

# COVID-19 Omnibus (Emergency Measures) Act 2020

## Quick Reference Guide

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Aspects of the Act with which Members  
should familiarise themselves.

VERSION: 1

DATE : 24/04/2020



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## Quick Reference Guide on the COVID-19 Omnibus (Emergency Measures) Act 2020

- These amendments have retrospective effect from 29 March 2020.
- The amending legislation is in force for six months.
- The amending legislation is to be read in conjunction with the Residential Tenancies Act (RTA) 1997 and any relevant regulations that may be made.

### Definitions: COVID-19 reason

Section 537 outlines when a person is deemed to be unable to comply with a term, provision or obligation because of a **COVID-19 reason**

A person is unable to comply with, a term, provision or obligation because of a COVID-19 reason if:

- the person is ill (**whether or not the illness is COVID-19**); or
- the person can't comply because they are complying with the COVID-19 Directions or a publicly announced recommendation by government or THE Chief Health Officer CHO in relation to CV;
- the person is unable to comply without suffering severe hardship; or
- the person is unable to comply with, or it is not reasonably practicable for the person to comply as a result of any exceptional circumstances in relation to the COVID-19 pandemic.

### Section 538: What is reasonable and proportionate?

Section 538 outlines what VCAT must consider in weighing up whether to issue an order under section:

- s549 Tribunal may terminate tenancy agreement in certain circumstances
- s551 Tribunal may make possession order - tenancy agreements

### What are the grounds for VCAT terminating tenancy agreements?

- tenant or visitor has intentionally/recklessly caused serious damage to the premises;
- tenant or visitor has endangered the safety of neighbours, landlord or agent (or their contactor/employee);
- tenant or any other person occupying or jointly occupying the rented premises has seriously threatened or intimidated the landlord or agent (or their contractor/employee);
- that the tenant has failed to comply with an order of the Tribunal under section 212;
- that the tenant has been given a notice to leave the rented premises under section 368;

- 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;
- 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;
- that the landlord has engaged an agent to sell the rented premises or has prepared or entered into a contract of sale for the rented premises;
- that the rented premises are unfit for human habitation or has been destroyed totally or to such an extent as to be rendered unsafe;
- that the tenant sublet all or part of the property without the landlord's consent
- that the premises are, immediately after the termination date, to be occupied by the landlord or a close relative
- The Tribunal has made an order under section 71E excluding a pet and the tenant does not comply within 14 days

#### **What must the Tribunal consider in making an order?**

- the conduct of the tenant which led to the notice to vacate being given, including whether it was a recurring breach of obligations under the tenancy agreement
- whether the breach is trivial
- whether the breach was caused by the conduct of any person other than the tenant
- whether the tenant has made an application for a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order
  - if the application has been made has it been issued and is it still in force; and
  - if the notice or order has been made whether it included an exclusion condition; and
  - any other matter in relation to family violence or personal violence the Tribunal considers relevant
- whether the breach has been remedied as far as is practicable
- whether the tenant has, or will soon have, capacity to remedy the breach and comply with any obligations under the tenancy agreement
- the effect of the conduct of the tenant, resident or site tenant on others as a tenant
- whether any other order or course of action is reasonably available instead of making the order sought;
- as the case requires, the behaviour of the landlord, the landlord's agent
- any other matter the Tribunal considers relevant.

### **Suspension of rent increases**

A landlord must not increase rent payable under a tenancy agreement

A landlord must not give a notice of a proposed rent increase to a tenant

### **Rent reduction and payment plans**

On an application of a tenant under a tenancy agreement, the Tribunal may make an order:

- reducing the rent payable under the tenancy agreement for specified period
- 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.

If the Tribunal makes an order it 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.
- cancel or amend an order

### **No breach if because of Covid-19 reason**

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.

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

#### Section 89:

A tenant has a duty to permit a person exercising a right of entry in accordance with this Division to enter the rented premises.

#### Division 5 of Part 2:

Relates to **General duties of tenants and landlords** and is covered by sections 59 to 71 of the RTA.

### **Notices to vacate by Landlord - Tenancy Agreements**

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.

*Note: A notice to vacate cannot be issued under the usual provisions of the RTA. Clarification is being sought about when a notice to vacate can be served*

### **Previously issued 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.

### **Existing possession orders**

A person who obtained a possession order before 29 March 2020 is not entitled to a warrant of possession unless the possession order could have been made under the conditions in the new legislation.

### **Notice of intention to Vacate by Tenant – allowable circumstances**

A tenant must not give a landlord a notice of intention to vacate rented premises unless:

- a. the tenant requires special or personal care and needs to vacate the rented premises in order to obtain that care;
- b. the tenant has received a written offer of public housing from the Director of Housing;
- 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;
- e. the tenant is suffering severe hardship.

A tenant (except for d. above) 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 or 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.

A tenant (under d. above) 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.