency right of a resident in relation to a rooming house or a caravan park;
- (e) exempt a tenant, SDA resident, site tenant, landlord, SDA provider or site owner from having to comply with an eligible agreement or with this Act or the common law in relation to an eligible agreement;
- (f) exempt a resident in relation to a rooming house or a caravan park, or a rooming house owner, caravan park owner or caravan owner, from having to comply with this Act or the common law in relation to an eligible residency right;
- (g) modify the operation of an eligible agreement or modify an eligible residency right;
- (h) modify the application of this Act or the **Victorian Civil and Administrative Tribunal Act 1998** (or a subordinate instrument under either of those Acts), or the common

law, in relation to an eligible agreement or an eligible residency right;

- (i) extend the period during which an eligible agreement is in effect or an residency right exists.

(2) Regulations under section 603(1) may—

- (a) prescribe matters relating to the enforcement of orders including, but not limited to, the enforcement of orders by VCAT in prescribed circumstances;
- (b) provide for and in relation to the admissibility in evidence of specified material relating to the Scheme;
- (c) empower the chief dispute resolution officer to amend or revoke an order;
- (d) empower the chief dispute resolution officer to correct errors and omissions in orders;
- (e) prescribe matters relating to applications for the amendment or revocation of orders;
- (f) empower the chief dispute resolution officer to authorise the payment of rent or hiring charges into or out of the Rent Special Account;
- (g) empower the chief dispute resolution officer to order payment out of the Residential Tenancies Fund for the purposes of compensation for the purposes of Parts 9 and 12A of this Act;
- (h) permit the chief dispute resolution officer and delegates of the chief dispute resolution officer to share

information with the Director, VCAT
and other prescribed entities.

606 Effect of Regulations

- (1) Regulations under section 603(1) have effect despite anything to the contrary—
 - (a) in this Act or the **Victorian Civil and Administrative Tribunal Act 1998** (or a subordinate instrument under either of those Acts); or
 - (b) in an eligible agreement; or
 - (c) at common law.
- (2) Without limiting subsection (1), a right or obligation under an eligible agreement, under this Act or the **Victorian Civil and Administrative Tribunal Act 1998** (or a subordinate instrument under either of those Acts), or under the common law, is not exercisable or enforceable to the extent that it is inconsistent with the regulations or an order made under the regulations.
- (3) Regulations under section 603(1) must not purport to—
 - (a) override section 447 of this Act (jurisdictional limits of VCAT);
 - (b) provide for the chief dispute resolution officer to have jurisdiction that VCAT does not have because of the operation of section 447;
 - (c) provide for sections 447(3), (4) and (5) (or provisions to an equivalent effect) to apply in relation to orders made by the chief dispute resolution officer.

607 Certain consultation requirements under Subordinate Legislation Act 1994 disappplied

The following are not required for any proposed statutory rule that is to be made under section 603(1)—

- (a) consultation under section 6 of the **Subordinate Legislation Act 1994**;
- (b) the preparation of a regulatory impact statement under section 7 of the **Subordinate Legislation Act 1994**.

607A Minister to consult

- (1) This section applies if the Minister is proposing to recommend the making of a regulation under section 603(1) that will disapply, or modify the application of, the **Victorian Civil and Administrative Tribunal Act 1998** or a provision of a subordinate instrument made under that Act.
- (2) Before making the recommendation, the Minister must consult the Minister who administers the **Victorian Civil and Administrative Tribunal Act 1998**.

607B Regulations are disallowable by either House of Parliament

A regulation made under section 603(1) may be disallowed in whole or in part by either House of Parliament.

Division 9—Regulations under the Act

608 Definitions

In this Division—

eligible agreement means the following—

- (a) a tenancy agreement;

(b) an SDA residency agreement;

(c) a site agreement;

eligible dispute means a dispute about any of the following—

(a) a matter arising in relation to an eligible agreement or a residency right;

(b) an alleged breach of an eligible agreement or a breach of a duty in respect of a residency right;

(c) an alleged breach of a provision of this Act or the regulations in relation to an eligible agreement or a residency right.

609 Regulations may make provision for certain matters for the purposes of responding to the COVID-19 pandemic

- (1) The Governor in Council, on the recommendation of the Minister, may make regulations for and in relation to the following matters for the purposes of responding to the COVID-19 pandemic.
- (2) The Minister may make a recommendation under subsection (1) only if the Minister is of the opinion that the regulations proposed to be made on the recommendation—
 - (a) are consistent with—
 - (i) any relevant advice given by the Chief Health Officer to the Minister administering the **Public Health and Wellbeing Act 2008** in relation to managing or responding to the COVID-19 pandemic; or

- (ii) any directions made by an authorised officer under Part 10 of the **Public Health and Wellbeing Act 2008** in relation to the COVID-19 pandemic; and
- (b) are reasonable to protect the health, safety or welfare of persons in relation to the administration of justice or for the effective and efficient administration of justice.
- (3) The Minister may make a recommendation under subsection (1) for the purposes of subsection (4)(a), (b), (c) or (d) only if the Premier has consented to the making of the recommendation.
- (4) Regulations under subsection (1) may—
 - (a) prohibit the termination of the following in prescribed circumstances—
 - (i) an eligible agreement;
 - (ii) a residency right;
 - (b) prohibit the making of a possession order in prescribed circumstances;
 - (c) change, limit or prevent the exercise or enforcement of a right or duty of any person under this Act or under an eligible agreement in prescribed circumstances;
 - (d) exempt a tenant, resident, SDA resident or site tenant from having to comply with the following—
 - (i) a provision of this Act;
 - (ii) a provision of an eligible agreement;

- (e) modify the operation of the following in respect of a tenant, resident, SDA resident or site tenant—
 - (i) a provision of this Act;
 - (ii) a provision of a tenancy agreement, site agreement or SDA residency agreement;
 - (f) prescribe administrative processes necessary or convenient for supporting the resolution of eligible disputes;
 - (g) require the parties to an eligible dispute to participate in mediation or conciliation conducted by the Director or a prescribed entity before an application may be made to VCAT in relation to the eligible dispute;
 - (h) empower the Director or a prescribed entity to conciliate or mediate eligible disputes;
 - (i) empower the Director or a prescribed entity to make binding orders;
 - (j) empower the Director or a prescribed entity to issue guidelines relating to the suitability of specified kinds of eligible disputes for mediation or conciliation;
 - (k) empower the Director or a prescribed entity to make rules for practice and the procedures to be followed in relation to the conduct of eligible disputes for mediation or conciliation.
- (5) Regulations under this section may—
- (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;

- (c) confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies;
- (d) apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time; or
 - (iii) as in force from time to time.

