

# National Association of Tenants' Organisations

Joint Submission, June 2020

Senate Select Committee COVID-19's inquiry into the Australian Government's response to the COVID-19 pandemic.



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## About NATO

The National Association of Tenant Organisations (NATO) is an unfunded federation of State and Territory-based Tenants' Unions and Tenant Advice Services across Australia. NATO's membership comprises Tenants Queensland, the Tenants' Union ACT, the Tenants' Union of New South Wales, the Tenants' Union of Tasmania, the Tenants' Union of Victoria, Tenancy WA, the Darwin Community Legal Service, and Shelter South Australia.

NATO is an affiliate member of National Shelter, and a number of NATO members are members of the International Union of Tenants.

We are the leading voices representing tenants' interests in our respective states and experts in the application of residential tenancy law. Collectively we resource, co-ordinate or directly provide advice regarding more than 80,000 tenancy issues each year. As such, we have a unique ability to comment on the experience of renting in Australia and are acknowledged as such by our respective state Governments.

## About this submission

The terms of reference for this Inquiry are very broad. This submission recognises that residential tenancies and renting are fundamentally state and territory based issues, however important and far-reaching decisions were made at the National Cabinet level that have directly impacted on people's ability to meet the challenges and threats of this pandemic, and their ability to sustain their homes during the immediate period as well as the recovery phase.

This submission provides background relating to the Australian housing system and private rental sector, and how this interacts with the public health imperatives and restrictions, as well as broader community well being. An overview of the impacts of the COVID19 pandemic and how these have been addressed for renting households in Australia is then provided. The submission hopes to provide an indication of the relative success of measures, and where further supports are required and gaps in protection have been identified.

In the appendices we provide firstly a detailed comparator of moratorium measures across jurisdictions and in relation to the National Cabinet Mandatory Code of Conduct: SME Commercial Leasing Principles During COVID-19. Secondly we include detailed summaries of the impact of the COVID-19 pandemic on renters' housing and responses at the state and territory level as provided by NATO members.

## Recommendations

The National Cabinet announcement on 29 March of a moratorium on evictions for 6 months was welcomed as a clear acknowledgement of the public health implications and general economic impacts of the COVID19 pandemic, and the importance of making sure people who rent their homes have access to safe, secure housing during and beyond the crisis.

We recommend the federal government:

- continues to work productively with states and territories through the National Cabinet structure to ensure no one is left behind during this health, economic and social crisis and the period of recovery leading out of it.
- work with state and territory governments to build on and extend existing moratoriums and supports in each state and territory to ensure:
  - All renters are supported to stay safe in their homes through the crisis, and as our communities enter into a recovery period.
  - Renters are given adequate support or protection to ensure they do not come out of the crisis burdened with unmanageable debt as a result of deferred and/or unaffordable rents.
- work with state and territory government to review existing moratoriums and other supports provided for renters<sup>1</sup> to ensure they include the following as a minimum:
  - A stop on evictions for rental arrears or evictions where the tenant is not at fault, covering all tenants including occupants.<sup>2</sup>
  - Support for renters to terminate a rental contract that is no longer viable and is causing hardship, without being burdened with unfair debts or penalties.
  - A requirement for binding arbitration where tenants and landlords cannot reach agreement on a rent reduction. This arbitration should take into account the financial position of both tenants and landlords.
  - A temporary freeze on any rent increases as has been introduced for commercial tenants.
  - Direct financial support for tenants who, after genuine rent reductions have been applied, would struggle to afford their rent.
- require banks and insurers offer genuine relief to landlords who have reduced rent.

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<sup>1</sup> We acknowledge that existing moratoriums and support packages implemented in a number of jurisdictions may already meet many of the minimum standards outlined here. We would like to ensure all jurisdictions meet all minimum standards.

<sup>2</sup> This would not apply for individuals who are being evicted due to violence. This is necessary to ensure the safety of people at risk of domestic and family violence.

- work with state and territory governments to consider what measures or relief are required to support renters with debts accrued while waiting for rent negotiations to complete, or because of failed rent negotiations.
- work with state and territory governments to ensure timely, appropriate monitoring of COVID-19 impacts in relation to renting households and consideration of what further response/s will be required after the moratoriums lift.
- work with state and territory governments to ensure significantly increased public investment in social and affordable housing to assist in Australia's economic and social recovery from the COVID-19 pandemic.

## The Australian housing system and the private rental sector

In each of our states and jurisdictions our housing system/s have failed to ensure everyone is able to access safe, secure, affordable housing. Issues around security and affordability are particularly acute for those who rent their homes, who on average earn lower income than landlords and/or homeowners; and are more likely to have precarious employment - many of them working on casual contracts in hospitality, tourism and the arts. Low income renters are particularly vulnerable.

The precariousness of low-income renters is evident in the latest data in the Australian Bureau of Statistics' Housing Costs and Occupancy series,<sup>3</sup> and the detailed analysis by the Productivity Commission:<sup>4</sup>

- Just over 1 million low-income households lived in the private rental sector at 2017- 18 (ABS, 2019).
- Two-thirds (66%) of low-income private renters (Australia-wide) pay more than 30 per cent of their income in rent ('rental stress'), with almost one-quarter (24%) paying more than 50 per cent (Productivity Commission, 2019: 53).
- Almost half (47%) have less than A\$500 per week left after paying rent, and 18 per cent have less than \$250 per week left, for other expenses (2019: 54).
- Thirty percent of all low-income private renters do not have \$500 saved for use in an emergency – while the average rent paid by low-income private renters is \$339 per week (ABS, 2019).

Moreover, the Productivity Commission's analysis show that amongst low-income private renters in rental stress, households with certain other characteristics are disproportionately represented relative to their share of all low-income private renter households:

- Households with older persons are in rental stress at more than twice the rate of their share of all lower income private renter households;
- Households with disabled persons are in rental stress at a 50 per cent higher rate;
- Households with persons with low educational attainment are in rental stress 34 per cent higher (2019: 67).
- Households with Aboriginal or Torres Strait Islander people are both more likely to be renting and face a range of health vulnerabilities as a community. Aboriginal and Torres Strait Islander people are three times more likely to be living in overcrowded homes.<sup>5</sup>

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<sup>3</sup> Australian Bureau of Statistics (2019) Housing Occupancy and Costs, 2017-18 – cat no 4130.0.

<sup>4</sup> Productivity Commission (2019) Vulnerable Private Renters: Evidence and Options, Commission Research Paper, Canberra.

<sup>5</sup> Australian Institute for Health and Welfare (2019) Indigenous housing, accessed at 16 March

Each of these factors compounds the difficulty of dealing with affordability problems and the risk posed by evictions. Mounting debts and eviction for these renters may lead to homelessness and long term poverty.

The COVID19 pandemic has highlighted and exacerbated the existing inequalities of our failing housing system.



## Safe at home during and post pandemic

*"This is the success we're seeking, to be able to have the protections in place, to enable Australians to go back to as normal a life and an economy as possible. And to be able to achieve that as soon as we possibly can and so it is important that we remain focused on the challenge ahead. We don't want to just win the battle against COVID-19 but lose a broader conflict when it comes to our economy and the functioning of our society. That is why we remain focused on the road ahead. The road back, the restoration of key elements of our economy and to ensure that the broader health needs of Australians are also being addressed."*<sup>6</sup>

Prime Minister Morrison, 29 April 2020

As noted by the Prime Minister, the objectives of response and regulation around a pandemic are broad and extensive because they are fundamental to ensuring the ongoing functioning of our society and facilitate a return to normal life as soon as possible once the health objectives are realised. In terms of rental housing it is important to consider what these must be, and often they are elements that are not issues for those in our community who are not renting.

The COVID-19 pandemic has caused, and continues to cause significant economic harm through the cancellation of events, closure of workplaces and schools, the disruption of supply chains, and a general reduction in public activity and commerce. Many workers, especially contractors and casual workers, have suffered lost income or employment. The role of government during this time must be to support households navigate through health crises limiting financial and health impacts as much as possible. The COVID-19 pandemic public health crisis is only exacerbated by evictions and forced moves.

At a time when all community members were being told to stay at home and avoid contact, renters have been facing the health implications of being forced to move because they can't afford the rent, negotiations have failed, they are accruing debt, they have no other options or otherwise through no fault or decision of theirs. Despite the evictions moratorium announced and implemented in all jurisdictions except the Northern Territory, vulnerable tenants have faced eviction during the pandemic - largely because at implementation the moratorium protections were too restricted.

In addition to the immediate pandemic health aspect of keeping people isolated in their homes it is important to ensure that as many people as possible have security so they can continue to participate and contribute to their community. The social impact of stability in a time of crisis

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<sup>6</sup> Prime Minister Scott Morrison MP, Press Conference Parliament House Transcript 29 April 2020, <https://www.pm.gov.au/media/press-conference-australian-parliament-house-act-290420>, accessed 9 June 2020

is crucial, ensuring that all steps have been taken to maintain cohesion, minimising stress on individuals and families by keeping them in their homes.

Throughout the pandemic people have become more acutely aware of the imbalanced nature of the renting system. Petitions calling for rents and mortgages across Australia to be reduced or waived entirely have attracted hundreds of thousands of signatures<sup>7</sup> while a campaign of rent strikes attracted more than 16,000 sign-ons.<sup>8</sup> Local campaigns attempting to prevent evictions of especially vulnerable people also received media attention. These actions, particularly at this scale, were unlikely to occur and speak to the level of distress the community felt and the lack of confidence in a negotiation process.

During the pandemic while public health orders and restrictions are in place across the country we need to ensure as much as possible everyone is able to stay safe in their homes. This is equally important as our communities begin to recover from the crisis.

## During the crisis

### Evictions

Evicted persons and households, and/or those at high risk of eviction, are less able to take actions required to minimise transmission of COVID19, particularly where they become homeless. They are more likely to contract the virus and more likely to spread it.

In response to eviction, a person or household may have to couch-surf with families and friends – interrupting self-isolation and increasing the risk of transmission through overcrowding. To make an application for housing assistance, they may have to attend the offices of support agencies to collect evidence in support of their urgent need for housing. They will have less access to facilities for handwashing and for cleaning personal effects.

A person facing eviction during the pandemic will be attempting to find a new home. To do this, they will need to be out in public, visiting homes, and acting as a potential vector for spreading the virus. It is unlikely online inspections can be of sufficient quality to avoid this.

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<sup>7</sup> Change.org “Freeze rents & mortgages for the duration of Coronavirus“ accessed at <https://www.change.org/p/scott-morrison-freeze-rents-mortgages-for-the-duration-of-coronavirus> on 9 June 2020.

<sup>8</sup> Jennifer Duke and Eryk Bagshaw (2020) ‘Real estate agents ‘abused’ as coronavirus rent-strike grows’ *Sydney Morning Herald*, 7 April 2020. Accessed at: <https://www.smh.com.au/politics/federal/real-estate-agents-abused-as-coronavirus-rent-strike-grows-20200407-p54hwo.html> on 9 June 2020.

We also know that positive interactions with real estate agents significantly increase prospects for successful applications.<sup>9</sup>

Households may not have access to funds required to establish a new rental, especially if they are facing loss of income, do not have savings, and/or are unable to access a temporary loan. During the current health crisis, with social distancing measures in place and widespread economic impacts felt across the community, it is also more likely renters will be unable to rely on social/informal support networks to minimise or defer costs they may have previously relied on (e.g. through securing a short term loan from family or friends, or asking for help with cleaning, or moving furniture and household goods rather than paying movers, or professional cleaners, etc).

They may also feel greater pressure to continue to be in public attempting to find work or make money in some other fashion. Even before rental arrears and termination arises the fear of eviction for renting households, especially those at high risk of falling into arrears, will decrease the likelihood of households practicing effective self isolation.

### Social distancing

Households that rent their homes do not have the control over them that mortgagees and home owners have. Everyone has been encouraged to stay safe by practising social distancing through maintaining a physical distance from others, and generally limiting the number of visitors to their home.

The ability for people to assess and exercise their own judgement regards visitors to their homes during a pandemic is vital. Renters, just like other households, should be able to restrict visitors and access and/or require minimum health and safety practice of any visitors to their home. This is particularly true for those who are vulnerable and at a higher health risk during the crisis (e.g. people aged 70 and over, Aboriginal and Torres Strait Islander peoples 50 years and older with one or more chronic medical conditions, people aged 65 years and over with chronic medical conditions, people with compromised immune systems).

### During recovery

In relation to evictions this phase is likely to be similar to during the epidemic – it will be a

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<sup>9</sup> Bronwyn Bate (2019) Rental security and the property manager in a tenant's search for a private rental property, Housing Studies, DOI: 10.1080/02673037.2019.1621271

time of significant upheaval. Employment opportunities are likely to recover slowly and many people will need further time. Without further intervention in most jurisdictions, it is also likely landlords may begin chasing rent debts accrued during the moratoriums and many may move to evict. This will only hamper recovery and could precipitate further crisis.

## Impacts on renters and how these have been addressed

As the flow-on effects of the shutdown were felt and jobs were lost, the National Cabinet acted promptly, recognising the likely impact on both commercial and residential renters across the country. The announcement of an Evictions Moratorium on 29 March indicated a clear understanding that the pandemic and its public health implications and general economic impacts would have a significant enough consequence to warrant government intervention.

The objective of the mandatory code of conduct for commercial tenancies was to provide “a proportionate and measured burden share between the two parties while still allowing tenants and landlords to agree to tailored, bespoke and appropriate temporary arrangements that take account of their particular circumstances.”<sup>10</sup> The Commercial Code provided good faith leasing principles covering:

- no evictions due to non-payment of rent for the pandemic period (or reasonable subsequent recovery period)
- tenants remain committed to terms of lease
- landlords must offer proportionate rent reductions
- rent deferrals must be amortised over no less than 24 months
- a freeze on rent increases
- where parties cannot reach agreement on arrangements the matter is referred for binding mediation, and
- parties must not use the mediation process to prolong or frustrate the facilitation of amicable resolution outcomes.

Stakeholders across the country looked forward to a similar announcement for residential renters. Expectations were raised that additional announcements following subsequent meetings of the National Cabinet would further direct responses for residential renters, but unfortunately these were not realised. No national code or clear guidance was developed for residential renters. Instead the National Cabinet made a commitment to a moratorium on evictions over six months for residential tenancies in financial distress who are unable to meet their commitments due to the impact of coronavirus. The Prime Minister noted that, “individual measures beyond that they believe are best addressed within each individual jurisdiction.”<sup>11</sup>

The lack of guidance was met with surprise and disappointment by stakeholders across the country, including the Real Estate Institute Australia (REIA):

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<sup>10</sup> Prime Minister Scott Morrison MP, Press Conference Parliament House Transcript 7 April 2020, <https://www.pm.gov.au/media/update-coronavirus-measures-070420>, accessed 9 June 2020

<sup>11</sup> Ibid.

*"I am disappointed that a uniform approach could not have been agreed to for all Australians. We now face the potential situation where Australians will be treated differently depending on where they reside. This will add to the confusion and most likely there will be the misinterpretation of messaging [...] The rationale that commercial tenancies have a wide national impact, in this case economic, applies also to residential tenancies. For residential it is a social as well as economic impact – after all we all live in dwellings and not all of us either own or lease commercial property. [...] REIA requests that further consideration be given to a national approach to residential real estate."<sup>12</sup>*

The mandatory conciliation framework for commercial renters and other responses were positive. Similar measures could have been applied and/or modified for application to residential renters. This was a lost opportunity by the National Cabinet not to provide clearer direction and guidance for residential renters. The lack of clear guidance this caused has created inequities across the country for tenants and other renters. Unfortunately, as anticipated, the result for residential renters and landlords across the country has been inconsistent regulation that has created uncertainty and confusion for all stakeholders. Some jurisdictions made substantial changes that covered most issues arising out of the pandemic, however some produced very minimal responses. A full breakdown of jurisdictional responses is provided in the table in **Appendix 1**.

Below is a breakdown of the major issues that have been identified across the country, how they have been addressed and some commentary regarding the impacts. These issues have been reported by services across the country. Full responses from each jurisdiction are found in **Appendix 2**.

