

Residential Tenancies Possession Orders and Warrants of Possession

This fact sheet is based on information
contained in:

- [Residential Tenancies \(COVID-19
Emergency Measures\) Regulations 2020](#)

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Scope of this Fact Sheet

Although the fact sheet is about residential tenancies it will not refer to rooming houses, caravan parks and moveable dwellings, site agreements, specialist disability accommodation or tenancies with a fixed term of more than 5 years. However, this does not mean that legislation and regulation have not changed for those categories of residential accommodation. They are excluded because most members are not involved in managing those types of residential accommodation.

Part 16 Residential Tenancies Act 1997

Chapter 4 of the COVID-19 Omnibus (Emergency Measures) Act 2020 had the effect of creating Part 16 of the Residential Tenancies Act 1997. Part 16 can be found commencing at page 553 of the Act.

Residential Tenancies (COVID-19 Emergency Measures) Regulations 2020

These regulations are dated 12th May 2020 but some of their effect is retrospective.

In addition to details of the Residential Tenancies Dispute Resolution Scheme and corrections to the recently created Part 16 of the Act, the regulations contain transitional provisions relating to possession orders and warrants of possession.

This fact sheet does not address all matters related to possession orders and warrants. It only deals with transitional matters brought about by the temporary changes to the Act contained in Part 16.

Applications for Possession Orders (regulation 56)

An application for a possession order made before 25th April 2020 is invalid if the notice to vacate was on or after 29th March 2020.

Warrants of Possession (regulation 57)

1. A warrant of possession cannot be executed if:
 - the possession order was made before 29th March 2020;
and
 - the possession order could not have been made under Part 16 of the Act had it been in operation at the time;
and
 - the warrant was obtained on or after 29th March 2020 but before 25th April
and
 - the warrant was not executed before 12th May 2020.

2. A warrant of possession cannot be executed if:
 - the application for the possession order was made before 25th April 2020;
and
 - the possession order was made on or after 29th March 2020
and
 - the possession order could not have been made under Part 16 of the Act had it been in operation at the time;

- and
 - the warrant was not executed before 12th May 2020.
3. A warrant of possession cannot be obtained on or after 12th May 2020 if:
- the application for possession was made before 25th April 2020;
 - and
 - a possession order was made on or after 29th March 2020
 - and
 - the possession order could not have been made under Part 16 of the Act had it been in operation at the time.

Note: This regulation does not affect warrants executed before 12th May 2020.

REIV Comment

Each of the above circumstances has as one of the criteria:

“the possession order could not have been made under Part 16 of the Act had it been in operation at the time”

The regulations do not indicate who should make this judgement but given this VCAT grants possession orders it is presumably a matter for VCAT.