610 Effect of Regulations

- (1) Regulations under section 609(1) have effect despite anything to the contrary—
 - (a) in this Act or the **Victorian Civil and Administrative Tribunal Act 1998** (or a regulation under either of those Acts); or
 - (b) in an eligible agreement; or
 - (c) at common law.
- (2) Without limiting subsection (1), a right or obligation under an eligible agreement, this Act or the **Victorian Civil and Administrative Tribunal Act 1998** (or a subordinate instrument under either of those Acts), or under the common law, is not exercisable or enforceable to the extent that it is inconsistent with the regulations or an order made under the regulations.
- (3) Regulations under subsection 609(1) must not purport to override section 447 of this Act.

611 Certain consultation requirements under Subordinate Legislation Act 1994 disappplied

The following are not required for any proposed statutory rule that is to be made under section 609(1)—

- (a) consultation under section 6 of the **Subordinate Legislation Act 1994**;
- (b) the preparation of a regulatory impact statement under section 7 of the **Subordinate Legislation Act 1994**.

611A Minister to consult

- (1) This section applies if the Minister is proposing to recommend the making of a regulation under section 609(1) that will disapply, or modify the application of, the **Victorian Civil and Administrative Tribunal Act 1998** or a provision of a subordinate instrument made under that Act.
- (2) Before making the recommendation, the Minister must consult the Minister who administers the **Victorian Civil and Administrative Tribunal Act 1998**.

611B Regulations are disallowable by either House of Parliament

A regulation made under section 609(1) may be disallowed in whole or in part by either House of Parliament.

Division 10—Transitional provisions

612 Transitional provision—applications to the Tribunal

- (1) This section applies to an application that is made to the Tribunal before the commencement of this Division.

(2) The application—

- (a) must be dealt with in accordance with this Act and the **Victorian Civil and Administrative Tribunal Act 1998** as in force at the time the application was made; and
- (b) Divisions 1 to 9 do not apply to the application.

613 Transitional provision—possession orders

A person who obtained a possession order under Part 7 before 29 March 2020 is not entitled to a warrant of possession at any time on or after that date, unless the possession order could have been made under this Part had this Part been in operation at the time.

Note

A possession order may only be made under this Part if the Tribunal makes a termination order under this Part.

614 Transitional provision—notices to vacate

A notice to vacate given to a person before 29 March 2020 that specifies a termination date on or after 29 March 2020 is of no effect.

Division 11—Repeal of Part

615 Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 4.2—Amendments brought forward from Residential Tenancies Amendment Act 2018

47 Sections 233A to 233D substituted

For sections 233A, 233B, 233C and 233D of the
Residential Tenancies Act 1997 substitute—

**"233A Application for termination or new
tenancy agreement because of family
violence or personal violence**

- (1) A person specified in subsection (2) may
apply to the Tribunal for—
- (a) an order terminating the existing
tenancy agreement; or
 - (b) an order—
 - (i) terminating the existing tenancy
agreement; and
 - (ii) requiring the landlord of the
premises to enter a tenancy
agreement with the person and
other persons (if any) specified in
the application.
- (2) For the purposes of subsection (1), the
following persons are specified—
- (a) a party to the existing tenancy
agreement—
 - (i) who has been or is being subjected
to family violence by another
party to the existing tenancy
agreement; or
 - (ii) who is a protected person under
a personal safety intervention
order made against another party
to the existing tenancy agreement;

- (b) a person—
 - (i) who is residing in the rented premises as the person's principal place of residence; and
 - (ii) who is not a party to the existing tenancy agreement; and
 - (iii) who—
 - (A) has been or is being subjected to family violence by a party to the existing tenancy agreement; or
 - (B) is a protected person under a personal safety intervention order made against a party to the existing tenancy agreement.
- (3) For the purposes of subsection (2), a reference to a person who has been or is being subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.
- (4) An application under subsection (1) may be made without the consent of the landlord or any other party to the existing tenancy agreement.
- (5) If a person specified in subsection (2) is a child, an application under subsection (1) may be made on that child's behalf by a parent or guardian of the child who lives at the rented premises with the child.

- (6) For the purposes of a proceeding for an order under subsection (1), each of the following persons is a party to the proceeding—
- (a) the applicant or the person on whose behalf the application is made;
 - (b) the landlord;
 - (c) any other party to the existing tenancy agreement;
 - (d) any other person specified in the application.
- (7) The Tribunal must hear an application under subsection (1)—
- (a) within 3 business days of the application being made; or
 - (b) if the application cannot be heard within the period referred to in paragraph (a), no later than the next available sitting day of the Tribunal after the end of that 3 business day period.
- (8) In this section and sections 233B, 233C and 233D—

family violence has the same meaning as in the **Family Violence Protection Act 2008**;

personal violence means the following—

- (a) prohibited behaviour within the meaning of the **Personal Safety Intervention Orders Act 2010**;
- (b) stalking within the meaning of the **Personal Safety Intervention Orders Act 2010**;

protected person means—

- (a) in relation to a family violence safety notice, a protected person within the meaning of the **Family Violence Protection Act 2008**;
- (b) in relation to a family violence intervention order, a protected person within the meaning of the **Family Violence Protection Act 2008**;
- (c) in relation to a recognised non-local DVO, a protected person within the meaning of the **National Domestic Violence Order Scheme Act 2016**;
- (d) in relation to a personal safety intervention order, a protected person within the meaning of the **Personal Safety Intervention Orders Act 2010**;

recognised non-local DVO means a non-local DVO that is a recognised DVO under the **National Domestic Violence Order Scheme Act 2016**.