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<sup>12</sup> Real Estate Institute of Australia, Media Release: States and territories to organise renters and tenants, 7 April 2020, <https://reia.asn.au/media-release/states-and-territories-to-organise-renters-and-tenants/>, accessed 9 June 2020

## Moratorium implementation across states and territories

### Duration and scope of moratoriums

The inconsistency in responses is demonstrated at the most basic level regarding the one national commitment to a six month moratorium on evictions. Jurisdictions did impose an eviction moratorium, with the exception of the Northern Territory (NT) where the response was limited to an extension on the length of notice periods. The duration of the new protections is six months for five states; three months with possibility of extension in the ACT and Tasmania, and 120 days in the NT. (see **Appendix 1** for full breakdown)

Eligibility for the protections ranges from being limited to only if there is a loss of income reducing by at least 25% to being unable to comply with a term or provision in an agreement because of a COVID-19 reason, to health and safety being at risk, or no specific criteria.

The commencement (start date) and duration of the moratorium has also varied across states and territories. Tasmania was the first jurisdiction in Australia to ban evictions, with the Premier announcing on 3 April a general evictions moratorium except in limited circumstances. In Queensland moratorium protections introduced via legislation generally commenced on 24 April, though protection against eviction for tenants and residents suffering hardship was backdated to 29 March, the date of the national cabinet announcement regarding an evictions moratorium. A number of other states also backdated their protections (Victoria and Western Australia). Others simply commenced protections from the date at which the legislation passed. For those renting their homes, as well as landlords, real estate agents and other stakeholders the delays and uncertainty about what the moratorium protections would include led to much confusion and anxiety.

As noted above, duration or length of the moratorium protections has varied. Tasmania being the first to implement a moratorium is also the first jurisdiction to have protections come up for review (at end June). ACT and the Northern Territory will follow suit soon after (early July). The moratoriums in Queensland, NSW, Victoria and Western Australia will remain in place and come up for review in late September, early October.

Delays in implementation at the state and territory level, as well as variation and great complexity in implementation across jurisdictions following the announcement of an evictions moratorium by the National Cabinet created confusion and misunderstanding about the moratorium for all stakeholders - renters, landlords and agents. Some industry groups raised the prospect of individuals attempting to avoid paying rent during the moratorium period despite not being financially impacted. In our various jurisdictions NATO members provided

appropriate and accurate legal information and guidance to renters in relation to their legal responsibility to continue paying rent.

A significant number of tenants were adversely impacted by this misunderstanding and confusion. Many may have been forced to leave their rental homes because of the delays in introducing protections against eviction - even where moratoriums, once implemented, backdated eviction protections - or uncertainty about the various rent reduction negotiation processes across all jurisdictions and what these might involve and likely achieve in terms of an equitable outcome.

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### ***Case Study: Margaret – a Disability Support Pensioner, Queensland***

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Margaret rented a property in regional Queensland. She is a disability support pensioner (DSP) with a serious illness and compromised immune system, and supplemented her income with a market stall. When COVID hit, her income declined when the markets closed. As a DSP recipient, she is not entitled to the Corona Virus supplement and her \$300/week rent became unachievable. With the help of an advocate, Margaret tried to negotiate a rent reduction. At the time, the Queensland regulations had not been made and the only guidance provided was the idea of an evictions moratorium.

The landlord completely refused a rent reduction. Concerned about a mounting debt resulting from rent arrears, Margaret decided her only option was to seek an early termination of the agreement. She felt this very unfair, since she'd been a good tenant and had lived in the premises for a number of years. She then endured an emotional and stressful legal battle to end the lease early and leave her home. She became homeless during a pandemic and travelled hundreds of kilometres to stay with various friends.

In Margaret's words, "I remember seeing a bridge and someone was living under it, and I thought, what do I pack if I have to do that?"

The little people like me have no options at a time like this. We can't call the bank or our accountant. We can't defer payments. As pensioners, we don't qualify for additional government payments. There's nothing we can do. I have no home and no income and I did nothing to deserve it."



## Coverage

People who rent their homes are not just tenants and the types of agreements and protections for renters vary considerably across the country. This was part of the reason for the [Protect Our Communities](#) appeal to stop all evictions, i.e. to ensure even the most vulnerable people were able to stay in whatever homes they had, keeping themselves and the wider community safe. Too often the most vulnerable members of our communities are the ones who are least protected, these are the people living in caravan parks, boarding houses, lodging rooms, informal shared accommodation, supported accommodation and even student accommodation.

While tenancy law differs quite dramatically across the country, the regulations protecting people living in others tenure types is even more stark, and this was reflected in the COVID-19 responses that in many cases did not consider these types of accommodation. In addition to the types of housing there are specific groups of renters with special vulnerabilities or issues arising for them, such as temporary visa holders including international students, migrant workers, refugees and asylum seekers. Many of these renters were excluded from federal government supports, and in some instances - though not all - state and territory rent relief (see below for further discussion of rent relief packages).

	Coverage
<b>Queensland</b>	General tenancies, rooming houses
<b>New South Wales</b>	Only those in the private rental sector were protected, social housing tenants (and many affordable housing tenants by default) were specifically exempted from the protections. Boarding Houses residents were provided some, though not equivalent, protections under the moratorium.
<b>Victoria</b>	Tenancies, rooming houses and caravan parks
<b>Tasmania</b>	Tenancies and boarding premises
<b>Western Australia</b>	Tenancies, residential parks (long-stay) tenants, and 'accommodation agreements'(boarders and lodgers)
<b>Northern Territory</b>	Only tenancies, not other occupancies, with the exception of Flinders House for international students
<b>Australian Capital Territory</b>	Tenancies and very limited protections for occupancies (none for evictions).
<b>South Australia</b>	Tenancies and also some protections for residential park tenancy agreements and residential park site agreements

## Evictions

Further significant differences can be found in relation to the types of evictions prevented. Tasmania prohibited all evictions except for those due to violence or willful damage. This is in line with the national community coalition appeal in March ([Protect Our Communities](#)), whereas the NT did not introduce an eviction moratorium for any residential renters, and Queensland introduced new grounds for eviction.

	Type of evictions covered by the moratorium
<b>Queensland</b>	<p><u>COVID affected tenant or resident:</u></p> <ul style="list-style-type: none"> <li>• eviction is prevented for rent arrears; and,</li> <li>• if the tenancy ends during the period an extension has to be offered to September 30 unless the tenants or resident wants shorter.</li> </ul> <p><u>Other tenants/residents:</u></p> <ul style="list-style-type: none"> <li>• Termination and eviction for failure to pay rent and all other grounds which applied pre COVID remain</li> <li>• Agreements can be ended without grounds.</li> </ul> <p>A landlord was not prevented from ending a residential tenancy agreement for reasons other than failure to pay rent; or due to a notice to leave, or applying to the tribunal for a termination order, before 29 March 2020</p> <p><b>New grounds for evictions introduced</b></p> <ul style="list-style-type: none"> <li>• For COVID affected agreements tenancy (periodic only) can be terminated for the lessor/family to move in.</li> <li>• All tenancies, COVID-19 impacted or not, can now be ended DURING the fixed term if the lessor wants to sell or prepare the property for sale (2 months+).</li> </ul>
<b>New South Wales</b>	<p><u>COVID affected tenant</u></p> <ul style="list-style-type: none"> <li>• 60 day moratorium on all evictions for rent arrears</li> <li>• 60 days restrictions remain for 4 months. Then the landlord can only evict if they demonstrate attempted mediation after negotiations failed &amp; eviction fair and reasonable.</li> </ul> <p><u>All tenants</u></p> <p>landlord must give at least 90 days' notice for terminating a fixed term at the end of the term, a periodic tenancy, for breach (other than non-payment of rent or charges) or a tenancy of 20 years or more</p> <p>Residents of boarding houses must have 90 days' notice before eviction</p>
<b>Victoria</b>	<p><u>COVID affected</u></p> <ul style="list-style-type: none"> <li>• VCAT cannot make a Termination Order if the tenant's failure to comply with their obligations, between 29 March 2020 and 29 September 2020, including paying rent, was due to a "COVID-19 reason"</li> </ul> <p><u>All tenants</u></p> <p>A landlord or mortgagee for rented premises must not give a tenant a notice to vacate premises in certain circumstances, including for the tenant's damage to the premises, dangerous act or omission, non-payment of rent for at least 14 days or failure to pay the bond. A landlord or mortgagee may apply to the Tribunal for an order to terminate a tenancy agreement or a possession order. The Tribunal may make a termination or possession order if certain circumstances exist to warrant the termination or repossession.</p>
<b>Tasmania</b>	No tenant can be evicted for any reason other than violence or willful damage prior to 30 June 2020.

<b>Western Australia</b>	Evictions permitted only in certain circumstances: <ul style="list-style-type: none"> <li>● Where tenant is causing serious injury to person or damage to property;</li> <li>● Where tenant is not paying rent and it is not due to financial hardship caused by economic effects of COVID pandemic</li> <li>● Where agreement is frustrated or where landlord facing undue hardship</li> <li>● Where agreement is periodic and landlord has entered into contract of sale for premises</li> </ul>
<b>Northern Territory</b>	None, only extended time periods, including: <ul style="list-style-type: none"> <li>● Notice for breach for rent arrears for tenants who meet definition of COVID-19 hardship (from 14 days to 60), and time given to resolve breach (from 7 days to 60);</li> <li>● Notice for 'no-cause' termination for fixed term tenancies (from 14 days to 60) and periodic tenancies (from 42 days to 60).</li> </ul>
<b>Australian Capital Territory</b>	Where there is an impacted household Landlord must not: <ul style="list-style-type: none"> <li>● Issue termination notice because of rent arrears, or</li> <li>● Apply for TPO for rent arrears</li> </ul> Applies regardless of when arrears happened and even if notice was given before reg. <ul style="list-style-type: none"> <li>● Notices served are void</li> <li>● If an application was made for TPO ACAT must not make the order until after the moratorium, if TPO was made ACAT may suspend it.</li> </ul>
<b>South Australia</b>	<ul style="list-style-type: none"> <li>● Landlord unable to evict tenants experiencing financial hardship due to COVID.</li> <li>● SACAT will take into account undue hardship to tenants and landlords</li> <li>● No legislative clarity on what happens with arrears.</li> </ul>

Some key concerns held regards the evictions moratoriums implemented across jurisdictions:

- Renters on low or very low incomes may not be eligible for protections in a number of jurisdictions because they do not meet criteria set out in the quite restrictive definition of tenants impacted by COVID-19. They may nonetheless be experiencing significant hardship because of the relative impact on their household budget of even a modest income reduction.
- In many jurisdictions renters remain vulnerable to eviction for 'no grounds'. This allows landlords a 'loophole' to evade a requirement to enter into rent reduction negotiations and achieve eviction. The usual protection of a 'no grounds' eviction being slower than rent arrears or other breaches no longer applied.
- Concern regards 'second' or 'delayed' wave of evictions once the moratoriums lift due to rent arrears accrued and inadequate provision of rent relief.

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### *Case study: Mary, casual worker NSW*

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#### ***Evicted after raising concerns about possible financial impact of COVID-19***

Mary contacted her agent in March to let them know her household might be affected by the COVID-19 restrictions. She wanted to be proactive in starting a dialogue. After a few failed attempts to get a response from either the landlord or agent, Mary received a 'no grounds' eviction in April as the end of her fixed term lease approached. This notice was issued on 16 April and had a vacant possession period of only 30 days, not the amended 90 days as provided by the NSW moratorium protections.

Mary doesn't want to have to move from her home, and thankfully her work hasn't been impacted as significantly as she feared. She'd like to continue her tenancy, and is currently hoping the landlord will change their mind and instead of re-issuing the eviction notice, renew her lease agreement. Mary's trying to renegotiate but she's not sure how her landlord will respond.

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### *Case study: Jack, evicted during a pandemic, Queensland*

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#### ***"My tenure became insecure"***

Jack had lived in his rented home for some time before COVID-19 and has a fixed term agreement which runs until early next year. Jack lost income as a result of COVID and approached the agent about a rent reduction. Whilst in the process of negotiation, Jack received a Notice to Leave because the owner wants to move into the property. This is a new ground, temporarily in place, under the COVID-19 changes.

There is dispute between the real estate industry and tenant advocates about the interpretation of the new regulations. In particular, whether this ground (like the other new ground, to end the tenancy to prepare it for sale) can also end the agreement before the fixed term is complete. Jack's tenancy dispute is currently live and is likely to reach QCAT in the coming weeks.

In effect, the changes made to protect the community during the public health emergency have led to greater insecurity and stress for tenants by both introducing new grounds to end tenancies as well as allowing landlords to interrupt a tenancy during a fixed term. This seems a perverse outcome.

## Rent reduction negotiation frameworks

### Negotiation process including mandatory arbitration and binding decisions

A fundamental element of the mandatory commercial tenancy principles is the clear and consistent process guiding rent reduction negotiations, including the direction that landlords must offer proportionate reductions during the pandemic period and a subsequent recovery period. There is a clear expectation that rent reductions will be based on the tenant's decline in turnover to ensure that the burden is shared between landlords and tenants. No equivalent set of mandatory guidelines or principles were created for all residential tenants by the National Cabinet.

In all jurisdictions renters financially or otherwise impacted by COVID-19 were encouraged to let their landlords know of their changed circumstances as soon as possible, and initiate negotiations towards a rent reduction. In some jurisdictions, for example Victoria and Queensland, where informal rent reduction negotiations with an impacted (eligible) tenant failed the relevant Tribunal has been provided the power to make orders to set a reasonable rent reduction (waiver) and/or for an appropriate payment plan to pay rent. In many others the emphasis instead has been placed on informal negotiation, without clear regulation to compel a landlord who has capacity to offer a rent reduction or provide the Tribunal or courts with the power to independently set a reduced rent.

As with the delays in implementation of the protections against evictions, there have also been delays in provision of information about the process of negotiation - especially formal mediation processes in jurisdictions - and no clear guidance regards expectations of what fair final outcomes might look like in relation to both quantum of reduction, but also what proportion of waiver or deferral reductions are made up of.

We are aware that in many jurisdictions confusion and lack of certainty has meant that even in states or territories where mandatory conciliation or formal negotiation processes were implemented, many tenants are not progressing through to this formal stage. Where it is possible to challenge an unfair or unreasonable offer at Tribunal and have them set a reduced rent, again renters are not necessarily confident to take this up. Instead they are getting bullied or pressured into agreeing to inadequate, unaffordable reductions, and/or signing rent repayment agreements on unfavourable terms.

	Rent reduction process and binding decisions
<b>Queensland</b>	<ul style="list-style-type: none"> <li>• If proof of COVID income reduction, negotiated rent reduction, compulsory conciliation if no agreement. 25% of income will be used as a benchmark</li> <li>• Up to negotiation. QCAT has must take into consideration the financial and medical effect of the COVID-19 emergency on the applicant and any other party for the application; and the difficulty the applicant and any other party for the application may have in complying with the tribunal's decision</li> </ul>
<b>New South Wales</b>	<ul style="list-style-type: none"> <li>• Tenants and landlords advised to negotiate a reduction. Fair Trading provides a dispute resolution process if an agreement cannot be reached. No binding decision if an agreement cannot be reached.</li> <li>• If a tenant is in arrears and a landlord wishes to terminate the tenancy after 14 June, they are required to try to negotiate a reduction in rent before they can apply to NCAT for this to happen. NCAT cannot set a rent reduction.</li> </ul>
<b>Victoria</b>	<ul style="list-style-type: none"> <li>• "Fast tracked' dispute resolution service for tenants and landlords 'who struggle to strike a deal'</li> <li>• A tenant can apply to the Tribunal for an order to reduce rent, or for a payment plan to pay rent, under a tenancy agreement</li> </ul>
<b>Tasmania</b>	The Tasmanian Government encourages negotiation and provides a template letter.
<b>Western Australia</b>	<ul style="list-style-type: none"> <li>• Tenants and Landlords to enter 'rent repayment arrangement' to agree how rent will be paid or repaid after expiry of emergency period</li> <li>• If no agreement, mandatory conciliation process through Consumer protection before parties can apply to court</li> <li>• No basis for rent to be reduced or waived without agreement (except under normal circumstances)</li> </ul>
<b>Northern Territory</b>	Renters are required to provide proof of hardship, the Tribunal has jurisdiction to decide if it cannot be negotiated and this appears (not firm yet) as though it will be through a hardship application. No real guide except rent should not be more than 30% of income broadly
<b>Australian Capital Territory</b>	Parties can agree on a rent reduction, on 13 May ACT Govt introduced a free mediation service. No binding decisions.
<b>South Australia</b>	No reference to reduction of rent, however SACAT states that it will make orders with payment plans or any order it considers appropriate, and unless ordered otherwise tenants remain responsible to make up the balance at some date in the future.

