

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Residential Tenancies Amendment Bill 2018

A Bill for

An Act to amend the *Residential Tenancies Act 1997*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

- 1 **1 Name of Act**
- 2 This Act is the *Residential Tenancies Amendment Act 2018*.
- 3 **2 Commencement**
- 4 (1) This Act (other than sections 6, 7 and 8) commences on a day fixed
- 5 by the Minister by written notice.
- 6 *Note 1* The naming and commencement provisions automatically commence on
- 7 the notification day (see [Legislation Act](#), s 75 (1)).
- 8 *Note 2* A single day or time may be fixed, or different days or times may be
- 9 fixed, for the commencement of different provisions (see [Legislation](#)
- 10 [Act](#), s 77 (1)).
- 11 *Note 3* If a provision has not commenced within 6 months beginning on the
- 12 notification day, it automatically commences on the first day after that
- 13 period (see [Legislation Act](#), s 79).
- 14 (2) Sections 6, 7 and 8 commence on the day after this Act's
- 15 notification day.
- 16 **3 Legislation amended**
- 17 This Act amends the *Residential Tenancies Act 1997*.
- 18 **4 Sections 41 to 42B**
- 19 *substitute*
- 20 **41 Warrant—termination and possession order**
- 21 On application by a lessor, the registrar must issue a warrant for the
- 22 eviction of a tenant if—
- 23 (a) the ACAT has made a termination and possession order in
- 24 relation to the tenant; and

1 (b) the tenant fails to vacate the premises in accordance with the
2 order.

3 *Note* The ACAT must also direct the registrar to issue a warrant for the
4 eviction of a tenant if it makes a termination and possession order under
5 s 49C.

6 **5 Section 49**

7 *substitute*

8 **49 Failure to pay rent—termination and possession order**

9 (1) This section applies if—

10 (a) a tenant has failed to pay rent that has become payable under a
11 residential tenancy agreement; and

12 (b) the lessor has served a termination notice on the tenant because
13 of the tenant's failure to pay rent; and

14 (c) the tenant has not vacated the premises in accordance with the
15 notice.

16 (2) The lessor may apply to the ACAT for a termination and possession
17 order.

18 (3) The ACAT may—

19 (a) make a termination and possession order; or

20 (b) make a payment order; or

21 (c) refuse to make a termination and possession order or payment
22 order if—

23 (i) the tenant has paid any rent that has become payable and
24 is, in the ACAT's opinion, reasonably likely to pay future
25 rent as it becomes payable; and

26 (ii) the ACAT considers it just and appropriate to do so.

- 1 (4) If the ACAT makes a termination and possession order, it may
2 suspend the order for a stated period of not more than 3 weeks if
3 satisfied that—
- 4 (a) were the order not suspended for the stated period, the tenant
5 would suffer significant hardship; and
- 6 (b) the tenant's hardship would be greater than the hardship that
7 would be suffered by the lessor if the order were suspended for
8 the stated period.

9 **49A Failure to pay rent—payment order**

- 10 (1) This section applies if a lessor applies to the ACAT for a
11 termination and possession order under section 49 (2).
- 12 (2) Instead of making a termination and possession order, the ACAT
13 may make an order (a *payment order*) requiring the tenant to pay—
- 14 (a) the rent, or a stated part of the rent, that has become payable;
15 and
- 16 (b) future rent as it becomes payable.
- 17 (3) If the ACAT makes a payment order for part of the rent that has
18 become payable, the ACAT may also make an order under
19 section 83 (c) for payment of the remaining part.
- 20 (4) A payment order—
- 21 (a) expires on the date stated in the order (which must not be more
22 than 1 year after the day the order is made); and
- 23 (b) must state that if the tenant fails to comply with the payment
24 order, the lessor may apply for a termination and possession
25 order under section 49B.
- 26 (5) On application to the ACAT, an order under this section may be
27 varied if—
- 28 (a) both parties agree to the variation; and

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- 1 (b) the variation does not postpone the expiry date of the order;
2 and
- 3 (c) the ACAT considers it just and appropriate to vary the order.
- 4 **49B Failure to comply with payment order**
- 5 (1) This section applies if—
- 6 (a) the tenant has failed to comply with a payment order in the last
7 60 days; and
- 8 (b) the order has not expired; and
- 9 (c) the tenant continues to live at the premises.
- 10 (2) The lessor may apply to the registrar for a termination and
11 possession order.
- 12 (3) On receiving an application for a termination and possession order,
13 the registrar must—
- 14 (a) list the application for hearing before the ACAT not earlier
15 than 1 week after the day the notice under paragraph (b) is
16 given to the tenant; and
- 17 (b) give notice to the tenant stating—
- 18 (i) that an application for a termination and possession order
19 has been made; and
- 20 (ii) the time when, and the place where, the application is to
21 be heard; and
- 22 (iii) that the tenant should seek legal advice about the
23 application if the tenant wants to continue to live at the
24 premises.
- 25 (4) If the lessor does not apply to the ACAT under subsection (2), the
26 payment order, residential tenancy agreement and any debt under
27 the residential tenancy agreement is not affected.