233B Tribunal orders

- (1) On an application under section 233A(1), if satisfied as to the matters set out in subsection (2), the Tribunal may make—
 - (a) an order terminating the existing tenancy agreement; or
 - (b) an order—
 - (i) terminating the existing tenancy agreement; and

- (ii) requiring the landlord to enter into a new tenancy agreement with the specified person and other persons (if any) referred to in the application.
- (2) For the purposes of subsection (1), the matters are—
 - (a) the specified person and other persons (if any) could reasonably be expected to comply with the duties of a tenant under a tenancy agreement to which this Act applies; and
 - (b) the specified person or that person's dependent children would be likely to suffer severe hardship if the specified person were compelled to leave the premises; and
 - (c) the severe hardship suffered by the specified person would be greater than any severe hardship the landlord would suffer if the order were made; and
 - (d) if a tenant of the rented premises is excluded from the rented premises under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order, it is reasonable to do so given the length of the exclusion under the notice or order and the length of the existing tenancy agreement; and
 - (e) it is reasonable to do so given the interests of any other tenants (other than any excluded tenant) under the existing tenancy agreement and, in particular, whether the other tenants

support the specified person's
application.

- (3) In determining an application under section 233A(1), the Tribunal must take into account the following matters in relation to family violence or personal violence—
- (a) whether an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the specified person;
 - (b) if an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the person—
 - (i) whether there is a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order in effect; and
 - (ii) if there is a notice or an order in effect, whether a tenant of the rented premises is excluded from the rented premises under the notice or order;
 - (c) any prescribed matters;
 - (d) any other matter the Tribunal considers relevant.

- (4) If the Tribunal makes an order under subsection (1)(b), the new tenancy agreement—
 - (a) is subject to the same rent and frequency of rent payments as the existing tenancy agreement; and
 - (b) if the existing tenancy agreement is a fixed term agreement, runs for a term not longer than the remainder of that fixed term; and
 - (c) otherwise, is on the same terms and conditions as the existing tenancy agreement, subject to any changes the Tribunal determines.
- (5) If the Tribunal makes an order under subsection (1)(a), the Tribunal must specify the date on which the existing tenancy agreement terminates.
- (6) If the Tribunal makes an order under subsection (1)(b), the existing tenancy agreement is terminated on the signing of the new tenancy agreement.
- (7) If the Tribunal makes an order under subsection (1), it may also make the following orders—
 - (a) an order that the landlord or that person's agent must ensure that the specified person has access to the rented premises or former rented premises to remove the person's goods;
 - (b) an order that the landlord or that person's agent must not list information about the specified person on a residential tenancy database within the meaning of Part 10A.

(8) In this section—

specified person means a person specified in section 233A(2).

233C Tribunal may determine parties' liability under terminated tenancy agreement

(1) If the Tribunal makes an order under section 233B(1), the Tribunal may determine the liability of the person specified in section 233A(2) or any tenant under the existing tenancy agreement in relation to—

- (a) a bond paid for the rented premises;
and
- (b) any existing liability under the existing agreement, including—
 - (i) liability relating to outstanding rent; and
 - (ii) liability relating to damage caused to the rented premises; and
 - (iii) liability relating to outstanding utility charges.

(2) To remove doubt, the termination of a tenancy agreement under section 233B does not give rise to a right to claim compensation on the part of any party to the agreement for early termination of the agreement.

(3) The Tribunal may adjourn the hearing to allow an inspection of the rented premises in accordance with section 86(1)(g).

233D Cross-examination in a proceeding for termination or new tenancy agreement

- (1) Unless the Tribunal gives leave, in a proceeding on an application under section 233A(1)—
 - (a) a person subjected to family violence must not be personally cross-examined by the person who subjected that person to the family violence; and
 - (b) a protected person under a personal safety intervention order must not be personally cross-examined by the person against whom the personal safety intervention order was made.
- (2) For the purposes of subsection (1), a reference to a person subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.
- (3) The Tribunal may give leave under subsection (1) with or without conditions.
- (4) If leave is given under subsection (1), the person may only cross-examine the person subjected to family violence or the protected person—
 - (a) as to those matters set out in sections 233(1) and 233B(2); and
 - (b) in accordance with any conditions to which the leave given is subject."

48 New sections 317AA to 317AD inserted

After section 317 of the **Residential Tenancies Act 1997** insert—

"317AA Application for termination or new agreement because of family violence or personal violence

- (1) A person specified in subsection (2) may apply to the Tribunal for—
 - (a) an order terminating the existing agreement under section 144; or
 - (b) an order—
 - (i) terminating the existing agreement under section 144; and
 - (ii) requiring the caravan park owner or caravan owner (as the case may be) to enter into a new agreement under section 144 with the persons and other persons (if any) specified in the application.
- (2) For the purposes of subsection (1), the following persons are specified—
 - (a) a party to the existing agreement under section 144 who—
 - (i) has been or is being subjected to family violence by another party to the existing agreement; or
 - (ii) is a protected person under a personal safety intervention order made against another party to the existing agreement;

- (b) a person—
 - (i) who is residing on the site or occupying a caravan as the person's principal place of residence; and
 - (ii) who is not a party to the agreement under section 144; and
 - (iii) who—
 - (A) has been or is being subjected to family violence by a party to the existing agreement; or
 - (B) is a protected person under a personal safety intervention order made against a party to the existing agreement.
- (3) For the purposes of subsection (2), a reference to a person who has been or is being subjected to family violence includes a person who is a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.
- (4) An application under subsection (1) may be made without the consent of the caravan park owner or caravan owner (as the case may be) or any other party to the existing agreement under section 144.
- (5) If a person specified in subsection (2) is a child, an application under subsection (1) may be made on that child's behalf by a parent or guardian of the child who lives in the caravan or at the caravan park (as the case may be) with the child.

- (6) For the purposes of a proceeding in relation to an application for an order under subsection (1), each of the following persons is a party to the proceeding—
- (a) the applicant or a person on whose behalf the application was made;
 - (b) the caravan park owner or caravan owner (as the case may be);
 - (c) any resident who is excluded from the site, caravan or caravan park under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order that protects a person specified in subsection (2);
 - (d) any other existing residents of the site or caravan.
- (7) The Tribunal must hear an application under subsection (1)—
- (a) within 3 business days of the application being made; or
 - (b) if the application cannot be heard within the period referred to in paragraph (a), no later than the next available sitting day of the Tribunal after the end of that 3 business day period.
- (8) In this section and sections 317AB, 317AC and 317AD—
- family violence*** has the same meaning as in the **Family Violence Protection Act 2008**;

personal violence means the following—

- (a) prohibited behaviour within the meaning of the **Personal Safety Intervention Orders Act 2010**;
- (b) stalking within the meaning of the **Personal Safety Intervention Orders Act 2010**;

protected person means—

- (a) in relation to a family violence safety notice, a protected person within the meaning of the **Family Violence Protection Act 2008**;
- (b) in relation to a family violence intervention order, a protected person within the meaning of the **Family Violence Protection Act 2008**;
- (c) in relation to a recognised non-local DVO, a protected person within the meaning of the **National Domestic Violence Order Scheme Act 2016**;
- (d) in relation to a personal safety intervention order, a protected person within the meaning of the **Personal Safety Intervention Orders Act 2010**;

recognised non-local DVO means a non-local DVO that is a recognised DVO under the **National Domestic Violence Order Scheme Act 2016**.