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### ***Case study: Caitlyn, 70% drop in household income, NSW***

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#### ***Requested a rent reduction as soon as income dropped, but negotiations have stalled: 'It sounds like the landlord has made up their mind'***

Caitlyn and her family have been renting their home on the Central Coast for roughly two and a half years. Her husband is a photographer, and lost almost all jobs as the pandemic emerged. He also drives Uber to supplement his income but this has been very quiet. Caitlyn does some part time work, but their family have lost 70% of their household income.

She approached her real estate agent at the beginning of April about her family's changed financial circumstances. There have been constant delays in a response, with to-ing and fro-ing between agent and landlord. Eventually she was offered a reduction, but only as a deferral.

The real estate agent has told Caitlyn that her landlord is in hardship also. But while she and her partner have had to fill in lots of paperwork and provide evidence of their hardship, the landlord hasn't provided any. Instead the agent has reported deferral is the only option for a reduction because while the landlord could request a mortgage freeze they would still have compounding interest on their loan, which the landlord simply refuses to consider.

"I haven't considered going to Fair Trading, I'm not really sure about it and it sounds like the landlord has made up their mind. We've continued to pay our full rent and we're struggling. But we really don't feel comfortable with having a lot of debt at the end of this. Who knows where any of us will be and how we'll repay that? We're just asking for a temporary reduction, just until we get back on our feet."

As part of implementing a negotiation-based framework Governments assumed that landlords would be moving to evict tenants who were not able to pay the full rent. The eviction moratorium therefore was a tool to push a landlord to negotiate by intervening in that process. Ordinarily, it would not be sensible for a landlord to hold on to a tenant who was not able to pay the rent, but this is because tenants are generally easily replaceable. However, as it became apparent that there were rapidly rising vacancy rates and a reducing pool of potential tenants, there was not necessarily the same sense of replaceability. In these instances in fact, the rational thing was not to move towards eviction and instead allow the debt to accrue. The landlord now takes a risk that they will never be able to collect and the debt is on paper only but compared to a vacant property actually receiving no rent at all the risk that they won't collect some or all is one seen as worth taking. This effect brought some landlords back into

conflict with their insurance policies - but these were the insurance policies also encouraging the landlord not to negotiate in the first place.

## Insurance

Many renters attempting to negotiate a reduced rent with their landlord have been told that their landlord is unable to take part in negotiations because of their insurance policy.

It is currently the case that some landlord insurance policies state they will not pay claims made by landlords where rent has been reduced, only where rent is not paid at all. Other issues that have emerged include insurance clauses or practices that require or encourage eviction, notices to vacate, use of debt collection or negative tenant history reporting. Not all insurers with these policies are taking this approach. However there is a lot of uncertainty in relation to this, as well as confusion regarding how a landlord's ability to make a claim interacts with rent reduction negotiations. Whatever the scenario, lessors' insurance is being used by some parts of the real estate industry as a reason for the lack of negotiation on rent reductions.

NATO members are also keenly aware of a possible emerging issue of insurance companies stepping into the shoes of the landlord and commencing action to recover rent arrears through the court system. Tenants' Queensland is aware of one claim already being pursued by insurers, and possibly more in Queensland and other jurisdictions will follow - especially once moratoriums are lifted.

## Superannuation and requests for personal financial information

Across all states and territories we are aware renters have received requests from real estate agents asking for evidence of financial hardship and detailed personal information regarding income and expenditure before rent reduction negotiations have begun. These requests went beyond documentation to confirm eligibility under state or territory moratoriums.

We are also aware that, especially early on during the crisis, real estate agents and landlords encouraged or gave inappropriate advice about drawing on superannuation. Some suggested that no reduction would be forthcoming before such action was taken.



## Assisting renters end unsustainable tenancies

### Forced to leave

In most jurisdictions renters may still face significant penalty if they choose to end a fixed term tenancy agreement early because it is no longer viable. The need to move out has been clear to many tenants, for example those who lost either job overnight or were told to go home by the government. In many jurisdictions tenants when faced with an intractable situation with regard to trying to negotiate a rent reduction are choosing or being forced to end their fixed term tenancy early. These are not evictions but they still amount to compelled vacation of properties.

In most circumstances a tenant has to make an application to a Tribunal or Court for an order, often these can only be made if a tenant can prove significant hardship.

	<b>Ending unsustainable tenancies</b>
<b>Queensland</b>	<p>A fixed term agreement can be ended with notice and 1 weeks' compensation where there is extreme hardship, if -</p> <ul style="list-style-type: none"> <li>• Tenant or Resident (or all those named on the agreement) have lost 75% of income and have less than \$5,000 in savings, or</li> <li>• Domestic violence makes someone unsafe in the tenancy.</li> </ul> <p>If the tenant or resident is COVID affected and wants to end for extreme hardship, they must now go through dispute resolution first.</p>
<b>New South Wales</b>	<p>Only where the landlord won't engage in rent reduction negotiations.</p> <p>T must apply to NCAT. T can only be required to pay up to a maximum of 2 weeks rent in compensation. The Tribunal also has discretion not to impose any fee at all.</p>
<b>Victoria</b>	<ul style="list-style-type: none"> <li>• A tenant must not give a landlord a notice of intention to vacate premises in certain circumstances, unless certain criteria is satisfied.</li> <li>• A tenant is not liable to pay compensation or lease break fees or charges if a tenancy agreement ends early in certain circumstances.</li> </ul>
<b>Tasmania</b>	<ul style="list-style-type: none"> <li>• Tenants can apply to the Residential Tenancy Commissioner to terminate a tenancy due to severe COVID-19 related hardship. Need evidence – e.g proof of job/income loss, proof don't qualify govt. benefits.</li> <li>• Commissioner could still order a tenant to pay some compensation.</li> <li>• There is a COVID application to terminate the lease due to hardship.</li> </ul>
<b>Western Australia</b>	<p>Tenant can give not less than 21 days' notice to terminate before end date of the fixed term if experiencing financial hardship as result of economic effects of covid-19 pandemic</p>

	Tenant can apply to terminate for undue hardship for other reasons
<b>Northern Territory</b>	Tenants and Landlords can apply for Hardship – some strict rules and confusing provisions.
<b>Australian Capital Territory</b>	No new provisions, a tenant has to apply to ACAT under significant hardship provisions
<b>South Australia</b>	No new provisions, a tenant has to apply to SACAT under hardship provisions

In some jurisdictions provisions for early breaking of a fixed term tenancy where a tenant is impacted by COVID-19 have been introduced. These have not always addressed the identified problem adequately. For example, while the Queensland changes allowed tenants to end their fixed term agreement with one week's compensation, the criterion is so tight few are able to meet the criteria. This leaves them in protracted disputes with mounting arrears. In NSW the provisions reducing the break fee for impacted tenants where rent reduction negotiations have failed are only activated once the landlord refuses to engage in the formal negotiation process. This means before a tenant can make use of the provision there is a fairly lengthy delay to establish lack of engagement and/or access the formal negotiation process via NSW Fair Trading.

This has meant in practice many renters who have been impacted by the COVID-19 pandemic are not only losing their current rental home, but in the process they are being pushed into further financial hardship that could have been avoided.

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### *Case study: Caleb, recently unemployed, Queensland*

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#### Unemployed, no income and unable to terminate

Caleb is a young man renting alone in the inner city. He had recently renewed his tenancy agreement for an additional 12 months, taking him into 2021. Early in the lockdown he was retrenched due to the pandemic. Paying \$450 per week and with no prospect of income for several weeks, Caleb immediately approached the agent about ending his agreement but the agent refused.

Caleb wanted to apply to QCAT for an excessive hardship termination. Under the new COVID-19 rules, he had to undergo RTA dispute resolution first. Caleb applied and engaged in dispute resolution, the agent's position didn't shift.

Following the unresolved dispute resolution, Caleb made his application to QCAT for an excessive hardship termination. As the backlog for a hearing was long, Caleb ended his agreement so the rent arrears did not accrue further. He also made a request for his bond to be returned. The bond dispute proceeded separately.

The agent opposed the return of Caleb's bond. During the dispute resolution for the bond (which occurred just prior to the hearing for the excessive hardship termination), Caleb at first received a cleaning receipt which was dated prior to his exit from the premises. Disputing this, he was offered a settlement on the basis the bond would be used to pay for outstanding rent. He refused both – the latter on the basis that he does not have to compensate for loss of rent if awarded an excessive hardship termination. He is now awaiting a hearing for the bond return.

Recently, the application for termination on grounds of excessive hardship was heard. Caleb was successful in the application. In the days after the hearing, Caleb received a letter from the landlord's insurance company claiming the loss of rent. This is a live issue.

It is clear that Caleb is heavily impacted by a COVID-19 related job and income loss. However, he has on-going issues and settling the matters requires significant effort.

## Rent relief & other assistance

### Rent relief packages

Generally welcomed by tenant and landlord advocates rent relief packages or assistance products have been introduced in many states and territories. At the time of writing Victoria, Queensland, Western Australia and Tasmania have introduced rent assistance packages to assist tenants impacted by COVID-19, although in Queensland applications for this grant have now closed. The targeted packages have provided up to \$2000 in relief payments, variously delivered but generally via direct payment to the landlord.

In many jurisdictions in which rent relief packages have been introduced there are renters at risk who are ineligible for the rent relief scheme due to the criteria. While under these schemes tenants are generally only eligible to access rent relief packages if they have no savings, landlords are not similarly forced to sell, access equity, or otherwise demonstrate reduction in wealth in order to access land tax/mortgage relief etc.

Anecdotally NATO members are also aware that the relief provided may have had an unintended consequence of limiting the rent reduction offered by a landlord, or that landlords “require” that tenants agree to seek this assistance as a precondition of the landlord reducing rent.

	<b>Rent Relief</b>
<b>Queensland</b>	Tenants had access to a one-off payment of up to 4 weeks rent (maximum of \$2000) available to those affected by the COVID-19 who do not have access to other financial assistance. Applications closed April 27.
<b>New South Wales</b>	Recently announced Rent Assist COVID-19 Response provides a private rental subsidy for up to twelve months. Applicants must demonstrate they are within the low income limit at time of application and have been impacted by COVID-19: <ul style="list-style-type: none"> <li>● must not own any assets that can be used to resolve their housing needs.</li> <li>● must have less than \$3,000 in cash.</li> </ul>
<b>Victoria</b>	\$80million rental assistance for tenants who meet criteria. Grant up to \$2,000 <a href="https://www.housing.vic.gov.au/help-renting/rentrelief">https://www.housing.vic.gov.au/help-renting/rentrelief</a>
<b>Tasmania</b>	On 25 May 2020 Rent Relief Scheme. Up to 4 weeks rent or \$2000.00 (whatever is less) to tenants in financial hardship. To be eligible tenants must: <ul style="list-style-type: none"> <li>● have experienced 'financial hardship'</li> <li>● rent is more than 30 per cent of household income;</li> <li>● household has less than \$5000 in savings</li> </ul>
<b>Western Australia</b>	None announced
<b>Northern Territory</b>	None announced
<b>Australian Capital Territory</b>	None announced
<b>South Australia</b>	5 June announcement of rent relief - The \$1000 rent relief grants will be provided to landlords of eligible tenants, provided revised rental terms have been agreed that deliver rent relief of at least \$1,000. Applications open late June and close 30 Sept

**Land tax relief**

In addition towards providing rent relief for impacted tenants many jurisdictions are providing landlords with a part waiver on their land tax where a landlord can demonstrate they have reduced rent via waiver by at least as much as relief provided. However it is the case in most states and territories that only a relatively small proportion of landlords are required to pay land tax. As a result many renters will have landlords who will not benefit from the proposed land tax relief; this is especially true for low and very low income tenants.

## Access and other renting issues

During the COVID-19 pandemic everyone has been encouraged to stay safe by practising social distancing by maintaining a physical distance from others, and generally limiting the number of visitors to their home. The ability for people to assess and exercise their own judgement regards visitors to their homes during a pandemic is vital. Renters, just like other households, should be able to restrict visitors and access and/or require minimum health and safety practice of any visitors to their home.

However renters across the country have in general only been able to enforce this where clear public health orders were introduced in their jurisdiction. In many places while certain guidelines were encouraged, these were not necessarily mandatory and renting households have found it hard to enforce cleaning and health safety practices or - if a vulnerable person (i.e. at higher risk of COVID-19 infection) - refuse access for inspections or repairs where the landlord or real estate agent has been uncooperative.

In a number of jurisdictions we are aware of real estate agents insisting on physical entry to properties during the period of restrictions where this was counter to public health advice. Advocates have also provided advice to renters where landlords and real estate agents have issued tenants with instructions to conduct 'COVID cleans' of properties at the end of a tenancy, in some cases withholding bond for this purpose.

## Monitoring and responding to impacts

NATO members have encouraged state and territory governments to implement reporting and monitoring mechanisms for the various measures introduced via the moratoriums. Such mechanisms and/or processes of review would help ensure the prompt, appropriate identification of COVID-19 impacts in relation to renting households, and evaluation of any measures introduced to address these. Appropriate monitoring also allows for timely consideration of what *further* response/s are required, especially once moratoriums and associated protections are lifted. In some jurisdictions (ACT, Tasmania and the Northern Territory) this deadline is fast approaching.

In all jurisdictions the next key challenges will arise when the moratoriums end. At this point, we are concerned renters will likely face an immediate reversion to their pre-COVID-19 rents and an end to the other broad protections and/or relief that has so far been provided to keep renters safe in their homes. The COVID-19 emergency has highlighted the importance of a secure home as a public health and safety measure. Without a secure home, it is impossible for any community member to participate fully in the community, education, or the workforce. This emergency has also demonstrated the importance of housing as a social determinate of health – those without access to secure, affordable housing cannot maintain good health.

Unfortunately those who rent their homes often do not have access to safe, secure, affordable housing even outside of a pandemic situation. Social housing waiting lists in each state and territory are long and unwieldy. Prior to the COVID-19 health crisis close to 200,000 eligible applicants across Australia were waiting for social housing, this number does not include the full number of people requiring social housing to ensure their housing costs are affordable. This number has likely significantly increased since the health crisis. We do not have social housing systems that are able to absorb and quickly house people forced out of the private rental market due to a sudden loss of income.

