

Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 3)

Disallowable instrument DI2020–267

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 3)*.

2 Commencement

- (1) This instrument (other than section 5) commences on 23 October 2020.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Section 5 commences 10 days after this instrument’s notification day.

3 Expiry

- (1) This instrument expires on the earlier of—
- (a) the day the transitional period ends; or
 - (b) the day mentioned in the Act, section 156 (3).

- (2) In this section:

transitional period—see section 7.

4 Revocation

This instrument revokes the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 2)* (DI2020-216).

Part 2

Rent paid in advance and temporary reduction in rent

5 Modification of Act, s 8 (1) (a) (i)—amount of rent paid in advance for fixed term agreements

Despite the Act, section 8 (1) (a) (i), a residential tenancy agreement that is a fixed term agreement is taken to contain the standard residential tenancy term mentioned in schedule 1, clause 28 (Maximum rent in advance) as in force from time to time.

6 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.

- (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.

9 No termination etc in relation to moratorium arrears in transitional period

- (1) This section applies if—
- (a) at the end of the moratorium period, a tenant who was a member of an impacted household is in arrears for rent payable under the residential tenancy agreement for the premises in which the household lives (the *moratorium arrears*); and
 - (b) during the transitional period, the tenant pays rent as it becomes payable under the agreement.
- (2) During the transitional period, the lessor must not only because of the moratorium arrears—
- (a) give the tenant a termination notice; 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.
- (3) A termination notice given in contravention of this section is void.
- (4) To remove any doubt, if a tenant fails to pay rent as it becomes payable under the residential tenancy agreement during the transitional period (the *new breach*), this section does not stop—
- (a) the lessor giving a tenant a termination notice or exercising any other right against the tenant in relation to the new breach; and
 - (b) if the lessor gives a tenant a termination notice in relation to the new breach—the lessor including the amount of moratorium arrears in the notice; and

- (c) the ACAT making an order permitted by the Act in relation to—
 - (i) the new breach; or
 - (ii) the moratorium arrears.

Note Before making a termination or possession order for a household that was impacted by the COVID-19 pandemic during the moratorium period, the ACAT must first consider making a payment order (see this instrument, s 11).

10 Reconsideration of orders etc for failure to pay rent

- (1) This section applies if the ACAT—
 - (a) before any previous declaration, made an order (a *pre-moratorium order*) in relation to a tenant's failure to pay rent for premises under a residential tenancy agreement; but
 - (b) suspended the order under a previous declaration.
- (2) The tenant may apply to the ACAT to reconsider the pre-moratorium order.
- (3) The ACAT may vary or set aside the pre-moratorium order if satisfied that—
 - (a) since the order was made, the tenant—
 - (i) has paid part or all of the arrears for rent payable under the residential tenancy agreement; or
 - (ii) is otherwise able to show that the tenant's financial circumstances have improved; and
 - (b) the tenant is reasonably likely to pay future rent as it becomes payable.
- (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).

previous declaration means—

- (a) the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020* (DI2020-46); or
- (b) the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 2)* (DI2020-216).

suspend, for a warrant under the Act, section 41, means stay.

11 Modification of Act, s 49—payment orders for COVID-19 impacted households

- (1) This section applies if—
 - (a) a tenant who was a member of an impacted household during the moratorium period failed to pay rent under the residential tenancy agreement for the premises in which the household lived; and
 - (b) the lessor has applied to the ACAT for a termination and possession order under the Act, section 49 (2).
- (2) Before making a termination or possession order under the Act, section 49, the ACAT must first consider making a payment order under the Act, section 49A.

12 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.

13 Termination by tenant in impacted household

- (1) This section applies to a fixed term residential tenancy agreement for premises if the household living in the premises is, at any time in the moratorium period or the transitional period, an impacted household.
- (2) The 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 was or 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.

14 Extension of transitional period

- (1) The Minister may extend the period mentioned in section 7, definition of *transitional 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.

Gordon Ramsay MLA
Attorney-General
3 September 2020