317AB Tribunal orders

- (1) On an application under section 317AA(1), if satisfied as to the matters set out in subsection (2), the Tribunal may make—

- (a) an order terminating the existing agreement under section 144; or
 - (b) an order—
 - (i) terminating the existing agreement under section 144; and
 - (ii) requiring the caravan park owner or caravan owner (as the case may be) to enter into a new agreement under section 144 with the persons and other persons (if any) specified in the application.
- (2) For the purposes of subsection (1), the matters are—
 - (a) the specified person and other persons (if any) could reasonably be expected to comply with the duties of a resident under an agreement under section 144; and
 - (b) the specified person or that person's dependent children would be likely to suffer severe hardship if the specified person were compelled to leave the site, caravan or caravan park; and
 - (c) the severe hardship suffered by the specified person would be greater than any severe hardship the caravan park owner or caravan owner (as the case may be) would suffer if the order were made; and
 - (d) if a resident is excluded from the site, caravan or caravan park under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order, it is reasonable to do so given the length of the exclusion under the order

or notice and the length of the existing agreement under section 144; and

- (e) it is reasonable to do so given the interests of any other residents (other than any excluded resident) under the existing agreement under section 144 and, in particular, whether the other residents support the specified person's application.
- (3) In determining an application under section 317AA(1), the Tribunal must take into account the following matters in relation to family violence or personal violence—
- (a) whether an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the specified person;
 - (b) if an application for a family violence intervention safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the person—
 - (i) whether there is a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order in effect; and
 - (ii) if there is a notice or an order in effect, whether a resident is excluded from the site, caravan or caravan park under the notice or order;
 - (c) any prescribed matters;

- (d) any other matter the Tribunal considers relevant.
- (4) If the Tribunal makes an order under subsection (1)(b), the new agreement under section 144—
 - (a) is subject to the same rent and frequency of rent payments as the existing agreement; and
 - (b) if the existing agreement is for a specified period of occupancy, runs for a term not longer than the remainder of that specified period; and
 - (c) otherwise, is on the same terms and conditions as the existing agreement, subject to any changes the Tribunal determines.
- (5) If the Tribunal makes an order under subsection (1)(a), the Tribunal must specify the date on which the existing agreement under section 144 terminates.
- (6) If the Tribunal makes an order under subsection (1)(b), the existing agreement under section 144 is terminated on the signing of the new agreement.
- (7) If the Tribunal makes an order under subsection (1), it may also make the following orders—
 - (a) an order that the caravan park owner or caravan owner (as the case may be) must ensure that the specified person has access to the caravan and caravan park to remove the person's goods;

- (b) an order that caravan park owner or caravan owner (as the case may be) must not list information about the person on a residential tenancy database within the meaning of Part 10A.

- (8) In this section—

specified person means a person specified in section 317AA(2).

317AC Tribunal may determine parties' liability under terminated agreement

- (1) If the Tribunal decides to make an order under section 317AB(1), the Tribunal may determine the liability of any of the following persons in relation to any of the matters specified in subsection (2)—
 - (a) a resident who is excluded from a site, caravan or caravan park under—
 - (i) a family violence safety notice; or
 - (ii) a family violence intervention order; or
 - (iii) a recognised non-local DVO; or
 - (iv) a personal safety intervention order;
 - (b) a person specified in section 317AA(2);
 - (c) any other resident under the existing agreement under section 144.
- (2) For the purposes of subsection (1), the specified matters are—
 - (a) liabilities relating to outstanding rent; and
 - (b) liabilities relating to damage caused to the site, caravan or caravan park; and

- (c) liabilities relating to outstanding utility charges.
- (3) To remove doubt, the termination of an agreement under section 317AB does not give rise to a right to claim compensation on the part of any party to the agreement for early termination of the agreement.

317AD Cross-examination in a proceeding for termination or new agreement

- (1) Unless the Tribunal gives leave, in a proceeding on an application under section 317AA(1)—
 - (a) a person subjected to family violence must not be personally cross-examined by the person who subjected that person to the family violence; and
 - (b) a protected person under a personal safety intervention order must not be personally cross-examined by the person against whom the personal safety intervention order was made.
- (2) For the purposes of subsection (1), a reference to a person subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.
- (3) The Tribunal may give leave under subsection (1) with or without conditions.
- (4) If leave is given under subsection (1), the resident may only cross-examine the person subjected to family violence or the protected person—

- (a) as to those matters set out in section 317AB(2); and
- (b) in accordance with any conditions to which the leave granted is subject."

49 Sections 317M to 317P substituted

For sections 317M, 317N, 317O and 317P of the **Residential Tenancies Act 1997** substitute—

"317M Application for termination or new site agreement because of family violence or personal violence

- (1) A person specified in subsection (2) may apply to the Tribunal for—
 - (a) an order terminating the existing site agreement for the Part 4A site; or
 - (b) an order—
 - (i) terminating the existing site agreement for the Part 4A site; and
 - (ii) requiring the site owner to enter into a new site agreement with the person and other persons (if any) specified in the application.
- (2) For the purposes of subsection (1), the following persons are specified—
 - (a) a party to the existing site agreement who—
 - (i) has been or is being subjected to family violence by another party to the existing site agreement; or
 - (ii) is a protected person under a personal safety intervention order made against another party to the existing site agreement;

- (b) a person—
 - (i) who is the owner or co-owner of the Part 4A dwelling at law or in equity or who is residing in the Part 4A dwelling as the person's principal place of residence; and
 - (ii) who is not a party to the existing site agreement; and
 - (iii) who—
 - (A) has been or is being subjected to family violence by a person who is a party to the existing site agreement; or
 - (B) is a protected person under a personal safety intervention order made against a person who is a party to the existing site agreement.
- (3) For the purposes of subsection (2), a reference to a person who has been or is being subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.
- (4) An application under subsection (1) may be made without the consent of the site owner or any other party to the site agreement.
- (5) If a person specified in subsection (2) is a child, an application under subsection (1) may be made on that child's behalf by a parent or guardian of the child who lives in the Part 4A dwelling with the child.