Supporting community recovery from the COVID-19 pandemic, including economic recovery and the easing of inequality and disadvantage that have emerged, could usefully be achieved via significant investment in social and affordable housing. Investment could, as others have identified in further detail, involve the following:

- Building new, additional social and affordable housing stock in states and territories
- Repairing old social housing stock,
- Rapidly acquiring available properties in the private market to repurpose as social housing stock

	Parliamentary COVID response enquiries
<b>Queensland</b>	Public submissions are invited, deadline is 3 July <a href="https://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDVPC/inquiries/current-inquiries/COVID-19">https://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDVPC/inquiries/current-inquiries/COVID-19</a>
<b>New South Wales</b>	No call for submissions <a href="https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2593#tab-termsofreference">https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2593#tab-termsofreference</a>
<b>Victoria</b>	Public submissions are invited, deadline is 31 July <a href="https://www.parliament.vic.gov.au/paec/inquiries/inquiry/1000">https://www.parliament.vic.gov.au/paec/inquiries/inquiry/1000</a>
<b>Tasmania</b>	Nothing announced
<b>Western Australia</b>	Nothing announced
<b>Northern Territory</b>	No call for submissions <a href="https://parliament.nt.gov.au/committees/PAC/COVID">https://parliament.nt.gov.au/committees/PAC/COVID</a>
<b>Australian Capital Territory</b>	Public submissions sought and the Committee has handed down an interim report. 6 recommendations specifically relevant to renters at this time. Government response tabled 4 June 2020 <a href="https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/select_committees/select-committee-on-the-covid-19-response">https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/select_committees/select-committee-on-the-covid-19-response</a>
<b>South Australia</b>	<a href="#">COVID-19 Response Committee</a> appointed 8 April



# APPENDIX 1: Covid-19 and Renting National Regulation Comparison

	Qld	NSW	VIC	Tas	WA	NT	ACT	SA	Commercial Code
<b>Regulation status</b>	<a href="#">COVID-19 Emergency Response Act 2020 (Qld)</a> (Qld COVID-19 Emergency Response Act), Parts 8 and 9 23 April	<a href="#">Residential Tenancies Regulation 2019 (NSW)</a> , Part 6A. Commenced 15 April	<a href="https://content.legislation.vic.gov.au/sites/default/files/2020-04/20-11aa001%20authorised.pdf">https://content.legislation.vic.gov.au/sites/default/files/2020-04/20-11aa001%20authorised.pdf</a> Commenced 28 April	Commenced 27/3 <a href="#">Residential Tenancy Act 1997 (Tas)</a> (Tas RTA), sections 3A, 38A, 38B, 42, 53 and 56  2/4 <a href="#">Termination notices</a> , 23/4 <a href="#">No rent increases until June 30</a> .	Legislation now passed  <a href="http://bitly.ws/8sPg">http://bitly.ws/8sPg</a>	Legislation <a href="http://bitly.ws/8sPh">http://bitly.ws/8sPh</a>  Still waiting on modification notice to be published. This gives the nuts and bolts of our response.	Enacted 21/4 Effective 22 April <a href="http://bitly.ws/8sPe">http://bitly.ws/8sPe</a>	SA Emergency Response Bill 2020: commenced 9 April <a href="http://bitly.ws/8sPd">http://bitly.ws/8sPd</a>	<a href="http://bitly.ws/8sPc">http://bitly.ws/8sPc</a>  14 principles implemented by each S/T See below for S/T links
<b>Govt info link</b>	<a href="#">Residential HUB</a>	<a href="https://www.fairtrading.nsw.gov.au">https://www.fairtrading.nsw.gov.au</a>	<a href="#">Coronavirus (COVID-19) and your rights</a>	<a href="#">Residential tenancy - Changes to residential tenancies in Tasmania during COVID-19</a>	<a href="#">Residential tenancies - COVID-19 response</a>	<a href="#">Rental changes due to COVID-19</a> Very much initial information at this stage	<a href="https://www.covid19.act.gov.au">https://www.covid19.act.gov.au</a>	<a href="#">Government of South Australia, Consumer and Business Services: Rental advice due to COVID-19.</a>	<a href="#">Coronavirus-information-and-support-for-business/Relief-for-commercial-tenancies</a>
<b>Public info available</b>	<a href="https://tenantsqld.org.au/coronavirus-covid-19-information-2/">https://tenantsqld.org.au/coronavirus-covid-19-information-2/</a>	<a href="https://www.tenants.org.au/blog/renting-and-covid-19-information">https://www.tenants.org.au/blog/renting-and-covid-19-information</a>	<a href="https://www.tenantsvic.org.au/advice/coronavirus-covid-19/#rent">https://www.tenantsvic.org.au/advice/coronavirus-covid-19/#rent</a>	<a href="http://tutas.org.au/faq-covid-19-emergency-bill/">http://tutas.org.au/faq-covid-19-emergency-bill/</a>	We are in process of getting pro bono assistance to draft fact sheets	We haven't had time to draft yet and seeking further clarity.	<a href="http://bitly.ws/8sP8">http://bitly.ws/8sP8</a>	We refer people to the CBS website above and <a href="#">SACAT Fact sheet</a>	n/a
<b>Definition of Covid affected</b>	A tenant or resident suffers excessive hardship because of the COVID-19 emergency if, the person (or someone in their care) suffers from COVID-19, the person is subject to a quarantine direction, the person's place of employment is closed or restricted, the person is self-isolating, a travel restriction prevents the person working or returning home or the COVID-19 emergency prevents the person leaving or returning to Australia; <b>and</b> - the person suffers at least a 25% loss of income or the rent payable under their agreement or - is 30% or more of their income, with additional provisions where there is more than 1 tenant or resident	A household is impacted by COVID-19 if any rent-paying member of the household has lost or reduced their employment or income due to the COVID-19 pandemic (including if they are ill, or another household member or family member is ill, with COVID-19), and as a result the household's weekly income has reduced by at least 25%.	A person is unable to comply with, or it is not reasonably practicable for them to comply with, a term, provision or obligation due to a <b>COVID-19 reason</b> if: • a person is ill (whether or not the illness is COVID-19); • the person is complying with a public authority power or direction or public recommendation from the State or Chief Health Officer related to the COVID-19 pandemic. • doing so will cause severe hardship; or • any exceptional circumstances arise relating to the COVID-19 pandemic			A <b>person</b> is suffering <b>COVID-19 hardship</b> if a government COVID-19 direction causes: • the <b>rent</b> payable under a tenancy agreement to exceed 30% of household income; • the person's health or safety to be at risk; or any of the above hardship being made worse.	<b>if any rent-paying member of the household</b> has lost or reduced their employment or income due to the COVID-19 pandemic (including if they are ill, or another household member or family member is ill, with COVID-19), and as a result the household's weekly <b>income</b> has reduced by at least 25%	Throughout the Act it just refers to a person who is suffering financial hardship as a result of the COVID-19 pandemic.	Applies to all tenancies that are suffering financial stress or hardship as a result of the COVID-19 pandemic as defined by their eligibility for the JobKeeper programme, with an annual turnover of up to \$50 million
<b>Evictions moratorium</b>	Y, only for COVID affected renters in rent arrears	Y	Y	Y	Y	• N, only extension on notice periods	Y	Y	Y
<b>Length of moratorium (incl dates)</b>	29 March to <b>29 September</b> , or last day of the emergency	6 months from 25 March, ie <b>25 Sept.</b>	Cannot be evicted between 29 March and <b>26 Sept</b> for arrears caused by Covid-19 impact	Until <b>June 30</b> - will be reviewed and may be extended.	Emergency period as defined in Act is 30 March until <b>28 Sept 2020</b>	120 days ( <b>July</b> ) for rental arrears evictions, LL & Tenant can apply for Hardship, no time periods.	3 months from 22 April, ( <b>22 July</b> ) can be extended for a period of no more than 3 months	30 March - <b>10 Oct</b>	6 months ( <b>September</b> )
<b>Tenure coverage</b>	General tenancies and rooming	Tenancies and in some cases boarding houses	Tenancies, rooming houses and caravan parks	Residential Tenancies and Boarding Premises	Residential tenancies, residential parks (long-stay) tenants, and 'accommodation agreements' (boarders and lodgers)	Only tenancies under current law, so no Boarders/Lodgers, Caravan Parks. No other occupancies (exception Flinders House for international students)	Tenancies and very limited protections for occupancies (other rentals)	Tenancies and also apply to residential park tenancy agreements, residential park site agreements or residential park agreements under the RPA	Retail, office, industrial.

	Qld	NSW	VIC	Tas	WA	NT	ACT	SA	Commercial Code
<b>Type of evictions prevented during moratorium</b>	<p><b>Dispute resolution process</b> applies where a tenant's non-payment of rent is due to COVID-19 related hardship; and, if the T or R is COVID affected and they want to end the agreement in QCAT for Excessive Hardship – now must go through DR.</p> <p>If the T or R is COVID affected (by definition):</p> <ul style="list-style-type: none"> <li>eviction is prevented for rent arrears; and,</li> <li>if the tenancy ends during the period an extension have to be offered to September 30 unless the T or R wants shorter.</li> <li>A landlord is not prevented from ending a residential tenancy agreement for reasons other than failure to pay rent; or due to a notice to leave, or applying to the tribunal for a termination order, before 29 March 2020</li> <li>New grounds for ending a tenancy (periodic only) for the lessor/family to move in.</li> </ul> <p>If you are not COVID affected (by the definition):</p> <ul style="list-style-type: none"> <li>your tenancy can still be ended without grounds.</li> <li>for failure to pay rent and all other grounds which applied pre COVID.</li> </ul> <p>Whether or not you are COVID affected, your tenancy can now be ended DURING the fixed term if the lessor wants to sell or prepare the property for sale (2 months+).</p>	<p>60 day moratorium on all evictions for COVID affected (lost 25% of income) rent arrears from 15/4/20, ie to <b>June 14,</b></p> <p>After 60 days restrictions remain for 4 months. Then landlord can only evict if demonstrates attempted mediation after negotiations failed &amp; eviction fair and reasonable.</p> <p>LL must give at least 90 days' notice for terminating a F/T at the end of the term, a periodic tenancy, for breach (other than non-payment of rent or charges) or a tenancy of 20 years or more</p> <p>Residents of boarding houses must have 90 days' notice before eviction</p>	<p>Tenants Vic advising tenants to speak to their landlords, try to reach an agreement. Providing sample letters.</p> <p>A landlord or mortgagee for rented premises must not give a tenant a notice to vacate premises in certain circumstances, including for the tenant's damage to the premises, dangerous act or omission, non-payment of rent for at least 14 days or failure to pay the bond.</p> <p>A landlord or mortgagee may apply to the Tribunal for an order to terminate a tenancy agreement or a possession order. The Tribunal may make a termination or possession order if certain circumstances exist to warrant the termination or repossession.</p>	<p>No tenant can be evicted for any reason other than violence or willful damage prior to 30 June 2020.</p> <p>Advising tenants to remedy any breaches that have triggered a notice to vacate for a breach relating to damage, nuisance etc.</p>	<p>Evictions permitted only in certain circumstances:</p> <p>Where tenant is causing serious injury to person or damage to property</p> <p>Where tenant is not paying rent and it is not due to financial hardship caused by economic effects of COVID pandemic</p> <p>Where agreement is frustrated or where landlord facing undue hardship</p> <p>Where agreement is periodic, and landlord has entered into contract of sale for premises</p>	<p>None, only extended time periods, including fixed term (14 days now 60) and periodic (42 days now 60)</p>	<p>Where there is an impacted household LL must not</p> <ul style="list-style-type: none"> <li>Issue termination notice because of rent arrears, or</li> <li>Apply for TPO for rent arrears</li> </ul> <ul style="list-style-type: none"> <li>Applies regardless of when arrears happened and even if notice was given before reg.</li> <li>Notices served are void</li> </ul> <p>If an application was made for TPO ACAT must not make the order until after the moratorium, if TPO was made ACAT may suspend it.</p>	<p>LL unable to evict tenants experiencing financial hardship due to COVID.</p> <p>SACAT will take into account undue hardship to tenants and landlords</p> <p>No legislative clarity on what happens with arrears.</p>	<p>Landlords must not terminate leases due to non-payment of rent during the COVID-19 pandemic period (or reasonable subsequent recovery period)</p>
<b>Ending agreements early</b>	<p>Extreme hardship</p> <ul style="list-style-type: none"> <li>T or R (or all those named on the agreement) have lost 75% of income and</li> </ul>	<p>Only where landlord won't engage in rent reduction negotiations.</p> <p>T must apply to NCAT. T can only be required to pay up to</p>	<p>A tenant must not give a landlord a notice of intention to vacate premises in certain circumstances, unless certain criteria is satisfied.</p>	<p>Tenants can apply to the Residential Tenancy Commissioner to terminate a tenancy due to severe COVID-19 related hardship. Need evidence – e.g proof of</p>	<p>Tenant can give not less than 21 days' notice to terminate PTA or FTA before end date of FTA if experiencing financial hardship as result of</p>	<p>Tenants and Landlords can apply for Hardship – some strict rules and confusing provisions.</p>	<p>No new provisions. Under existing RTA a tenant can apply to Tribunal to terminate for hardship, aside from length of time to go to hearing, it can be up to 8</p>	<p>Tenants or landlords can make an application to terminate a tenancy agreement on the grounds of hardship.</p>	

	Qld	NSW	VIC	Tas	WA	NT	ACT	SA	Commercial Code
	<p>have less than \$5,000 in savings.</p> <ul style="list-style-type: none"> <li>DV makes someone unsafe in the tenancy.</li> </ul> <p>In both cases a f/t can be ended with notice and 1 weeks' compensation. - if T or R is COVID affected by definition and wants to end for EH, they must now go through DR first.</p>	<p>a maximum of 2 weeks rent in compensation. The Tribunal also has discretion not to impose any fee at all.</p>	<p>A tenant is not liable to pay compensation or lease break fees or charges if a tenancy agreement ends early in certain circumstances.</p>	<p>job/income loss, proof don't qualify govt. benefits.</p> <p>Commissioner could still order a tenant to pay some compensation.</p> <p>There is a COVID application to terminate lease due to hardship.</p>	<p>economic effects of covid-19 pandemic</p> <p>Tenant can apply to terminate for undue hardship for other reasons</p>		<p>weeks before end of the agreement.</p>		
<b>Rent – waived, deferred or reduced?</b>	<p>If proof of COVID income reduction, negotiated rent reduction, compulsory conciliation if no agreement. 25% of income will be used as a benchmark</p> <ul style="list-style-type: none"> <li>Up to negotiation. QCAT has must take into consideration the financial and medical effect of the COVID-19 emergency on the applicant and any other party for the application; and the difficulty the applicant and any other party for the application may have in complying with the tribunal's decision</li> </ul>	<p>Tenants and landlords advised to negotiate a reduction.</p> <p>No mandatory code of conduct as with commercial tenancies which sets out principle of proportionality – rent reduced in line with income loss.</p> <p>Fair Trading provides a dispute resolution process if an agreement cannot be reached. No binding decision if an agreement cannot be reached.</p> <p>If a tenant is in arrears and a landlord wishes to terminate the tenancy after 14 June, they are required to try to negotiate a reduction in rent before they can apply to NCAT for this to happen.</p> <p>NCAT cannot set a rent reduction.</p>	<p>“Fast tracked” dispute resolution service for tenants and landlords ‘who struggle to strike a deal’</p> <p>A tenant can apply to the Tribunal for an order to reduce rent, or for a payment plan to pay rent, under a tenancy agreement</p>	<p>TU Tas encouraging tenants to negotiate with LL re rent reduction.</p> <p>Cautioning tenants that the moratorium on evictions is not a rent holiday.</p> <p>Tenants’ Union urging Premier to broaden Mandatory Code for Commercial Tenancies to Residential Tenancies. If broadened, would result in tenants only having to pay rent proportionate to their loss of income.</p>	<p>Tenants and Landlords to enter ‘rent repayment arrangement’ to agree how rent will be paid or repaid after expiry of emergency period</p> <p>If no agreement, mandatory conciliation process through Consumer protection before parties can apply to court</p> <p>No basis for rent to be reduced or waived without agreement (except under normal circumstances)</p>	<p>Renters required to provide proof of hardship, Tribunal has jurisdiction to decide if it cannot be negotiated and this appears (not firm yet) as though it will be through a hardship application. No real guide except rent should not be more than 30% of income broadly.</p> <p>Commissioner of Tenancies (at Consumer Affairs) can issue a ‘Certificate of Hardship’ if evidence is unable to be supplied, evidence broadly letter from employer or confirmation of approval for Cth Jobseeker.</p>	<p>No regulation aside from 3.LL and T can agree in writing on a temporary rent reduction. Parties can agree to extend the period if T continues to suffer financial hardship.</p> <p>It may be for a period beyond the operation of the reg; The reversion to the original rent is not an increase; the amount the reduced by is not arrears or a debt</p> <p>13 May Govt introduced free mediation service. No binding decisions</p> <p>For occupants (not tenants) - where there is a reduced occupancy fee and the period ends this is not an increase and the amount the fee is reduced by under the agreement is not arrears or a debt</p> <p>25% rent reduction = rebates on rates &amp; land tax.</p>	<p>No reference to reduction of rent or what happens with arrears once moratorium is over.</p> <p>SACAT states that it will make orders with payment plans or any order it considers appropriate, and unless ordered otherwise tenants remain responsible to make up the balance at some date in the future.</p> <p>Act says Tribunal cannot order interest to be paid</p>	<ul style="list-style-type: none"> <li>Landlords must offer tenants proportionate reductions as waivers and deferrals during the pandemic period and a subsequent reasonable recovery period.</li> <li>Rental waivers must constitute no less than 50% of the total reduction in rent payable and should constitute a greater proportion of the total reduction in rent payable in cases where failure to do so would compromise the tenant’s capacity to fulfil their ongoing obligations. Regard to the Landlord’s financial ability to provide such additional waivers.</li> <li>Payment of rental deferrals must be amortised over the balance of the lease term and for a period of no less than 24 months,</li> <li><b>Binding mediation</b> - Where landlords and tenants cannot reach agreement, the matter should be referred and subjected (by either party) to applicable state or territory retail/commercial leasing dispute resolution processes for binding mediation. Landlords and tenants must not use mediation processes to prolong or frustrate the facilitation of amicable resolution outcomes.</li> </ul>
<b>Rent increases frozen</b>	Not addressed.	No.	Yes - the landlord is not allowed to increase the rent for six months from 29 March 2020.	No.	No rent increases during emergency period	Not mentioned	LL may not increase the rent for an impacted household for the moratorium period	<p>Rent increases for affected household banned for moratorium period</p> <p>Reference to payments of rent also include payments of amounts relating to water supply and usage.</p>	<ul style="list-style-type: none"> <li>Landlords agree to a freeze on rent increases (except for retail leases based on turnover rent) for the duration of the COVID-19 pandemic and a reasonable subsequent recovery</li> </ul>