- 1 **49C Hearing of application—failure to comply with payment**
2 **order**
- 3 (1) After considering an application under section 49B and hearing the
4 parties who attend the hearing, the ACAT must—
- 5 (a) make a termination and possession order; or
6 (b) refuse to make a termination and possession order.
- 7 (2) If the ACAT makes a termination and possession order, the
8 ACAT—
- 9 (a) must direct the registrar to issue a warrant for the eviction of
10 the tenant; and
11 (b) may make an order to pay any unpaid rent that is payable.
- 12 (3) If the ACAT refuses to make a termination and possession order, the
13 ACAT may—
- 14 (a) confirm the payment order; or
15 (b) make another payment order; or
16 (c) set aside the payment order.
- 17 (4) If the ACAT makes a termination and possession order, it may
18 suspend the order for a stated period of not more than 3 weeks if
19 satisfied that—
- 20 (a) were the order not suspended for the stated period, the tenant
21 would suffer significant hardship; and
22 (b) the tenant’s hardship would be greater than the hardship that
23 would be suffered by the lessor if the order were suspended for
24 the stated period.

1 **6 Application for registration of standard guarantee**
 2 **contract**
 3 **Section 103 (1)**

4 *after*

5 commissioner for fair trading

6 *insert*

7 , on or after a day declared by the Minister,

8 **7 New section 103 (3)**

9 *after the notes, insert*

10 (3) A declaration under subsection (1) is a notifiable instrument.

11 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

12 **8 New part 15**

13 *insert*

14 **Part 15 Transitional—Residential**
 15 **Tenancies Amendment Act 2018**

16 **151 Meaning of *commencement day*—pt 15**

17 In this part:

18 *commencement day* means the day the *Residential Tenancies*
 19 *Amendment Act 2018*, section 6 commences.

20 **152 Applications for registration of standard guarantee**
 21 **contract**

22 (1) This section applies if—

23 (a) an application for registration of a standard guarantee contract
 24 is made under section 103 before the commencement day; and

- 1 (b) the application—
2 (i) is not decided by the commissioner before the
3 commencement day; or
4 (ii) is refused by the commissioner.
5 (2) The application is taken not to have been made.

6 **153 Registered standard guarantee contracts**

- 7 (1) This section applies if a standard guarantee contract is registered
8 under section 104 before the commencement day.
9 (2) On the commencement day, the registration of the standard
10 guarantee contract is taken to have ended.

11 *Note* A term of a commercial guarantee that is inconsistent with, or is in
12 addition to, a registered standard guarantee contract is void (see
13 s 16 (3)).

- 14 (3) To avoid any doubt, any commercial guarantee entered into before
15 the commencement day that is consistent with the registered
16 standard guarantee contract is not affected by subsection (2).

17 **154 Expiry—pt 15**

18 This part expires 12 months after the commencement day.

19 *Note* Transitional provisions are kept in the Act for a limited time.
20 A transitional provision is repealed on its expiry but continues to have
21 effect after its repeal (see [Legislation Act](#), s 88).

1 **9 Section 151**

2 *substitute*

3 **151 Meaning of commencement day—pt 15**

4 In this part:

5 *commencement day* means—

- 6 (a) for sections 152 and 153—the day the *Residential Tenancies*
7 *Amendment Act 2018*, section 6 commences; and
8 (b) for section 154—the day the *Residential Tenancies Amendment*
9 *Act 2018*, section 4 commences.

10 **10 Section 154**

11 *substitute*

12 **154 Conditional termination and possession orders in force**
13 **immediately before commencement day**

- 14 (1) This section applies to a conditional termination and possession
15 order made under the pre-amendment Act, section 49 (4) and in
16 force immediately before the commencement day.
17 (2) The order is taken to be a payment order made under this Act,
18 section 49A.
19 (3) The order expires on the date stated in it, unless sooner ended under
20 this Act.
21 (4) In this section:

22 *pre-amendment Act* means this Act as in force immediately before
23 the commencement day.

1 **155 Expiry—pt 15**

2 This part expires 12 months after the day the *Residential Tenancies*
3 *Amendment Act 2018*, section 4 commences.

4 *Note* Transitional provisions are kept in the Act for a limited time.
5 A transitional provision is repealed on its expiry but continues to have
6 effect after its repeal (see [Legislation Act](#), s 88).

7 **11 Dictionary, definition of *conditional termination and***
8 ***possession order***

9 *omit*

10 **12 Dictionary, new definition of *payment order***

11 *insert*

12 *payment order*—see section 49A (2).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 May 2018.

2 Notification

Notified under the [Legislation Act](#) on 2018.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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