- (6) For the purposes of a proceeding in relation to an application for an order under subsection (1), each of the following persons is a party to the proceeding—
- (a) the person who made the application or on whose behalf the application was made;
 - (b) the site owner;
 - (c) any site tenant who is excluded from the Part 4A dwelling under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order that protects a person specified in subsection (2);
 - (d) any other existing joint site tenants of the Part 4A site.
- (7) The Tribunal must hear an application under subsection (1)—
- (a) within 3 business days of the application being made; or
 - (b) if the application cannot be heard within the period referred to in paragraph (a), no later than the next available sitting day of the Tribunal after the end of that 3 business day period.
- (8) In this section and sections 317N, 317O and 317P—
- family violence*** has the same meaning as in the **Family Violence Protection Act 2008**;

personal violence means the following—

- (a) prohibited behaviour within the meaning of the **Personal Safety Intervention Orders Act 2010**;
- (b) stalking within the meaning of the **Personal Safety Intervention Orders Act 2010**;

protected person means—

- (a) in relation to a family violence safety notice, a protected person within the meaning of the **Family Violence Protection Act 2008**;
- (b) in relation to a family violence intervention order, a protected person within the meaning of the **Family Violence Protection Act 2008**;
- (c) in relation to a recognised non-local DVO, a protected person within the meaning of the **National Domestic Violence Order Scheme Act 2016**;
- (d) in relation to a personal safety intervention order, a protected person within the meaning of the **Personal Safety Intervention Orders Act 2010**;

recognised non-local DVO means a non-local DVO that is a recognised DVO under the **National Domestic Violence Order Scheme Act 2016**.

317N Tribunal orders

- (1) On an application under section 317M(1), if satisfied as to the matters set out in subsection (2), the Tribunal may make—

- (a) an order terminating the existing site agreement for the Part 4A site; or
 - (b) an order—
 - (i) terminating the existing site agreement for the Part 4A site; and
 - (ii) requiring the site owner to enter into a new site agreement with the person and other persons (if any) specified in the application.
- (2) For the purposes of subsection (1), the matters are—
 - (a) the specified person and other persons (if any) could reasonably be expected to comply with the duties of a site tenant under a site agreement; and
 - (b) the specified person or that person's dependent children would be likely to suffer severe hardship if the specified person were compelled to leave the Part 4A dwelling; and
 - (c) the severe hardship suffered by the specified person would be greater than any severe hardship the site owner would suffer if the order were made; and
 - (d) if a site tenant is excluded from the Part 4A dwelling under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order, it is reasonable to do so given the length of the exclusion under the notice or order and the length of the existing site agreement; and

- (e) it is reasonable to do so given the interests of any other site tenants (other than any excluded site tenants) under the existing site agreement and, in particular, whether the other site tenants support the specified person's application.
- (3) In determining an application under section 317M(1), the Tribunal must take into account the following matters in relation to family violence or personal violence—
 - (a) whether an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the specified person;
 - (b) if an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order has been made by or in respect of the specified person—
 - (i) whether there is a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order in effect; and
 - (ii) if there is a notice or an order in effect, whether a site tenant is excluded from the Part 4A dwelling under the notice or order;
 - (c) the ownership of the Part 4A dwelling;
 - (d) any prescribed matters;

- (e) any other matter the Tribunal considers relevant.
- (4) If the Tribunal makes an order under subsection (1)(b), the new site agreement must—
 - (a) be subject to the same rent and frequency of rent payments as the existing site agreement; and
 - (b) if the existing site agreement is for a fixed term, run for a term not longer than the remainder of that fixed term; and
 - (c) otherwise, be on the same terms and conditions as the existing site agreement, subject to any changes the Tribunal determines.
- (5) If the Tribunal makes an order under subsection (1)(a), the Tribunal must specify the date on which the site agreement terminates.
- (6) If the Tribunal makes an order under subsection (1)(b), the existing site agreement is terminated on the signing of the new agreement.
- (7) If the Tribunal makes an order under subsection (1), it may also make the following orders—
 - (a) an order that the site owner or that person's agent must ensure that the specified person has access to the Part 4A dwelling to remove the person's goods;
 - (b) an order that the site owner or that person's agent must not list information about the specified person on a

residential tenancy database within the
meaning of Part 10A.

(8) In this section—

specified person means a person specified
in section 317M(2).

**317O Tribunal may determine parties' liability
under terminated agreement**

(1) If the Tribunal makes an order under
section 317N(1), the Tribunal may determine
the liability of the following persons in
relation to any of the matters specified in
subsection (2)—

- (a) a site tenant who is excluded from a
Part 4A dwelling under—
 - (i) a family violence safety notice; or
 - (ii) a family violence intervention
order; or
 - (iii) a recognised non-local DVO; or
 - (iv) a personal safety intervention
order;
- (b) a person specified in section 317M(2);
- (c) any other site tenant under the existing
site agreement.

(2) For the purposes of subsection (1), the
specified liabilities are any existing liabilities
under the existing agreement, including—

- (a) liabilities relating to unpaid rent; and
- (b) liabilities relating to damage caused to
the site; and
- (c) liabilities relating to outstanding utility
charges.

- (3) To remove doubt, the termination of an agreement under section 317N does not give rise to a right to claim compensation on the part of any party to the agreement for early termination of the agreement.

317P Cross-examination in a proceeding for termination or new agreement

- (1) Unless the Tribunal gives leave, in a proceeding on an application under section 317M(1)—
- (a) a person subjected to family violence must not be personally cross-examined by the person who subjected that person to the family violence; and
 - (b) a protected person under a personal safety intervention order must not be personally cross-examined by the person against whom the personal safety intervention order was made.
- (2) For the purposes of subsection (1), a reference to a person subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.
- (3) The Tribunal may give leave under subsection (1) with or without conditions.
- (4) If leave is given under subsection (1), the site tenant may only cross-examine the person specified in subsection (2)—
- (a) as to those matters set out in section 317N(2); and
 - (b) in accordance with any conditions to which the leave granted is subject."