	Qld	NSW	VIC	Tas	WA	NT	ACT	SA	Commercial Code
									period, notwithstanding any arrangements between the landlord and the tenant.
<b>Entries/ Access</b>	T and R, if they are a vulnerable person, can refuse entries for non-essential activities like inspections. Entry for smoke detectors, safety switches still allowed. Emergency repairs must still be undertaken but released from routine repairs if specific circumstances prevent them entering.  T/R must undertake virtual inspection if the refuse entry.	NSW govt banned open house inspections.  Strict limits to other inspections must be COVID safe		During the emergency restrictions no general inspections. Entry only for urgent repairs, concern a tenant is ill or injured, a risk to tenant or damage.	No restrictions – government has just announced that re-allowing home opens	Only access for emergency repairs and 2 visits a week for prospective tenants and purchasers. Other provisions of the RTA still in place.	LL may only physically access with T's consent, for urgent repairs or if they have order from ACAT.  Inspections only by audio visual means, no physical access. Non-urgent repairs – within reasonable period with consent of tenant.	Except in exceptional circumstances, inspection of premises may only occur by virtual means.	
<b>Residential tenancy databases</b>	Protection for Ts and Rs who are COVID affected by definition from listing during the emergency for rent arrears and termination.	Restrictions on database listings for COVID-19 affected tenants	Prohibition on listing personal information about a person in a residential tenancy database due to a person's non-payment of rent due to a COVID-19 reason	No practical use of Rental Tenancy Databases in Tasmania	No mention	No listing if COVID or general hardship related.	No listing in relation to rent arrears breach during the moratorium period and if at the time the T was in impacted household.	Not allowed to be listed on RTD any matter relating to failure to pay rent due where tenant is suffering financial hardship due to COVID19, or any other matter SACAT orders not to be recorded	
<b>\$\$s - govt promised relief for landlords</b>	Land tax relief package if they satisfy criteria - <a href="https://www.qld.gov.au/environment/land/tax/covid-19">https://www.qld.gov.au/environment/land/tax/covid-19</a>	No detail re land tax relief for landlords.  Requirement for landlord to enter into negotiations with tenant does not hang on whether or not eligible for land tax relief. Any offer of rent reduction limited to what the landlord receives in relief can't be regarded as fair & reasonable.	Land tax relief for landlords involved in mediation process (\$420 million). If landlord provides tenant with 25% rent relief they will be eligible for 25% reduction on their land tax (while any remaining land tax deferred until Mar 2021)  A new Coronavirus Relief Deputy Commissioner established at State revenue Office to manage initiative.	None yet	Up to \$2000 for four weeks of rent announced Tenant must apply but landlord gets it paid directly to them Parties must be in a rent repayment arrangement Eligibility criteria for tenants to apply	Nil	25% rent reduction = rebates on rates & land tax	24 April - eligible landlords will be offered a 25% reduction on their 2019-20 land tax liability on affected properties.  Landlords would be required to pass on the full benefit of the land tax relief to their tenants impacted by COVID-19 restrictions	
<b>\$\$s - govt promised relief for tenants</b>	Ts have access to a one-off payment of up to 4 weeks rent (maximum of \$2000) available to those affected by the COVID-19 who do not have access to other financial assistance. Applications closed April 27.	Rent Choice Assist COVID-19 Response provides a private rental subsidy for up to twelve months. Applicants must demonstrate they are within the low income limit at time of application and have been impacted by COVID-19, that is: • must not own any assets that can be used to resolve their housing need. must have less than \$3,000 in cash.	\$80million rental assistance for tenants who meet criteria. Grant up to \$2,000 <a href="https://www.housing.vic.gov.au/help-renting/rentrelief">https://www.housing.vic.gov.au/help-renting/rentrelief</a>	On 25 May 2020 Rent Relief Scheme. Up to 4 weeks rent or \$2000.00 (whatever is less) to tenants in financial hardship. To be eligible tenants must: <sup>1</sup> • have experienced 'financial hardship'; • rent is more than 30 per cent of household income; household has less than \$5000 in savings		Nil	Nil	5 June announcement of rent relief - The \$1000 rent relief grants will be provided to landlords of eligible tenants, provided revised rental terms have been agreed that deliver rent relief of at least \$1,000. Applications open late June and close 30 Sept	
<b>Social housing</b>	Protected	•		• No evictions for all tenants including social housing tenants	Covered by moratorium. Unclear whether housing will continue to evict using 3 strikes.	Still waiting on Public Housing to announce their COVID policy, otherwise no change to social housing (except	\$250 payment to all social housing households by June. In addition to \$750 to social security, veteran and other	Will not be evicted	

<sup>1</sup> COVID-19 Rent Relief – Tenants Factsheet. As found at [https://www.communities.tas.gov.au/\\_data/assets/pdf\\_file/0027/89721/V1.2\\_TasGov\\_COVID19\\_Factsheet\\_-Rent-Relief-Tenants\\_D002.pdf](https://www.communities.tas.gov.au/_data/assets/pdf_file/0027/89721/V1.2_TasGov_COVID19_Factsheet_-Rent-Relief-Tenants_D002.pdf) (Accessed 5 June 2020).

	Qld	NSW	VIC	Tas	WA	NT	ACT	SA	Commercial Code
						some are Indigenous specific so restriction to access)	income support recipients and concession card holders		
<b>Other elements</b>	Lessors have extended powers to evict without showing they are COVID affected.		<p>A tenant or landlord is taken to not be in breach of a tenancy agreement if the purported breach is due to a COVID-19 reason.</p> <p>The Tribunal can make an order to reduce the term of a fixed term tenancy agreement and any consequential variations, if the applicant would suffer severe hardship if the term were not reduced.</p> <p>A tenancy agreement does not terminate unless the Tribunal makes a termination order, or it is terminated under certain limited scenarios.</p> <p>Establishment of a residential tenancies dispute resolution scheme</p>					<p>General protection for tenants who breach their residential tenancy agreement when complying with a COVID-19 related law</p> <p>A provision for the South Australian Civil and Administrative Tribunal to consider COVID-19 pandemic-related factors in cases of undue hardship to tenants or landlords and to make appropriate orders.</p> <p>A landlord is not entitled to compensation for non-payment of rent where the tenant is suffering financial hardship due to the COVID-19 pandemic.</p>	<ul style="list-style-type: none"> <li>Landlords and tenants share a common interest in working together</li> <li>Parties required to discuss relevant issues, negotiate appropriate arrangements, and to work towards achieving mutually satisfactory outcomes.</li> <li>Negotiate in good faith.</li> <li>Act in an open, honest and transparent manner, and will each provide sufficient and accurate information within the context of negotiations to achieve outcomes consistent with this Code.</li> <li>Any agreed arrangements will take into account the impact of the COVID-19 pandemic on the tenant, with specific regard to its revenue, expenses, and profitability. Such arrangements will be proportionate and appropriate based on the impact of the COVID-19 pandemic plus a reasonable recovery period.</li> <li>The Parties will assist each other in their respective dealings with other stakeholders</li> </ul> <p>The Parties will take into account the fact that the risk of default on commercial leases is ultimately (and already) borne by the landlord. The landlord must not seek to permanently mitigate this risk in negotiating temporary arrangements envisaged under this Code.</p>
<b>Positive elements</b>	Extension of protections to rooming accommodation residents.	Extra funds for tenancy services		Eligibility for rent relief is not limited to Australian citizens or permanent residents i.e. temporary visa holders may also apply.		RTD, increased penalties for LL breaches (traditionally not imposed)		Includes rooming houses and residential parks	<ul style="list-style-type: none"> <li>Landlords and tenants share a common interest in working together</li> <li>Parties required to discuss relevant issues, negotiate appropriate arrangements, and to work towards achieving mutually satisfactory outcomes.</li> <li>Negotiate in good faith.</li> <li>Act in an open, honest and transparent manner, and will each provide sufficient</li> </ul>
<b>Biggest issues</b>	Lessors have extended powers to evict without showing they are COVID affected and can end a fixed term agreement DURING the agreement. Ts have to proceed	No protection for international students or people facing eviction for reasons other than rent arrears.		What happens at end of COVID-19? Will tenants be required to pay all arrears within 14 days as required by Notice to Vacate?		<ol style="list-style-type: none"> <li>Penalties for misrepresentation.</li> <li>No share house coverage (or boarders or lodgers), so hard if one sharer is in hardship as taken off whole household income.</li> </ol>		Outcomes mainly rely on discretion of SACAT to order as they see fit	<ul style="list-style-type: none"> <li>Negotiate in good faith.</li> <li>Act in an open, honest and transparent manner, and will each provide sufficient</li> </ul>

	Qld	NSW	VIC	Tas	WA	NT	ACT	SA	Commercial Code
	through DR if they want to end the agreement for EH and are COVID affected. Lessors remain able to go directly to QCAT for EH terminations.	Lodgers, people in share houses will find it tricky to access protections Guidelines not clear enough – moratorium measure don't address imbalance of power between tenant & landlord  Very concerned about rent reductions primarily deferral – putting off payment of an accrued debt I				3. Poorly drafted, so weird conditions around fixed to periodic and different treatment. 4. No flexibility for if a tenant wants to agree to things, such as access for normal repairs or renovations. 5. No guidelines for negotiation and no third-party negotiation until Tribunal or anything addressing power imbalance. 6. Huge issue in that tenants must notify within 14 days of knowledge or date of mod notice of Covid hardship – looks like they will lose the extended time periods if they forget this. Generally very confusing!!			and accurate information within the context of negotiations to achieve outcomes consistent with this Code. ● Any agreed arrangements will take into account the impact of the COVID-19 pandemic on the tenant, with specific regard to its revenue, expenses, and profitability. Such arrangements will be proportionate and appropriate based on the impact of the COVID-19 pandemic plus a reasonable recovery period. ● The Parties will assist each other in their respective dealings with other stakeholders ● The Parties will take into account the fact that the risk of default on commercial leases is ultimately (and already) borne by the landlord. The landlord must not seek to permanently mitigate this risk in negotiating temporary arrangements envisaged under this Code.
<b>Parliamentary COVID response inquiries</b>	Public submission deadline is 3 July <a href="https://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDVPC/inquiries/current-inquiries/COVID-19">https://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDVPC/inquiries/current-inquiries/COVID-19</a>	Officials only so far reporting <a href="https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2593#tab-termsreference">https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2593#tab-termsreference</a>	Public subs to 31 July <a href="https://www.parliament.vic.gov.au/paec/inquiries/inquiry/1000">https://www.parliament.vic.gov.au/paec/inquiries/inquiry/1000</a>	Nothing announced <a href="https://www.examiner.com.au/story/6720963/premier-has-no-issue-with-scrutiny-of-covid-19-response/">https://www.examiner.com.au/story/6720963/premier-has-no-issue-with-scrutiny-of-covid-19-response/</a>	Nothing announced	No call for submissions <a href="https://parliament.nt.gov.au/committees/PAC/COVID">https://parliament.nt.gov.au/committees/PAC/COVID</a>	Public submissions. Hearings to 25 June. Committee handed down 2 interim reports, 6 recs relating to specifically to renters. Government response tabled 4 June 2020 <a href="http://bitly.ws/8J7J">http://bitly.ws/8J7J</a>	<a href="#">COVID-19 Response Committee</a> appointed 8 April	

APPENDIX 2: Summary of COVID-19 impacts on renters' housing and state and territory responses



## Australian Capital Territory

Summary provided by: Tenants' Union ACT

The *Residential Tenancies Act 1997* (RTA) was amended in early April 2020 to include new section 156, allowing the Minister to make a declaration in response to the COVID-19 pandemic. On 21/4/2020, the government enacted the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020* (effective from 22/4/2020 for 3 months with the government able to extend for a further 3 months).

### What has the ACT government done?

The legislation places a moratorium on evictions for rent arrears accrued during the moratorium period if the renter meets the definition of an impacted household or became eligible for JobSeeker or JobKeeper after 20/3/20. An impacted household is defined as one where any rent-paying member of the household has stopped earning income or had a reduction in income because they, another household member or a family member for whom the renter cares for, has COVID-19, or because of a law introduced or other measure taken by the Territory, State or Commonwealth in response to the pandemic AND the household's gross weekly incomes has reduced by at least 25%.

The protections include the following:

- A landlord cannot increase the rent for the duration of the moratorium period for impacted households.
- A lessor (or agent) can only physically access a property if the tenant gives consent, to do urgent repairs, or with an order from the ACT Civil and Administrative Tribunal (ACAT).
- Non-urgent repairs normally must be completed within 4 weeks. During the moratorium period, repairs must be undertaken within a reasonable period as agreed with the tenant
- A member of an impacted household cannot ever be put on a database (blacklisted) for arrears accrued during the moratorium period.

In terms of rent relief, the ACT Government has offered lessors a rebate on their land tax and rates. If a lessor chooses to reduce their tenant's rent by at least 25% for up to 6 months, the ACT Government will match 50% of the rent reduction to a maximum of \$2,600 over 6 months.

## How has the ACT Government dropped the ball?

Aside from rent reductions (lessor and renters can negotiate), none of the provisions apply expressly to occupancy agreements. People on occupancy agreements (which include caravan parks, student accommodation, refuges, and private rentals) are some of the most vulnerable renters in the ACT.

The provisions do not address the issue of lessors using other legislative provisions to seek termination (lessor or family member intends to move in, sell or renovate/undertake significant repairs to the property, no-cause eviction). There are no provisions to enable tenants experiencing hardship in fixed-term agreements to end their tenancies early without penalty or without making an application to the ACAT.

Some renters will accrue very large rent arrears. At the end of the moratorium period, there will be nothing to prevent lessors making applications to the ACAT seeking termination of the tenancy (after issuing the relevant notices).

The legislation places an onus on lessors and renters to negotiate. No compulsory mediation/conciliation. After a push by The Greens, the ACT Government announced the Conflict Resolution Service (CRS) would assist renters and lessors with negotiating rent reductions, etc. It is not known how many parties have taken up this opportunity and whether it has been of any assistance. There is nothing in the legislation that compels lessors to negotiate reduced rent. The land tax rebate and other financial assistance offered by the ACT government are wholly inadequate.

Limited public information available. Information on the ACT Government's COVID-19 website demonstrates a poor understanding of the nature of occupancies and the applicability of the *Declaration* to them.

NOTE: the TUACT made submissions to the ACT Government's Select Committee on the COVID-19 Pandemic Response and gave evidence at a hearing. An interim report released 15 May 2020 made the following recommendations in relation to renters:

- **Recommendation 3** - the ACT Government contact all landlords and tenants that have had their email details recorded when a bond was lodged to inform them of the supports available for renters and landlords alike.
- **Recommendation 4** - the ACT Government create and make available a standard terms and rights document for tenants and landlords to assist them in understanding the changes due to COVID-19.

- **Recommendation 5** - the ACT Government establish a tenant transfer system to allow for easier and more convenient change of tenants and retrieval of bonds for members of group houses.
- **Recommendation 6** - the ACT Government develop a framework for the repayment of any rental arrears accrued during the COVID-19 eviction moratorium.
- **Recommendation 7** - the ACT Government develop a plan to prohibit a lessor or grantor from seeking termination solely on the basis of rent arrears during the moratorium.
- **Recommendation 8** - the ACT Government explore a method for renters in fixed-term leases to terminate their tenancies during the COVID-19 pandemic, such as by the same mechanism available to people on periodic tenancies (i.e. 3 weeks' notice).

On 4 June 2020, the ACT Government tabled a response to the interim report. Overall, the response has been disappointing.

- **Recommendation 3** - Agreed
- **Recommendation 4** – Agreed. Whilst the ACT Government agreed to this recommendation, it should be noted that it referred to the current information on the ACT's COVID-19 website. This is not a standard terms and rights document and the factsheet available for renters is much less detailed.
- **Recommendation 5** – Agreed in principle. The ACT Government introduced a bill in early 2020 that will change how share housing arrangements are managed.
- **Recommendation 6** – Noted. The ACT Government is considering measures to support tenants to manage the repayment of any rental arrears accrued during the moratorium. No further detail supplied.
- **Recommendation 7** – Noted. The protections cover only COVID-19 impacted tenants, not those with capacity to pay who may accrue arrears during the COVID-19 Emergency. Although the current declaration is for three months, the Government has committed to a six-month moratorium. The Government will continue to monitor the situation which could include extending the current declaration to further support Canberrans who have been adversely impacted by the COVID-19 pandemic. This response appears to misapprehend (or ignore) the issues that will be faced by impacted renters after the moratorium ends.
- **Recommendation 8** – Noted. The Government will continue to monitor the situation to determine whether additional regulations are required to provide more support for tenants and landlords throughout the course of the COVID-19 emergency declaration. Further information is available on Dispute resolution for residential tenants and landlords, and the Conflict Resolution Service now providing mediation for residential tenants and landlords. Again, this response suggests the ACT Government does not understand the issue facing renters.

