

Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 2)

Disallowable instrument DI2020–216

made under the

Residential Tenancies Act 1997, s 156 (Declaration—COVID-19 emergency response)

Part 1 Preliminary

1 Name of instrument

This instrument is the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 2)*.

2 Commencement

This instrument commences on the day after its notification day.

Note This instrument expires in accordance with the Act, s 156 (3).

3 Revocation

This instrument revokes the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (DI2020-46)*.

Part 2 Temporary reduction in rent or occupancy fees

4 Modification of Act, s 8 (1)—rent reduction clause

- (1) For the Act, section 8 (1), the lessor and tenant may agree to include a COVID-19 temporary rent reduction clause in the residential tenancy agreement.
- (2) If the lessor and tenant agree on a COVID-19 temporary rent reduction clause—
 - (a) the reduced rent period (including any extensions) may be for a period longer than the operation of this instrument; and

- (b) the reversion of the rent payable under the residential tenancy agreement to the original rent is not an increase in the rent under the Act or the agreement; and
- (c) the amount the rent is reduced by under the agreement between the parties is not arrears of rent or a debt due to the lessor.

(3) In this section:

COVID-19 temporary rent reduction clause means the following clause:

Temporary reduction of rent because of COVID-19 pandemic

(1) The parties agree that because of financial hardship suffered by the tenant arising from the COVID-19 pandemic, for the period stated in writing by the parties the rent payable under the agreement is reduced to an amount stated in writing by the parties.

Note ***Writing*** includes any way of representing or reproducing words in visible form including email or text message (see Legislation Act, dict, pt 1, def of *writing*).

(2) The parties may, in writing, extend the period in which rent is reduced for a further stated period if the tenant continues to suffer financial hardship because of the COVID-19 pandemic.

5 Agreement to reduce occupancy fee under occupancy agreement

- (1) This section applies if the parties to an occupancy agreement agree to a reduced occupancy fee for a stated period because of financial hardship suffered by the occupier arising from the COVID-19 pandemic.
- (2) To avoid any doubt, if the parties agree that the occupancy fee payable under the occupancy agreement reverts to the amount payable immediately before the fee was reduced—
 - (a) the occupancy agreement principle under which the occupant is entitled to notice of an increase in the fee does not apply; and
 - (b) the amount the fee is reduced by under the agreement is not arrears or a debt due to the grantor.

(3) In this section:

occupancy fee means the amount payable by the occupier for the right to occupy the premises.

Part 3 Moratorium on terminations, rent increases etc

6 Definitions—pt 3

In this part:

household, in relation to premises the subject of a residential tenancy agreement, means the tenants and any other people living in the premises.

impacted, by the COVID-19 pandemic—see section 7.

impacted household means a household—

- (a) impacted by the COVID-19 pandemic; or
- (b) a member of which became eligible for the JobSeeker or JobKeeper payment from the Commonwealth on or after 20 March 2020.

moratorium period means the period beginning on 22 April 2020 and ending—

- (a) on 22 October 2020; or
- (b) if the period is extended under section 13—at the end of the extended period.

7 When is a household *impacted* by COVID-19 pandemic?

- (1) For this part, a household is *impacted* by the COVID-19 pandemic if—
 - (a) 1 or more rent-paying household members have stopped earning income, or had a reduction in income, because—
 - (i) the member, or another member, is ill with COVID-19; or
 - (ii) the member has carer responsibilities for a family member who is ill with COVID-19; or
 - (iii) of a law introduced or other measure taken by the Territory, a State or the Commonwealth in response to the COVID-19 pandemic; and
 - (b) the household’s weekly gross income is at least 25% less than the household’s weekly gross income before the income of any of the rent-paying household members was stopped or reduced.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

- (2) In this section:

rent-paying household member, in relation to premises the subject of a residential tenancy agreement, means a member of a household who regularly pays a share of the rent payable under the agreement.

weekly gross income, of a household, means the total of the weekly gross income, including any government payment, received by each rent-paying household member.

8 Moratorium on termination etc for failure to pay rent

- (1) This section applies to a residential tenancy agreement for premises in which an impacted household lives.
- (2) During the moratorium period, the lessor must not—
 - (a) give a tenant in the household a termination notice because of the tenant's failure to pay rent; or
 - (b) apply for a termination and possession order under—
 - (i) the Act, section 49 (Failure to pay rent—termination and possession order); or
 - (ii) the Act, section 49B (Failure to comply with payment order); or
 - (c) apply for a payment order under the Act, section 49A (Failure to pay rent—payment order); or
 - (d) apply for a warrant under the Act, section 41 (Warrant—termination and possession order) for the eviction of the tenant because of the tenant's failure to pay rent.
- (3) This section applies—
 - (a) regardless of when the tenant's failure to pay rent happened; and
 - (b) even if a termination notice was given by the lessor to the tenant before the commencement of this part.
- (4) A termination notice given in contravention of this section is void.