Part 4.3—Amendment of Residential Tenancies Amendment Act 2018

50 Commencement

In section 2(2) of the **Residential Tenancies Amendment Act 2018**, for "1 July 2020" substitute "1 January 2021".

51 Repeal of amending Act

In section 389 of the **Residential Tenancies Amendment Act 2018**, for "1 July 2021" substitute "1 January 2022".

Chapter 5—Temporary amendments of other Acts

Part 5.1—Amendment of Education and Training Reform Act 2006

Division 1—Temporary measures

52 New Chapter 5A inserted

After Chapter 5 of the **Education and Training
Reform Act 2006** insert—

"Chapter 5A—Temporary measures in response to COVID-19 pandemic

Part 5A.1—Preliminary

5A.1.1 Purpose and effect of Chapter

- (1) The purpose of this Chapter is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Chapter applies despite anything to the contrary in—
 - (a) another Chapter of this Act; or
 - (b) any statutory rule or other subordinate instrument made under this Act; or
 - (c) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or

- (d) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
- (e) any other law.

Part 5A.2—School sector registration

5A.2.1 Extension of registration period— providers of accredited senior secondary courses and senior secondary qualifications

- (1) For the purposes of responding to the COVID-19 emergency, the Authority, by notice in writing, may extend the registration of a person or body, or a class of person or body, under Division 3 of Part 4.3 of Chapter 4 for a period of not more than 6 months, whether or not the total period of registration would exceed 5 years.
- (2) The Authority may extend a registration under subsection (1) more than once, however the total period of extended registration must not exceed 6 months.
- (3) The Authority may extend a registration under subsection (1) whether or not the person or body has applied to renew the registration.

- (4) A registration extended under this section continues in force until the date specified by the Authority in the written notice unless the registration is sooner suspended or cancelled in accordance with section 4.3.12.

Part 5A.3—RTOs

5A.3.1 Extension of registration period for RTOs

- (1) For the purposes of responding to the COVID-19 emergency, the Authority, by notice in writing, may extend the registration of an RTO, or a class of RTO, for a specified period of not more than 6 months, whether or not the total period of registration would exceed 5 years.
- (2) The Authority may extend a registration under subsection (1) more than once, however the total period of extended registration must not exceed 6 months.
- (3) The Authority may extend the registration of an RTO under subsection (1) whether or not the RTO has applied to renew the registration.
- (4) To avoid doubt, the Authority is not required to conduct a compliance audit before extending the registration of an RTO that has already applied to renew the registration.
- (5) A registration extended under this section continues in force until the date specified by the Authority in the written notice unless the registration is sooner suspended or cancelled in accordance with Division 4 of Part 4.3 of Chapter 4.

Part 5A.4—Registration of teachers

5A.4.1 Institute may extend provisional registration of a teacher

- (1) For the purposes of responding to the COVID-19 emergency, the Institute, by notice in writing, may extend the provisional registration of a teacher for a specified period of not more than 6 months, whether or not the total period of provisional registration would exceed 2 years.
- (2) The Institute may extend a provisional registration under subsection (1) more than once, however the total period of extended registration must not exceed 6 months.
- (3) If the provisional registration of the teacher has been extended under subsection (1), section 2.6.10 has effect as if—
 - (a) the reference to "the second year after the registration" in subsection (2) were a reference to "the period specified by the Institute in a notice given under section 5A.4.1(1)";
 - (b) the reference to "not exceeding 2 years that is specified by the Institute" in subsection (3) were a reference to "specified by the Institute in a notice given under section 5A.4.1(1)".

5A.4.2 Institute may extend provisional registration of an early childhood teacher

- (1) For the purposes of responding to the COVID-19 emergency, the Institute, by notice in writing, may extend the provisional registration of an early childhood teacher for a specified period of not more than 6 months,

whether or not the total period of provisional registration would exceed 2 years.

- (2) The Institute may extend a provisional registration under subsection (1) more than once, however the total period of extended registration must not exceed 6 months.
- (3) If the provisional registration of the early childhood teacher has been extended, or extended and further extended, under this section, section 2.6.12E has effect as if—
 - (a) the reference to "second year after the registration" in subsection (2) were a reference to "period specified by the Institute in a notice given under section 5A.4.2(1)";
 - (b) the words "not exceeding 2 years that is specified by the Institute" in subsection (3) were a reference to "specified by the Institute in a notice given under section 5A.4.2(1)".

5A.4.3 Institute may extend non-practising registration of teacher or early childhood teacher

- (1) For the purposes of responding to the COVID-19 emergency, the Institute, by notice in writing, may extend the non-practising registration of a teacher or an early childhood teacher for a specified period of not more than 6 months.
- (2) The Institute may extend a registration under subsection (1) more than once, however the total period of extended registration must not exceed 6 months.
- (3) Registration extended under this section remains in force for the period specified by the Institute in the written notice.

5A.4.4 Institute may extend duration of permission to teach

- (1) For the purposes of responding to the COVID-19 emergency, the Institute, by notice in writing, may extend the duration of a person's permission to teach for a specified period of not more than 6 months, whether or not the total period would exceed 3 years from the date of the grant of the permission.
- (2) The Institute may extend the duration of a permission to teach under subsection (1) more than once, however the total period of extended duration must not exceed 6 months.
- (3) A permission to teach extended under this section remains in force for the period specified by the Institute in the written notice.

Part 5A.5—Giving of notices relating to disciplinary proceedings

5A.5.1 Giving of notices relating to disciplinary proceedings

- (1) A notice under section 2.6.33B(1) may be sent by electronic communication.
- (2) A notice under section 2.6.36(c), 2.6.41A(c) or 2.6.42(e) may be served by electronic communication.

Part 5A.6—Repeal of Chapter

5A.6.1 Repeal of Chapter

This Chapter is **repealed** on the day that is 6 months after its commencement."

Division 2—Transitional provisions

53 New section 6.1.43 inserted

After section 6.1.42 of the **Education and Training Reform Act 2006** insert—

"6.1.43 Transitional provisions—COVID-19 Omnibus (Emergency Measures) Act 2020

- (1) Despite its repeal, section 5A.4.1(3) continues to have effect in relation to a provisional registration of a teacher that was extended under section 5A.4.1(1).
- (2) Despite its repeal, section 5A.4.2(3) continues to have effect in relation to a provisional registration of an early childhood teacher that was extended under section 5A.4.2(1)."