## What is happening in practice?

Unfortunately, following defunding of the TUACTION, it is very difficult for us to gauge exactly what is happening in practice as we are no longer providing advice and assistance to renters. We understand the following issues have emerged:

- landlords being unwilling to negotiate rent reductions (in part because of the impact on landlord insurance and their ability to make a claim)
- agents requesting renters provide detailed information about their financial circumstances (beyond what the ACT Government indicated should be required)
- lessors seeking termination for reasons other than rent arrears (may or may not be an impacted household)
- agents suggesting renters access their superannuation, agents requesting access to the property for reasons such as showing prospective purchasers (renters not aware of their rights in relation to limiting access)
- renters feeling like they cannot assert their rights re no access or agents ensuring appropriate hygiene protocols are met (fear of retaliation)
- renters feeling there is inadequate information available and relying on the document produced by the TUACTION and published on our website (an unfunded organisation providing the most comprehensive information to renters).

The TUACTION has written to the ACT Government requesting we continue to be considered a stakeholder and consulted in relation to legislative reform (the COVID-19 legislation might have been more favourable for renters had that occurred).

## New South Wales

### Summary provided by Tenants' Union NSW

#### Tenants' Union NSW

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in residential tenancy law and policy, and the main resourcing body for the statewide network of Tenants' Advice and Advocacy Services (TAASs) in New South Wales.

### Protections implemented via the NSW Evictions Moratorium

The implementation of the Evictions Moratorium in NSW via the Residential Tenancies Amendment (COVID-19 Regulation 2020) provided a 60 day stop and further 6 month restrictions on evictions for rental arrears where the tenant has been impacted by COVID-19. The stop took effect from 15th April and is in place for 60 days from then – until 13th June. After the 60 day stop lifts (from 14<sup>th</sup> June), the restrictions that follow require a landlord applying to evict for rental arrears to demonstrate they have first attempted to negotiate with the tenant in 'good faith'. The NSW Civil and Administrative Tribunal (the Tribunal) can then only order an eviction where they determine an eviction would be fair and reasonable in the specific circumstances, considering a range of factors including the nature of any rent reduction negotiations entered into, the financial positions of both parties, whether the tenant has alternative accommodation, and public health objectives. The restrictions remain in place for 6 months after the commencement of the regulation.

Tenants were considered to be impacted and therefore covered by the moratorium if they met the following eligibility criteria:

A renting household must be able to demonstrate any 1 or more rent paying members of the household have:

- lost employment or income as a result of the impact of the COVID-19 pandemic, or had a reduction in work hours or income as a result of the impact of the COVID-19 pandemic, or
- had to stop working, or materially reduce the member's work hours, because of – the member's illness with COVID-19, or another member of the household's illness with COVID-19, or the member's carer responsibilities for a family member ill with COVID-19

*and as a result of the above factors*

- the weekly household income for the household has been reduced by at least 25% compared to the weekly household income for the household before the occurrence of any of the matters

The 25% reduction in household income is assessed on income after tax, and is assessed on total household income - not just any one individual in the household. This includes any government assistance, such as the new job keeper payments. The 'household' is understood to be everyone living in the home contributing to rent, not just those listed on the tenancy agreement.

A number of other measures were also implemented to support renters. These included further protections for impacted tenants against blacklisting, the extension of notice periods for some other evictions, additional resourcing of Fair Trading and the NSW Civil and Administrative Tribunal, and a one off funding boost for tenant advocacy services.

In addition, land tax relief of up to 25% is being provided to landlords who pass on this discount as a rent reduction (waiver) to impacted tenants.

## Forced moves: evictions

### 'Renters in hardship prior to the COVID-19 health crisis'

The Evictions Moratorium in NSW as currently implemented does not protect against eviction for a range of vulnerable renters who are evicted for reasons other than rental arrears, for example people who receive 'no grounds' evictions. Many vulnerable tenants were experiencing hardship before the health crisis. Renters on very low incomes may not qualify for protections because their income may not have reduced by the 25 per cent required, but nonetheless be experiencing significant hardship because of the relative impact on their household budget of even a modest income reduction.

### Use of 'no grounds' evictions (s84, 85) as a loophole

The moratorium does not provide protection from evictions for 'no grounds'. The notice period for ending a fixed term tenancy ('no grounds' evictions under s84) has been extended to 90 days in line with 'no grounds' evictions (under section 85). We are already aware in NSW some landlords have served 'no grounds' after 15 April to tenants who had been seeking a rent reduction. We are very concerned these landlords are making use of 'no grounds' evictions as a loophole, to evade the requirement to enter into 'good faith' negotiations on rent reduction.

## Evictions in social housing

Tenants in social housing are exempt from the current Evictions Moratorium protections. We are aware that despite a commitment from most social housing providers to proceed with evictions only as a last resort that tenant advocates are continuing to assist tenants facing eviction during the crisis for non-serious issues. These tenants will end up homeless with their health and safety at risk.

## Lack of protections for lodgers, including many renters in share housing

People in share housing are also finding it tricky to access protections. Many remain excluded from coverage of any tenancy legislation and they, along with other lodgers, are not provided any protection under the moratorium. These renters, always vulnerable, and often in this form of accommodation because they cannot afford anything else, are even more at risk of eviction during this period. Another particularly vulnerable group here is international students who have lost casual employment but ineligible for the Commonwealth Government's income support.

## Forced moves: Tenants forced to leave

### Uncertainty about rent reduction negotiations framework (process and outcomes)

In NSW the rent reduction negotiation framework fails to adequately address the imbalance of power between tenant and landlord in negotiations. Tenants and landlords come to the table with very different negotiating power, but given the lack of clarity regarding what might be considered a 'fair and reasonable' offer they are also bringing very different expectations.

The National Cabinet released a Mandatory Code of Conduct for negotiations between commercial tenants and landlords. It includes principles including the need to provide rent reductions in line with income reductions, a requirement that reductions are minimum 50 per cent waiver, and minimum timeframes for payment of any deferred rent. There is no equivalent guidance for residential tenancies, only a requirement for parties to negotiate in good faith and then attempt dispute resolution with Fair Trading before the landlord pursues an eviction at the Tribunal.

Local Tenants' Advice and Advocacy Services in NSW report that in a significant number (if not most) of the rent reduction matters they have provided assistance for during the crisis, landlords have responded in one of two key ways:

- refusing an initial request by tenant to reduce rent or significantly delaying any response to the tenant's request, and/or

- offering a reduction but insisting this all be repaid at a later date (i.e. any reduction is offered as 100% deferral of any unpaid rent, no temporary waiver offered).

Landlords often resist further discussion after an initial offer has been made, and tenants' requests for information about their landlords' financial situation (as per 'good faith' negotiations) are being ignored.

We expect high numbers of matters will not be resolved at the informal or formally mediated stage (that is, through the Fair Trading Dispute Resolution Process). Many matters may continue through to the NSW Civil and Administrative Tribunal (the Tribunal), clogging up the Tribunal at a time when it is least able to handle a significant increase in applications. We are concerned that in a significant number of cases the delays and failure at the negotiation stage will force tenants to leave their tenancy and their homes. Many tenants will be forced to leave because of concerns their landlord will not engage any further and/or they will not successfully negotiate an adequate enough reduction in rent to avoid unmanageable debt and eviction once the moratorium lifts.

### No binding arbitration regards rent reduction

The current framework encouraging rent reduction negotiations in practice is not binding. While it protects a tenant from eviction if the landlord applies to the Tribunal and the eviction is not found to be fair and reasonable in the circumstances, the Tribunal even at this point has no power to apply a fair rent reduction with an appropriate mix of waiver and deferral components. This allows the tenant to stay in the tenancy but they will likely be accruing a substantial debt. Many will be forced to leave in these circumstances.

A concerning number of tenants are reporting their landlords are 'stonewalling' or delaying responding to a tenants' request for a rent reduction. Some are responding to requests to negotiate by suggesting tenants 'just pay what they can, we'll sort it out later', while being explicit any unpaid rent will accrue as arrears to be paid back at a later date. These responses suggest that a significant number of landlords are seemingly happy to wait until they are able to evict once the moratorium lifts and are confident they will be able to collect any unpaid rent (or any deferred rent) as a debt at that point.

Even where a landlord has engaged in a limited fashion with rent reduction negotiations and then applies for eviction, and where the Tribunal then refuses to evict because they determine the landlord has not negotiated in 'good faith', the Tribunal has no power to apply a 'fair and reasonable' rent reduction. The rent will remain unchanged.



## Impacted tenants can still face significant penalties for ending lease early

Many renters impacted by COVID-19 - those impacted financially as per current eligibility, but also those renters, for example international students, who haven't been able to travel back to Australia or have been told to return overseas - have been forced to break their leases early. Tenants who can no longer afford to pay their rent and want to break their lease to return to their home country or live with their parents for example, have incurred hefty penalties if their lease began before fairer provisions were introduced in March.

When the moratorium in NSW was first implemented no provisions were introduced to allow impacted tenants to end a fixed term lease more easily. Already existing provisions allowing tenants to apply to the Tribunal to terminate their agreement for hardship (s104) are not practically useful in these instances, especially given the wait of 6 weeks and up to 8 weeks for a scheduled telephone hearing. It is also not entirely clear how the Tribunal will consider these applications.

Responding to this situation the NSW Government introduced a further amendment that allowed that where rent reduction negotiations have failed because the landlord won't engage properly impacted tenants can end their fixed term tenancy early with reduced penalties. They are now able to apply to the Tribunal to end the tenancy, and only be required to pay up to a maximum of 2 weeks break fee (or compensation) in this circumstance. The Tribunal also has discretion not to impose any fee at all.

This may in some instances reduce the penalty tenants forced to leave will face if they need to break their lease early. Though the wait time for a scheduled hearing, along with the wait time for formal mediation via Fair Trading, may make this provision somewhat redundant. However we hope the provision may encourage reluctant landlords to engage more fully and in 'good faith' when their tenants initiate rent reduction negotiations.

## Rent relief measures

### Land Tax Relief

In NSW land tax relief is provided to the landlord with a waiver of up to 25% on their land tax where a landlord reduces rent (in the form of waiver) for an impacted tenant. However only a relatively small proportion of landlords in NSW (approximately 16%) are required to pay land tax. As a result many renters will have landlords who will not benefit from the proposed land tax relief; this is especially true for low and very low income tenants. However, not receiving relief in this way does not release a landlord from a requirement to enter into rent reduction negotiations with impacted tenants.

We are aware many landlords are reporting to agents and their tenants they are not able to reduce rent or alternatively provide any reduction in rent except as deferral, because they will not be able to successfully make a claim on a landlord insurance policy for any loss resulting from their offer to reduce rent as a waiver.

Without further relief for tenants and landlords we remain concerned that most tenants, even those able to access the dispute resolution process via Fair Trading, will not successfully be able to negotiate a reduction in rent that will keep them out of rental stress and/or poverty. We are concerned many renters will only be offered inadequate reductions, and are particularly concerned agents and landlords will continue to offer rent reductions as deferrals only.

### Rent Choice Assist COVID-19 Response

The Department of Communities and Justice (DCJ Housing) has provided assistance for people who are homeless or at risk of homelessness in the private rental market during COVID-19 via '[Rent Choice Assist COVID-19 Response](#)'. The period of assistance is 6 months, but with the possibility of extending this to twelve months. It takes the form of a subsidy. This is calculated as the difference between a reasonable market rent and 25% of the client's current gross assessable household income (including 100% of their Commonwealth Rent Assistance entitlement, if applicable). More details can be found [here](#).

The 'Rent Choice Assist COVID-19 Response' is a very positive response to tenants struggling during the COVID-19 crisis. It ensures rent is affordable for the tenant, and eligibility is based on a '[low income](#)' band which has a higher cut off than for social housing. Unfortunately funding for the product may already or very shortly be exhausted. We are unsure if further funding will be provided.

### Rent Relief Scheme

In mid May the NSW Parliament recommended a Rent Relief Scheme be established to provide up to \$2,500 compensation for landlords who face financial hardship directly or indirectly as a result of COVID-19. Any compensation the landlord receives would be required to pass this on to their tenants as a rent reduction. To be eligible landlords would be required to demonstrate their tenant:

- Has suffered a loss of 25% or more of their income
- Has less than \$5000 in savings
- Is paying more than 30% of their income in rent to the landlord

The bill suggested the government could fund the scheme from the Property Services Compensation Fund. That Fund is funded by the Property Services Interest Account which

holds the interest earned on rent and deposits held in agency trust accounts. This interest is also used for purposes related to housing, like partly subsidising the Tribunal's operational costs.

The NSW Government is presently assessing Parliament's recommendation.

## Limits on rent increases during health crisis

An omission in the current measures is an element addressing the issue of rent increases. By including a freeze on rent increases for the duration of the pandemic and a reasonable subsequent recovery period in the National Code, the National Cabinet recognised it as an important tool to lessen the financial burden on tenants during this crisis.

For lower income households just managing their rent payments the imposition of an increase can lead to financial hardship that may have otherwise been avoided. While it may seem unpalatable that at a time when the focus is on providing rent reductions and sharing the burden, there are landlords increasing the rent. Tenants' Advice and Advocacy Services have seen examples of this occurring.

While the Residential Tenancies Act 2010 does currently provide a mechanism for tenants to apply to the Tribunal for a review of the increase, when making its determination the Tribunal cannot consider a tenant's income or whether they can afford the increase.

## Northern Territory

Summary provided by Darwin Community Legal Service (DCLS)

### Darwin Community Legal Service (DCLS)

DCLS is a multi-disciplinary organisation offering legal assistance and advocacy through our Tenancy Advice Service (TAS), General Legal Service and our specialised Seniors and Disability Rights Service.

TAS provides legal advice, representation and information to NT tenants including those renting privately, in public housing, caravan parks, boarding and share houses. We advocate for change that promotes fairness and security in the areas of housing and tenancy.

### Summary of the NT's COVID-19 response regarding residential tenancies

The Tenancies Legislation Amendments Act 2020 (NT) came into force on 24 April 2020 and gives the Minister for Attorney General and Justice broad powers to make amendments to the Residential Tenancies Act 1999 (NT) for the duration of emergency period. The Territory's COVID-19 tenancy measures were introduced by Gazette notice ('the Modification Notice') on 28 April 2020.<sup>13</sup>

Due to the Territory's Constitutional constraints, the Modification Notice was drafted in a way that distinguishes between 'new' tenancies and 'existing' tenancies and provides different processes depending on this categorisation.<sup>14</sup> While we appreciate the reason for this, the complexity of the provisions make it highly inaccessible for tenants seeking to inform themselves of their modified rights and obligations. As the provisions were not subject to the usual legislative process, there was no second reading speech or explanatory statement to assist in the interpretation of provisions of the Modification Notice. The implementation of the NT COVID-19 tenancy measures was heavily criticised in Parliament due to the lack of scrutiny and transparency.<sup>15</sup>

The measures unfortunately came too late to benefit many renters affected by COVID-19 and the delay resulted in widespread uncertainty, particularly after the Prime Minister announced

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<sup>13</sup> Attorney-General and Minister for Justice (NT), 'Residential Tenancies COVID-19 Modification Notice 2020' in Northern Territory, *Northern Territory of Australia Government Gazette* No. S28, 28 April 2020.

<sup>14</sup> 'Existing' tenancies are fixed term tenancies that are existing on the Gazette date. 'New' tenancies are fixed term tenancies entered into after the Gazette date, as well as all periodic tenancies. See *ibid* ss 17, 18.

<sup>15</sup> Northern Territory of Australia, *Parliamentary Debates*, Legislative Assembly, 24 April 2020.

the six month moratorium on evictions on 29 March 2020. Mixed messaging resulted in some tenants assuming they would not be evicted, and, with the added confusion of Tribunal restrictions on listings and physical attendance, some tenants did not appear at their Tribunal hearings where termination orders were made.