9 Existing orders etc for failure to pay rent

- (1) This section applies if—
 - (a) an application for an order in relation to a tenant's failure to pay rent for premises under a residential tenancy agreement has been made to the ACAT and—
 - (i) the application has not yet been decided; or
 - (ii) an order has been made; and
 - (b) the tenant has not vacated the premises; and
 - (c) the tenant is a member of an impacted household that live in the premises.
- (2) The ACAT must not make any order until after the moratorium period has ended.
- (3) However, if an order has been made, the ACAT may, on application by the tenant, suspend the order for a stated period of not more than the moratorium period.

- (4) In this section:
- order*, in relation to a tenant's failure to pay rent means—
- (a) a termination and possession order under the Act, section 49 (Failure to pay rent—termination and possession order); or
 - (b) an order under the Act, section 49C (Hearing of application—failure to comply with payment order); or
 - (c) a warrant under the Act, section 41 (Warrant—termination and possession order).
- suspend*, for a warrant under the Act, section 41, means stay.

10 Restriction on listings in residential tenancy database

- (1) A lessor, lessor's agent or database operator must not list personal information about a person in a residential tenancy database in relation to a breach of a residential tenancy agreement during the moratorium period if—
- (a) the breach was for failure to pay rent under the agreement; and
 - (b) at the time of the breach the person was a member of an impacted household.
- (2) To remove any doubt, subsection (1) applies even if—
- (a) the moratorium period has ended; or
 - (b) after the moratorium period ends—
 - (i) the tenant remains in arrears for rent payable during the moratorium period; or
 - (ii) the residential tenancy agreement is terminated because of the breach for failing to pay rent in the moratorium period.

11 Restriction on rental increases

- (1) This section applies to a residential tenancy agreement for premises in which an impacted household lives.
- (2) Except as provided in this instrument, the lessor may not increase the amount of rent payable under the residential tenancy agreement during the moratorium period.

12 Termination by tenant in impacted household

- (1) This section applies to a fixed term residential tenancy agreement for premises in which an impacted household lives.
- (2) During the moratorium period, a tenant under the residential tenancy agreement may, by written notice to the lessor, terminate the agreement.

- (3) The tenant must give the lessor—
 - (a) at least 3 weeks notice of the termination; and
 - (b) evidence that the tenant is a member of an impacted household.

Examples—par (b)

- 1 statutory declaration attesting to status
 - 2 evidence of eligibility for the JobKeeper or JobSeeker payment from the Commonwealth
 - 3 letter from an employer attesting to a change in a tenant’s employment status
 - 4 evidence of a reduction in household income
- (4) The lessor is not entitled to any compensation or break fee under the Act or the agreement in relation to the early termination of the fixed term agreement in accordance with this section.

13 Extension of moratorium period

- (1) The Minister may extend the period mentioned in section 6, definition of *moratorium period*, paragraph (a) for a period of no more than 3 months.
- (2) An extension is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Part 4 Access to premises

14 Restricted access to premises

- (1) A lessor under a residential tenancy agreement may only physically access the premises—
 - (a) with the tenant’s consent; or
 - (b) to do urgent repairs to the premises; or
 - (c) if the lessor applies to the ACAT—in accordance with an order by the ACAT.
- (2) Unless the parties to a residential tenancy agreement otherwise agree or the tenant vacates the premises, any inspection of the premises that the lessor must or may do under the Act or the agreement may only be done by audio-visual or other electronic means without the lessor physically accessing the premises.
- (3) Subsection (2) does not apply if the tenant fails to provide reasonable assistance to the lessor to enable the virtual inspection to be done.

15 Non-urgent repairs

- (1) For clause 57 of the standard residential tenancy terms, the lessor must do the non-urgent repair within a reasonable period as agreed with the tenant.
- (2) For subsection (1), in deciding what is a reasonable period regard must be had to—
 - (a) the nature of the repair; and
 - (b) the extent of access required to the premises to do the repair; and
 - (c) the hardship suffered by the tenant by the repairs not being done.

Gordon Ramsay MLA
Attorney-General
21 July 2020