Part 5.2—Amendment of Environment Protection Amendment Act 2018

54 Commencement of Environment Protection Amendment Act 2018

For section 2 of the **Environment Protection Amendment Act 2018** substitute—

"2 Commencement

- (1) Subject to subsections (2), (3) and (4), this Act comes into operation on a day or days to be proclaimed.
- (2) Section 19 comes into operation on 28 August 2018.
- (3) Part 3 comes into operation on 1 July 2019.
- (4) If a provision of this Act does not come into operation by 1 December 2021, it comes into operation on that day.

2A COVID-19 Measure

- (1) This Act is to be taken to have been enacted as amended by Part 5.2 of the **COVID-19 Omnibus (Emergency Measures) Act 2020**.
- (2) The proclamation of commencement made on 3 March 2020 and published in the Victoria Government Gazette S 104 is revoked and is by virtue of this section to be taken to have had no effect."

55 Consequential amendment of section 64 of the Environment Protection Amendment Act 2018

In section 64 of the **Environment Protection Amendment Act 2018**, for "1 July 2021" substitute "1 July 2022".

Part 5.3—Amendment of Local Government Act 2020

56 New Part 12 inserted

After Part 11 of the **Local Government Act 2020** insert—

"Part 12—COVID-19 temporary measures

392 Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (d) any other law.

393 Definitions

In this Part—

prescribed period means the period
commencing on 1 May 2020 and
ending on 1 November 2020;

special committee has the same meaning as
it has in section 3 of the **Local
Government Act 1989**.

394 Council meeting attendance

For the prescribed period, a requirement of
this Act or any other Act or the regulations
under this Act or any other Act, that a
Councillor, member of a governing body of a
regional library or any other person, be
present at or attend any of the following
meetings is satisfied if the Councillor,
member or other person participates in the
meeting by electronic means of
communication—

- (a) a Council meeting;
- (b) a joint meeting of Councils;
- (c) a meeting of a delegated committee or
joint delegated committee;
- (d) a meeting of a governing body of a
regional library;
- (e) a meeting of a special committee.

395 Meetings may be closed to the public during the prescribed period

- (1) Subject to subsection (2), for the prescribed
period, a requirement of this Act or any other
Act or the regulations under this Act or any
other Act, that a meeting specified in
section 394 be open to the public, is satisfied
if—

- (a) in the case of a meeting specified in paragraph (a) or (b) of section 394, the meeting is streamed live on the Internet site of the Council; or
 - (b) in the case of a meeting specified in paragraph (c) or (e)—
 - (i) the meeting is streamed live on the Internet site of the Council; or
 - (ii) the meeting is recorded and made available on the Internet site of the Council as soon as practicable after the meeting.
- (2) A Council or delegated committee is not required to stream the meeting live on the Internet site of the Council or make a recording of the meeting available on the Internet site of the Council (as appropriate) if the Council or delegated committee considers it necessary to close the meeting to the public because of a circumstance specified in section 66(2)(a).
- (3) For the avoidance of doubt, a Council, delegated committee or special committee is not required to allow the public to attend a meeting specified in section 394(a), (b), (c) or (e) for the duration of the prescribed period.

396 Repeal of Part

This Part is **repealed** on 2 November 2020."

Part 5.4—Amendment of Parliamentary Committees Act 2003

57 New Part 7 inserted

After Part 6 of the **Parliamentary Committees Act 2003** insert—

"Part 7—COVID-19 temporary measures

Division 1—Preliminary

53 Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or

- (iii) the **Constitution Act 1975**; or
- (d) any other law.

Division 2—Joint Investigatory Committees

54 Sittings of Joint Investigatory Committees

- (1) Section 25(5)(a) of the **Parliamentary Committees Act 2003** has no effect.
- (2) A member participating in a meeting of a Joint Investigatory Committee by audio link or audio visual link—
 - (a) is present for the purposes of determining whether there is a quorum; and
 - (b) may vote on a question arising at the meeting.

Division 3—Repeal of Part

55 Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 5.5—Amendment of Planning and Environment Act 1987

58 New Part 10A inserted

After Part 10 of the **Planning and Environment Act 1987** insert—

"Part 10A—COVID-19 temporary measures

Division 1—Preliminary

204 Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or

- (iii) the **Constitution Act 1975**; or
- (d) any other law.

Division 2—Temporary measures

205 Requirements to make documents available for inspection

- (1) A provision of this Act that requires a designated entity to make available a document for inspection at the designated entity's office free of charge is taken to be satisfied if the document is made available free of charge to the general public on the designated entity's Internet site.
- (2) Subject to subsection (3), in making available a document on a designated entity's Internet site, the designated entity must not disclose personal information about any of the following individuals without their consent—
 - (a) an individual who has made an application for a planning permit;
 - (b) an individual who has made an application for an amendment of a planning permit;
 - (c) an individual who has made a submission or objection.
- (3) Subsection (2) does not prevent a designated entity from—
 - (a) publishing one or more addresses of land that is the subject of an application for a planning permit, an application to amend a planning permit or an amendment to a planning scheme;

- (b) making personal information about an individual available on request to a person, if the individual—
 - (i) has made an application for a planning permit or an application to amend a planning permit; or
 - (ii) has lodged a submission or objection under this Act.
- (4) In this section—

designated entity means the following—

- (a) the Minister;
- (b) a planning authority;
- (c) a responsible authority;
- (d) a referral authority;
- (e) a municipal council;
- (f) any other person or entity.

personal information means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

205A Requirements relating to notices

For the purposes of this Act, a requirement that a notice (however described) issued by a designated entity must specify the place or places at which a document may be inspected is taken to be satisfied if the notice specifies the designated entity's Internet site.

205B Modified rules about panel hearings

- (1) A requirement under section 160 that a panel must conduct its hearings in public is taken to be satisfied if the panel makes the hearing available to be viewed free of charge by the general public by electronic means, either while the hearing is being held or as soon as reasonably practicable afterwards.
- (2) For the purposes of subsection (1), the hearing may be made available—
 - (a) by electronic means on an Internet site; or
 - (b) by other electronic means.
- (3) Despite section 162, if a person has a right to be heard by a panel or is called by a panel—
 - (a) the panel is not required to hear the person in person, but may instead require the person or their representative to appear and be heard at a specified time by electronic means; and
 - (b) if the panel so requires, the reference in section 163 to the person not being present or represented at the time and place appointed for the hearing of the submission is taken instead to be a reference to neither the person nor their representative being available to appear and be heard by electronic means at the specified time.