Our service has received a large influx of enquires from anxious tenants, both before and after the measures can into effect on 28 April 2020.

It should also be noted that at the time of writing, the Department of Local Government, Housing and Community Development has still not released its COVID-19 policy, resulting in uncertainty for public housing tenants and service providers.

The majority of protective measures only apply to tenants who meet the definition of COVID-19 hardship and have notified their landlord of their hardship prior to a breach notice being issued. The definition is a high bar, a Government COVID-19 direction must directly or indirectly result in (a) the rent payable by a person exceeds 30% of gross household income; (b) a risk to physical, mental or psychological health or safety, or (c) one of the hardships referred to in (a) or (b) is made worse.<sup>16</sup> This definition does contemplate those in share houses or other arrangements where tenants do not share finances. The rent payable by a person may be a portion of the total rent, but that portion must exceed 30% of the total household income before tax. The measures would have wider reach if the definition contemplated a percentage reduction of a person's income. Further, some of our clients report landlords not accepting their COVID-19 hardship, resulting in further uncertainty around whether they will be covered under the provisions.

The measures do not provide any protection for those in occupancy arrangements or other agreements excluded under the Residential Tenancies Act 1999 (NT).<sup>17</sup>

## Evictions

### Evictions for rent arrears

The NT COVID-19 measures do not prevent evictions for rent arrears, however, where a tenant meets the definition of COVID-19 hardship and has notified their landlord, the eviction process is extended (60 days before a breach notice can be issued, and a further 60 days for the breach to be rectified).<sup>18</sup> Depending on the type of tenancy, the Tribunal has options that

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<sup>16</sup> Residential Tenancies COVID-19 Modification Notice 2020 (n11) s 5.

<sup>17</sup> Residential Tenancies Act 1999 (NT) s6.

<sup>18</sup> Residential Tenancies COVID-19 Modification Notice 2020 (n 11) ss 23, 26.

would not result in immediate eviction (such as creating a new six month tenancy on varied terms or suspending the order for possession for six months).<sup>19</sup>

While the extended time frames for rent arrears provide some reassurance to tenants in the NT, the majority of our clients are concerned about accruing large debts, having court orders against them, the effect it would have on their tenancy references and their ability to obtain a subsequent tenancy when they are eventually evicted or their tenancy is otherwise terminated. In our experience tenants are instead choosing to apply to the Tribunal to terminate their tenancy early on the basis of hardship.<sup>20</sup>

It is also worth noting that the notice periods for 'no cause' evictions (discussed below) are shorter than the process for termination on the basis of rent arrears, so this is a quicker and simpler option for landlords who want to evict a tenant who is not able to pay their rent.

If the tenant has not notified the landlord of COVID-19 hardship prior to a breach notice being issued, the usual process for termination for rent arrears applies (breach notice issued can be issued when the tenant is 14 days in arrears, and the tenant has 7 days to rectify the breach).<sup>21</sup>

### 'No cause' evictions

Tenants can still be evicted without reason, however the notice periods have been extended (from 14 to 60 days for fixed term tenancies, and from 42 to 60 days for period tenancies).<sup>22</sup>

Unlike other provisions in the Modification Notice, the extended notice periods for 'no-cause' evictions apply to all tenancies which is beneficial in that it provides clarity for both tenants and landlords. It should be noted that the NT has the shortest notice periods for 'no-cause' evictions in Australia, so while these temporary extensions are an improvement, they are still shorter than the normal statutory notice requirements in many jurisdictions.<sup>23</sup>

A tenant who has been issued a 'no cause' termination notice can arguably apply to the Tribunal for an order creating a new tenancy of up to 6 months, but only if the tenant is in a 'new' tenancy, meets the criteria for COVID-19 hardship, and has taken reasonable steps mitigate and the hardship with their landlord.

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<sup>19</sup> Ibid ss29, 31.

<sup>20</sup> Ibid, s 28; Residential Tenancies Act 1999 (NT) s 99.

<sup>21</sup> Residential Tenancies Act 1999 (NT) s 96A.

<sup>22</sup> Residential Tenancies COVID-19 Modification Notice 2020 (n11) ss 19, 20; Residential Tenancies Act 1999 (NT) ss 89, 90.

<sup>23</sup> Australian Government Productivity Commission, 'Vulnerable Private Renters: Evidence and Options', Commission Research Paper', September 2019, p 13.

The law in relation to termination for any other reason remains unchanged.

## Rent reduction frameworks

Legislative guidance and incentives for landlords to agree to rent reductions in the NT is limited. There is a requirement that a landlord and tenant to engage in 'good faith efforts' to resolve a breach for rental arrears, however this only applies to 'new' tenancies and only after a landlord has issued a breach notice because the tenant is more than 60 days in arrears.<sup>24</sup> At this point a tenant is already in significant debt and a rent reduction may have little value. What constitutes 'good faith efforts' is unclear, and there is no requirement for a landlord to provide evidence or reasons to the tenant as to why a rent reduction cannot be offered (noting that tenants are required to provide financial evidence). Many tenants are offered rent deferrals, rather than reductions, which means they still accrue debt, many with no foreseeable way of repaying their accruing debt.

Tenants in 'new' tenancies who meet the criteria for COVID-19 hardship are able to apply to the Tribunal for an order creating a new fixed term tenancy of up to six months 'on conditions that could legally be agreed to between the parties' including a reduction of the rent payable.<sup>25</sup>

Tenants in 'existing' tenancies suffering COVID-19 hardship do not have any recourse if their landlord does not agree to a rent reduction. Tenants who are suffering COVID-19 hardship but do meet the definition of COVID-19 hardship (for example if they are in a share house arrangement) also have no legislative recourse.<sup>26</sup>

Some landlords are concerned that they will not be able to fill their property if their tenant moves out, and if they do they will need to market it at a lower rate to reflect the state of the economy. This is a natural incentive for landlords to offer a rent reduction, however it is often on the condition that a tenant sign a further fixed term lease. We are not aware of any other incentives for residential landlords to offer rent reductions. This is disappointing as the Federal and NT governments have offered significant incentives for commercial landlords who offer rent reductions.

Where a rent reduction is refused, we are sometimes advised that it is because reductions in rent are not covered by the landlord's insurance, or it would not cover the landlord's mortgage repayments. It would be beneficial if banks and insurers were able (or required) to assist landlords in this regard.

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<sup>24</sup> Residential Tenancies COVID-19 Modification Notice 2020 (n11) s 26.

<sup>25</sup> Ibid s 29.

<sup>26</sup> Other than under the existing section 42 of the Residential Tenancies Act 1999 (NT) which allows the Tribunal to declare the rent excessive having regard to the general level of rent for comparable premises.

The COVID-19 tenancy measures in the NT do not address rent increases during the emergency period, however, existing legislation suggests a landlord would likely need to wait six months from the date a tenancy was deemed to be 'new'.<sup>27</sup> 'Existing' tenancies can still be subject to rent increases.<sup>28</sup> A suspension on rent increases would be appropriate and beneficial, however our service has only had one client report a rental increase during the emergency period.

## Ability to end tenancies without penalty

The Residential Tenancies Act has an existing provision which allows tenants to apply to terminate their tenancy early on the basis of undue hardship,<sup>29</sup> however this has been interpreted by the Tribunal to exclude termination on the basis of financial hardship alone.<sup>30</sup> The Modification Notice amends this section by specifying that undue hardship includes financial hardship, as well as 'a risk to physical, psychological or mental health and safety'. A 'risk of domestic or family violence' is also provided as an example which provides further clarity.<sup>31</sup>

We welcome the expansion of this provision and encourage consideration of its permanent implementation. It has been arguably the most effective provision for our COVID-19 affected clients, providing an avenue by which they can be released from financially unsustainable agreements.

## Rent relief & assistance

The Territory Government introduced the Worker and Wellbeing Fund, which provides assistance to Territorians affected by COVID-19 who are not eligible for other government financial support, such as Centrelink benefits. This is a positive measure that provides some much needed rent assistance to particularly vulnerable groups, such as international students and temporary visa holders.

Other tenants are not covered under the Fund, and we are not aware of any other rental relief available to renters in the Northern Territory. This is disappointing in light of the Federal and NT assistance packages available to commercial tenants.

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<sup>27</sup> Residential Tenancies Act 1999 (NT) s 41.

<sup>28</sup> Ibid.

<sup>29</sup> Residential Tenancies Act 1999 (NT) s 99.

<sup>30</sup> See *Nsimire v Vailis & Biringanine* [2017] NTCAT 89 at [28].

<sup>31</sup> Residential Tenancies COVID-19 Modification Notice 2020 (n11) s 28.



## Queensland

### Summary provided by Tenants' Queensland

#### Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020

Following passage of the *COVID-19 Emergency Response Act 2020*, the Queensland Government has implemented measures to respond to COVID in the residential tenancies market through the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*. These changes covered, almost equivalently, general tenancies - such as houses, units and caravans – and rooming accommodation – such as residents in boarding houses and other room only lettings.

Most changes commenced on 24 April 2020 when the regulations were made, however the moratorium on evictions for tenants and residents suffering excessive hardship because of the COVID-19 emergency applied retrospectively to 29 March. The following is a summary of Queensland's changes.

#### Overview of protections

Protections provided for all tenancies and rooming accommodation included measures:

- Allowing tenants and residents to end their fixed term agreement with capped lease break costs (one week) when:
  - their income has reduced by at least 75% and they have savings less than \$5,000 (income loss and savings include all named on the lease);
  - or,
  - they can no longer safely occupy the premises due to domestic violence.
- Allowing vulnerable tenants and residents to refuse physical entry for non-essential reasons, whilst including an obligation for them to facilitate virtual inspections if a physical one cannot take place.
- Relaxing owner obligations for routine repairs and inspections while maintaining regulatory obligations that ensure tenant and resident safety continue to apply.
- Giving landlords and providers new powers to end fixed term tenancies during the lease if they wish to prepare the property for sale, (whether or not either party is in 'COVID hardship').

- Retaining the ability for landlords and providers to apply directly to the Tribunal to end a lease early for hardship (i.e. conciliation is not required).

In addition when tenants and residents meet a prescribed threshold of 'COVID excessive hardship' protections introduced under the moratorium:

- Require the parties to undertake conciliation:
  - to resolve disputes (including rent arrears, reductions, deferrals); and,
  - if the tenant or resident wants to end their lease in the Tribunal for hardship (which imposes an additional step for them).
- Protect tenants and residents from eviction and tenancy database listings due to rent arrears caused by being in 'COVID-19 excessive hardship'.
- Prevent the use of without ground notices to leave by landlords and providers, extend fixed term tenancies due to expire during the COVID-19 emergency to at least 30 September 2020 unless the tenant requests a shorter term.
- Require landlords and providers to end leases only with approved reasons.

## Assessment of the Queensland COVID changes

There are positive aspects of the Queensland COVID protections including that most extend to people living in rooming accommodation, entries can be refused (with some exceptions) where tenants and residents are immune-compromised, and protections from eviction and database listings for COVID-related rent arrears.

However, there are gaps and significant inequities in the rules.

### Leaving renters to negotiate rent arrears, reductions and ending agreements

Some renters experiencing rent cost issues are able to negotiate reasonable outcomes with their landlord without government intervention, and the COVID response framework is irrelevant where equitable agreements can be reached between the parties. It's where landlords and agents are unwilling to negotiate in good faith to achieve sustainable and fair outcomes that renters must rely on the government determined processes. However, when those processes have negotiation as the central tenement, unless there is a guiding and enforceable formula for rent disputes, the power imbalance favours landlords.

For example, whilst there is a relatively high resolution rate for Residential Tenancies Authority (RTA) dispute resolution requests (83% as at May 22), outcomes for renters are unknown since a successful outcome for the RTA is simply an agreed outcome. The resolution rate provides no insight into the substance or fairness of the outcome.

For this reason, Tenants' Queensland is concerned that many of these 'resolved' RTA negotiations may involve rent deferrals rather than genuine rent reductions (with no requirement to pay the amount of rent reduction back). This may result in mounting debts, eventual eviction and long term poverty.

In short, relying on negotiation is ineffective for rents because of the inherent imbalance of power between the parties, including the power for the landlord to evict.

An enforceable formula for rent reduction disputes – e.g. 30% of income as rent for proven income loss, or a sliding scale for rent reduction - would incentivize parties and increase the efficiency of negotiate processes.

### Lack of public health focus

The Queensland COVID changes don't focus enough on the public health issue i.e. reducing unnecessary moves, and make renters' housing even more insecure because they:

- Continue to allow evictions without any grounds if you don't fit the 'COVID excessive hardship' criteria
- Introduce a new ground for landlords to end a tenancy, including one new ground allowing the landlord to end the tenancy before the fixed term agreement ends. Landlords are not required to show they are in COVID hardship in order to use these new provisions. The new grounds include: the landlord intends to prepare the property for sale; and, the landlord or their family need to move in.

### Lack of balance

The introduction of new grounds to end tenancies lacks balance. In addition to the new grounds, landlords remain able to go directly to the Tribunal to end an agreement on grounds of excessive hardship (COVID affected or not). This contradicts the processes for COVID impacted tenants who must proceed through conciliation prior to a hearing for an excessive hardship termination or a rent reduction hearing.

The introduction of an additional step in the process of resolving urgent disputes puts renters at risk of spiraling debts.

### Criterion for ending the tenancy is too tight

The need to move out has been clear to many tenants e.g. those who lost either job overnight or were told to go home by the government. Whilst the Queensland changes allowed tenants

to end their fixed term agreement with one week's compensation, the criterion is so tight few are able to meet the criteria. This can leave them in protracted disputes with mounting arrears.

## Conclusion

Early acknowledgement of the impact of COVID-19 on residential renters was positive as it raised and confirmed the importance of responding. However the delay by National Cabinet in progressing any details of the evictions moratorium created confusion and raised anxiety levels particularly for impacted renters. Expectations were raised that additional announcements would further direct responses for residential renters but these were not realised.

The mandatory conciliation framework for commercial renters was positive and could have been applied or modified for application to residential renters. It was a lost opportunity by the National Cabinet not to provide a direction for residential renters. This has created inequities across the country for tenants.

Further action to require banks to defer interest payments for hardship cases with the possibility of disallowing interest capitalisation in these instances, would have solved many issues regarding reductions. Guidance from the Australian Government regards insurers' claim settlement practice where landlords reduced rents for impacted residential tenants could have similarly assisted.

## South Australia

The South Australia Emergency response Bill commenced 9 April, modifying the Residential Tenancies Act 1995. Modifications affected residential tenancies, residential parks and supported residential facilities. Changes are to stay in effect for 6 months and are limited to residential tenancies and residential parks agreements, with some changes for supported residential facilities

### Issues arising and responses

#### Evictions

A landlord is unable to evict tenants for rent arrears if they are experiencing financial hardship due to COVID. A number of gaps have emerged relating to the protections provided:

- No legislative clarity on what happens with rent arrears
- Problems with response - tenants in financial hardship can still be evicted if there are other grounds, or no grounds
- Issue of tenants being evicted if they do not fit within the definition of being impacted by COVID

#### Rent reduction negotiation framework

No framework provided, no mediation service. No legislative clarity on what happens with arrears. No reference to reduction of rent or what happens with arrears once moratorium is over.

Advice states that landlords and tenants should try to negotiate and agree on rent, but if they are unable to come to an agreement an application can be made to SACAT who can make any order it deems appropriate on the basis of financial hardship. SACAT states that it will make orders with payment plans or any order it considers appropriate, and unless ordered otherwise tenants remain responsible to make up the balance at some date in the future. The Act provides that the Tribunal cannot order interest to be paid.

#### Protections against blacklisting

The protections introduced disallowed the listing on residential tenancy databases any matter relating to failure to pay rent due where tenant is suffering financial hardship due to COVID19, or any other matter SACAT orders not to be recorded.

## Ability to end tenancies without penalty

Tenants or landlords can make an application to terminate a tenancy agreement on the grounds of hardship. No specific change except that Tribunal can order that specified costs associated with the termination of a residential tenancy agreement be reduced or waived.

## Rent relief assistance

On 5 June the South Australian government announced a rent relief package. The \$1000 rent relief grants will be provided to landlords of eligible tenants, provided revised rental terms have been agreed that deliver rent relief of at least \$1,000. Applications open late June and will close 30 Sept.

## Other renting issues

A restriction on rent increases was introduced. Rent increases for affected households are banned for the moratorium period. Reference to payments of rent also include payments of amounts relating to water supply and usage.