Division 3—Repeal of Part

205C Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 5.6—Amendment of Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015

59 New Part 5A inserted

After Part 5 of the **Safe Patient Care (Nurse to
Patient and Midwife to Patient Ratios)
Act 2015** insert—

"Part 5A—COVID-19 temporary measures

Division 1—Preliminary

45A Purpose and effect of Part

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or

(ii) the **COVID-19 Omnibus
(Emergency Measures)
Act 2020**; or

(iii) the **Constitution Act 1975**; or

(d) any other law.

Division 2—Temporary changes

45B Effect of declaration

This Act has the force of law subject to any declaration that is in effect under this Part.

45C Powers and duties of Minister

- (1) If the Minister, after consultation with at least one relevant union and a representative body, considers that compliance with a ratio or ratio variation is impracticable for a hospital or hospitals due to the COVID-19 pandemic, the Minister may declare that the operation of Part 4 is suspended in respect of that hospital or those hospitals—
 - (a) for the period specified in the declaration, being a period ending on or before the day that is 6 months after the day on which this Part comes into operation; and
 - (b) subject to any conditions or exceptions specified in the declaration.
- (2) A declaration under subsection (1) may apply—
 - (a) to one or more hospitals named in the declaration; and
 - (b) to one or more classes of hospital specified in the declaration; and

- (c) in relation to all ratios and ratio variations, or one or more ratios or ratio variations of a type specified in the declaration.
- (3) A declaration under subsection (1)—
 - (a) comes into operation on the day on which it is made; and
 - (b) must be published in the Government Gazette; and
 - (c) has effect until the end of the period specified in the declaration, unless revoked earlier under subsection (4).
- (4) The Minister, by notice published in the Government Gazette, must revoke a declaration under subsection (1) if the Minister no longer considers that compliance with a ratio or ratio variation is impracticable due to the COVID-19 pandemic, after consultation with at least one relevant union and a representative body.
- (5) In this section—
representative body means a body whose primary function is to represent the interests of hospitals.

45D Operator must take patient and staff safety into account

The operator of a hospital that is the subject of a declaration in effect under section 45C(1) must, as far as is practicable, staff the hospital in a manner that takes into account the safety of patients and staff, having regard to staffing levels and the skill mix of the staff.

COVID-19 Omnibus (Emergency Measures) Act 2020
No. 11 of 2020

Part 5.6—Amendment of Safe Patient Care (Nurse to Patient and Midwife to
Patient Ratios) Act 2015

45E Declaration not a legislative instrument

A declaration under section 45C is not a legislative instrument within the meaning of the **Subordinate Legislation Act 1994**.

Division 3—Repeal of Part

45F Repeal of Part

This Part is **repealed** on the day that is 6 months after its commencement."

Part 5.7—Amendment of Workplace Injury Rehabilitation and Compensation Act 2013 and the Accident Compensation Act 1985

Division 1—Amendment of Workplace Injury Rehabilitation and Compensation Act 2013

60 New Part 14 inserted

After Part 13 of the **Workplace Injury
Rehabilitation and Compensation Act 2013**
insert—

"Part 14—COVID-19 temporary measures

623N Termination of weekly payments after expiry of second entitlement period

- (1) For the prescribed period, section 191(1)(b) applies as if a reference to 13 weeks were a reference to 39 weeks.
- (2) For the purposes of section 191 as applied by subsection (1), any reference to a determination in section 191 means a determination made during the prescribed period.
- (3) In this section, *prescribed period* means the period—
 - (a) starting on 1 December 2019; and
 - (b) ending on the day that is 6 months after the commencement of this section.

623O Repeal of this Part

This Part is **repealed** on the day that is 6 months after its commencement."

Division 2—Amendment of Accident Compensation Act 1985

61 New Part X inserted

After Part IX of the **Accident Compensation
Act 1985** insert—

"Part X—COVID-19 temporary measures

395 Termination of weekly payments after expiry of entitlement period

- (1) For the prescribed period, section 114B(1)(b) applies as if a reference to 13 weeks were a reference to 39 weeks.
- (2) For the purposes of section 114B as applied by subsection (1), any reference to a determination in section 114B means a determination made during the prescribed period.
- (3) In this section, *prescribed period* means the period—
 - (a) starting on 1 December 2019; and
 - (b) ending on the day that is 6 months after the commencement of this section.

396 Repeal of this Part

This Part is **repealed** on the day that is 6 months after its commencement."

Chapter 6—Other matters

Part 6.1—Transitional regulations

62 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the repeal of any provision inserted into an Act by Chapter 3, 4 or 5 of the **COVID-19 Omnibus (Emergency Measures) Act 2020**.
- (2) Regulations made under this section may—
 - (a) be of limited or general application;
 - (b) differ according to time, place or circumstances;
 - (c) leave any matter or thing to be decided by a specified person or class of person.
- (3) To the extent to which any provision of the regulations under this section takes effect from a date that is earlier than the date of its making, the provision does not operate so as—
 - (a) to 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 the date of its making; or
 - (b) to 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 the date of its making.

- (4) Regulations under this section have effect despite anything to the contrary in—
 - (a) any Act (other than this Act, the **Constitution Act 1975** or the Charter of Human Rights and Responsibilities); or
 - (b) any subordinate instrument.
- (5) The following are not required for any proposed statutory rule that is to be made under this section—
 - (a) consultation under section 6 of the **Subordinate Legislation Act 1994**;
 - (b) the preparation of a regulatory impact statement under section 7 of the **Subordinate Legislation Act 1994**.
- (6) This section is **repealed** on the day that is 6 months after its commencement.

63 Regulations are disallowable by either House of Parliament

A regulation made under section 62 may be disallowed in whole or in part by either House of Parliament.

64 Regulations continue in force for 6 months after repeal of empowering section

Despite the repeal of section 62, regulations made under that section that are in force immediately before that repeal continue in force on and after that repeal until the day that is 6 months after that repeal.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly: 23 April 2020

Legislative Council: 23 April 2020

The long title for the Bill for this Act was "A Bill for an Act to temporarily amend certain Acts, and to temporarily empower the making of regulations, to modify the application of the law of Victoria in certain respects for the purpose of responding to the COVID-19 pandemic and for other purposes."