In relation to access of premises except in exceptional circumstances, inspection of premises may only occur by virtual means during the pandemic.

## Tasmania

Summary provided by Tenants' Union of Tasmania

### Residential Tenancy in Tasmania and COVID-19

#### COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020

On 25 March 2020 the Premier, the Honourable Peter Gutwein MP tabled the COVID-19 Disease Emergency (Miscellaneous Provisions) Bill 2020 in the House of Assembly. The significance of the Bill was noted in his second reading speech in which he observed:<sup>32</sup>

The Bill I am introducing today is essential to support the continuity of government services, and key regulatory functions, during what is likely to be a period of significant social and economic upheaval for all Tasmanians.

After unanimous support from both the House of Assembly and the Legislative Council, the COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 ('the Act') became law and took effect on 27 March 2020.

#### Evictions

On Friday 3rd April 2020 the Premier declared that no residential tenant could be evicted within the emergency period. The only exceptions were in circumstances where:<sup>33</sup>

- (1) the tenant was using the premises for an unlawful purpose; or
- (2) the tenant had received a Notice to Vacate prior to 3rd April 2020 and the premises were to be sold; or
- (3) there was mutual agreement to terminate the

Tasmania was the first jurisdiction in Australia to ban evictions.

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<sup>32</sup> The Honourable Peter Gutwein MP, Hansard, *COVID-19 Disease Emergency (Miscellaneous Provisions) Bill 2020*, Second Reading Speech, Wednesday 25 March 2020 at 15.

<sup>33</sup> Tasmanian Government Gazette, 'COVID-19 Disease Emergency' Special Gazette 21961, Friday 3 April 2020. As found at [http://www.gazette.tas.gov.au/editions/2020/april\\_2020/21961\\_-\\_Special\\_3\\_April\\_2020.pdf](http://www.gazette.tas.gov.au/editions/2020/april_2020/21961_-_Special_3_April_2020.pdf) (Accessed 5 June 2020).

## Rent Increases

The COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Tas) provides:

### **22. Provisions restricting rent increases or termination of commercial tenancies**

(1) *In this section –*

**emergency period** has the same meaning as in the Residential Tenancy Act 1997 as amended by this Act.

(2) *The Minister may, by notice, declare that, despite any provision of a lease, a lease that is within a class of leases specified in the notice must not, within the emergency period, be terminated, and the rent payable under the lease may not be increased, in the circumstances set out in the notice.*

(3) *A termination of a lease, or an increase in rent in relation to a lease, to which a notice under subsection (2) applies is void and of no effect if it is in contravention of the notice.*

On 9 April 2020 the Premier declared that within the emergency period commercial landlords would not be able to increase rent for those commercial tenants who could establish a decrease in turnover of more than 30 per cent in one continuous month.<sup>34</sup>

On 23 April 2020 the Premier declared that residential landlords would not be able to increase rent for residential tenants.<sup>35</sup>

Expressed in another way, the Premier declared that there would be a retrospective rent freeze for commercial tenants from 1 April 2020 but did not freeze rents for residential tenants until 23 April 2020 and with no retrospectivity.

The Order to restrict rent increases for residential premises is in place until 30 June 2020 but may be extended.

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<sup>34</sup> Tasmanian Government Gazette, 'COVID-19 Disease Emergency' Special Gazette 21971, Thursday 9 April 2020. As found at [http://www.gazette.tas.gov.au/editions/2020/april\\_2020/21971\\_-\\_Special\\_9\\_April\\_2020.pdf](http://www.gazette.tas.gov.au/editions/2020/april_2020/21971_-_Special_9_April_2020.pdf) (Accessed 5 June 2020).

<sup>35</sup> Tasmanian Government Gazette, 'COVID-19 Disease Emergency' Special Gazette 21978, Thursday 23 April 2020. As found at [http://www.gazette.tas.gov.au/editions/2020/april\\_2020/21978\\_-\\_Special\\_23\\_April\\_2020.pdf](http://www.gazette.tas.gov.au/editions/2020/april_2020/21978_-_Special_23_April_2020.pdf) (Accessed 5 June 2020).



## Breaking Lease Due to Severe Hardship

The Residential Tenancy Act 1997 (Tas) was amended so that both the tenant and landlord could apply to the Residential Tenancy Commissioner for an order to terminate the agreement in the case of severe COVID-19 related hardship.

Section 38A of the Residential Tenancy Act 1997 (Tas) provides as follows:<sup>36</sup>

### **38A. Order allowing for termination in case of severe COVID-19 related hardship**

*(1) An owner or tenant of residential premises to which a fixed term lease applies may apply to the Commissioner for an order declaring that the lease is terminated.*

*(2) An owner or tenant of residential premises to which a fixed term lease applies may only apply under subsection (1) for an order on the grounds that the continuation of the lease would result in severe hardship to the owner, or tenant, respectively, related to the effect of the presence in the State of the socially-dislocating disease and the risk of its spread amongst persons in the State.*

*(3) If the Commissioner is satisfied that the continuation of a fixed term lease to which an application under subsection (1) relates would result in severe hardship to the owner, or tenant, respectively, related to the effect of the presence in the State of the socially-dislocating disease and the risk of its spread amongst persons in the State, the Commissioner may make an order declaring that the lease is terminated from a date specified in the order.*

*(4) An order under subsection (3) may specify that compensation is payable by the owner or tenant in relation to the termination of the lease.*

*(5) The Commissioner, within 3 days of making an order under subsection (3) in relation to residential premises, is to notify the owner and the tenant of the residential premises of the making of the order.*

*(6) An order made under subsection (3) in relation to residential premises is to specify that, unless an appeal is made under this section, the order takes effect on the day after the end*

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<sup>36</sup> As found at <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1997-082#GS38A@EN> (Accessed 5 June 2020).

*of the 7-day period after the day on which notice of the order was given under subsection (5).*

The 'severe hardship' termination provision commenced on 3rd April 2020.

## Inspections

The COVID-19 Disease (Emergency Provisions) Act 2020 amends section 56 of the Residential Tenancy Act 1997, relating to 'right of entry' for the emergency period.

During this period, an owner or their agent can only undertake inspections for the purposes of section 56(2) or section 56(3)(e). Specifically, this allows for inspection when:

- it is reasonably believed that the tenant is ill, injured or unable to give permission;
- denial of immediate access is likely to result in damage to all or part of the premises;
- there is a risk to the tenant or another person present on the premises;
- damage has occurred to the premises;
- it is reasonably believed that the premises have been abandoned; or
- with 24 hours' notice to the tenant, to ensure that repairs have been appropriately carried out.

Expressed in another way, general inspections are banned until 30 June 2020.

## COVID-19 Rent Relief Scheme

On 25 May 2020 the State Government introduced the COVID-19 Rent Relief Scheme. The Scheme provides up to 4 weeks rent or \$2000.00 (whichever is less) to tenants in financial hardship. To be eligible tenants must:<sup>37</sup>

- have experienced 'financial hardship';
- rent is more than 30 per cent of household income;
- household has less than \$5000 in savings

Eligibility is not limited to Australian citizens or permanent residents i.e. temporary visaholders may also apply.

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<sup>37</sup> COVID-19 Rent Relief – Tenants Factsheet. As found at [https://www.communities.tas.gov.au/\\_\\_data/assets/pdf\\_file/0027/89721/V1.2\\_TasGov\\_COVID19\\_Factsheet\\_-Rent-Relief-Tenants\\_D002.pdf](https://www.communities.tas.gov.au/__data/assets/pdf_file/0027/89721/V1.2_TasGov_COVID19_Factsheet_-Rent-Relief-Tenants_D002.pdf) (Accessed 5 June 2020).

## Victoria

Summary provided by Tenants Victoria

### Victorian experience of residential tenancy during COVID-19

#### The scheme:

The Covid-19 Emergency Measures Omnibus Act supports residential tenants by establishing a scheme enabling:

1. a moratorium on evictions for rental arrears incurred as a result of COVID-19
2. tenants and landlords agree on rent reduction
3. binding arbitration where tenants and landlords cannot agree on a rent reduction.
4. a moratorium on rent increases
5. renters to terminate a rental contract that is causing hardship, without being burdened with unfair debts or penalties.

The regulation of evictions began on 24 April, nearly 1 month after its announcement by the Commonwealth government, through the COVID Emergency Measures Omnibus Act (the legislation), with supporting regulations made on 11 May 2020. The Act was retroactive from 29 March to support the Commonwealth's in-principle announcement of an eviction moratorium.

This legislation prevented penalisation of tenants for the arrears created by COVID-19 related financial difficulties, and enabled creation of a framework to reduce rent by negotiation. Due to a drafting error, the legislation initially prevented tenants leaving fixed term tenancies save for COVID-19 related hardship, so home buyers or those who wanted to move for other reasons were locked into an unwanted tenancy. Fortunately, the drafting error was remedied by the 11 May regulations.

The framework instituted a rental increase freeze and allowed landlords to give Notice to Vacate should they wish to move into the property (either themselves or family members), for renovation or sale purposes. Tenants needing to move due to Covid-19 related hardship can give shortened (14-day) notice and were not required to pay reletting costs. In our experience, many landlords issued Notices to Vacate in response to COVID-19; primarily for sale, but also to renovate or move in.

The framework encouraged landlords and tenants to agree on rental reduction. It did not outlaw rent deferral, or agreements reached to defer prior to the commencement of the scheme. The regulations introduced a binding mediation for rental agreements, accessible through Consumer Affairs Victoria (CAV), undertaken by the expert mediators from Dispute

Settlement Victoria. Anecdotally, we understand that the expert mediators welcome the assistance of tenant advocates participating mediations. Rent reduction agreements reached directly, with the assistance of CAV or via mediation must be registered with CAV.

A very positive measure in the Victorian scheme to support more vulnerable tenants, is the COVID-19 Rental Subsidy of up to \$2000 per applicant for those paying over 30% of their income in rent. Applicants with under \$5000 in assets, who have registered their rent reduction agreement through Consumer Affairs Victoria, apply to Department of Health and Human Services for the subsidy to be paid directly to their landlord. This targeted protective measure has been welcomed by both tenant and landlord advocates.

## Particularly vulnerable groups

For Tenants Victoria, the canary in the coalmine at outset of the COVID-19 effects, was international students. This group suddenly found in tenancies and without work. The Victorian government has provided some assistance, as have City of Melbourne and some of the universities, however many students remain in perilous situations.

Another vulnerable group are those with disabilities, who have found it difficult to obtain sufficient care and support and whose access to rental dispute settling mechanisms and advocacy has been limited.

Share housing residents and boarding house residents have also been at particular risk due to difficulties maintaining social distancing. While share housing residents may be able to negotiate this among themselves, boarding house residents have no say in who lives in their home. These residents are often physically vulnerable or have co-morbidities that would make COVID-19 infection even more dangerous than for other tenants.

## Looking forward

The next challenge in Victoria will arise at the end of September when the Omnibus legislation ends. At this point, tenants could face an immediate reversion to their pre-COVID-19 rental payment and an end to the protections given to keep Victorian tenants safe in their homes.

The COVID-19 emergency has highlighted the importance of a secure home as a public health and safety measure: without a secure home, it is impossible to participate fully in the community, education, or the workforce. This emergency has also demonstrated the social determinates of health – that those without access to secure housing cannot maintain good health.

Tenants Victoria recommends National Cabinet give principles and guidance as we move from lockdown and emergency measures to the next phase of managing the pandemic. Tenants need clarity that:

- Covid-19 related arrears evictions will be prohibited,
- rental increases will be limited,
- the paramount need to maintain housing will be supported, with eviction and homelessness a last resort.

Establishing these clear principles will support jurisdictions to create appropriate regulatory schemes as we all take the next steps to manage this pandemic together.

We congratulate the Victorian government on its responsiveness and actions to maintain the health and homes of Victorians during the pandemic, their liaison with stakeholders to design measures to protect us all, and willingness to adjust and tailor regulatory measures to give the best effect. We will continue to work collaboratively with government and stakeholders to further make further improvements.

## Western Australia

Summary provided by Tenancy WA

### COVID Measures taken by the West Australia Government

The *Residential Tenancies (COVID-19 Response) Act 2020* was introduced to assist Western Australian tenants who are experiencing financial hardship due to the COVID-19 response. The COVID-19 Act provides for a number of protections for tenants, including a moratorium on evictions, a ban on rent increases, extension of fixed-term leases and facilitates the creation of rent repayment agreements.

The COVID-19 Act only applies during the emergency period, which is 30 March 2020 to 29 September 2020.

The COVID-19 Act applies to "residential tenancy agreements" under the *Residential Tenancies Act 1987 (WA)*. The COVID-19 Act applies to all residential tenancies, including renters, those in public, social, community and government housing, together with long-stay residents in park homes as well as boarders and lodgers.

#### Hold on evictions for Failure to pay rent

Under the new laws, renters cannot be evicted for not paying rent if they cannot afford to pay that rent due to COVID-19. Renters not affected by the financial impacts of COVID-19 can be evicted for choosing to stop paying rent and refusing to talk to the landlord about how rent arrears are going to be paid.

Renters can be evicted during the emergency period if:

- a termination notice was issued prior to 30 March 2020 (even if the vacant possession date is within the emergency period);
- a court or tribunal ordered termination of a rental agreement before 24 April 2020;
- the renter or another person allowed to live in the premises:
  - is causing damage, including to any shared areas or facilities, or
  - has caused injury to the landlord/agent or any other person, including neighbours, and the landlord/agent has obtained a court order terminating the agreement;

- the landlord is suffering hardship and has obtained a court order terminating the agreement. An example of the landlord suffering hardship could be if the landlord has lost their job and needs to move back into the premises. In this circumstance, a renter may be able to seek compensation orders from the court for any additional expenses caused by the termination of the agreement. Expenses can include relocation costs.

Renters also cannot be evicted during the emergency period if a lender repossesses the property or if a fixed-term lease or accommodation agreement comes to an end.

## Payment of Rent

Negotiation of any rent reduction or deferral is left to the parties to negotiate themselves. The COVID-19 Act allows for the creation of a "rent repayment agreement". This is the only mechanism that can change the rent payable under a tenancy agreement. Any agreement to change rent arrangements should be put in writing.

A rent repayment agreement is a written agreement between a landlord and tenant, which varies the rent payable under the tenancy agreement for the duration of the emergency period. The agreement must set out how part or all of the rent will be paid to the landlord during the emergency period.

## Termination of Lease

If no other options are available, a renter may consider terminating their lease. To terminate a periodic (open-ended) or a fixed-term lease, a renter is required to give the landlord not less than 21 days' notice in writing before the date they intend to move out. A renter may only terminate a fixed-term tenancy if they are experiencing financial hardship due to COVID-19.

The notice period to terminate accommodation agreements (for boarders and lodgers) is 7 days.

If a renter terminates a fixed-term tenancy or accommodation agreement prior to its end date for reasons of financial hardship due to COVID-19, the landlord is not entitled to compensation because the agreement was terminated early.

## Residential database listings

Restrictions have been introduced to prevent listing of tenants on residential tenancy databases where the breach in question is caused by failure to pay rent due to COVID-19 financial hardship or any other matter caused by COVID-19 as prescribed by regulation.

## Freeze on rent increases

Under the COVID-19 Act, rent cannot be increased during the emergency period. Any increase of rent payable under a tenancy agreement will not come into effect until the day after the end of the emergency period. In addition, a tenant cannot be charged interest on the unpaid rent during the emergency period.

## Expiration

A fixed term tenancy agreement that expires during the emergency period, will continue as a periodic tenancy, unless the tenant terminates the tenancy or the landlord and tenant enter into a new agreement.

## Repairs and maintenance

During the emergency period the landlord does not have to undertake maintenance or repairs if the landlord is:

- suffering financial hardship due to COVID-19; or
- unable to access the premises for reasons resulting from COVID-19

However the landlord must still undertake urgent repairs. Urgent repairs are repairs that are necessary:

- for the supply of a service prescribed as an essential service (this includes water, gas, electricity, sewage and refrigerator repairs (if a refrigerator was provided with the premises)); or
- to avoid exposing a person to the risk of injury, exposing the property to damage or causing the tenant undue hardship.

## Mandatory conciliation service

As part of the COVID-19 Response Act a mandatory conciliation service has been established by Consumer Protection to manage disputes arising between tenants and landlords. This service is available if for disputes that occur during the COVID-19 coronavirus pandemic emergency period, which relate to the following areas:



- rent repayment – within three months of the end of the emergency period
- termination – within six months of the event date
- repairs – within six months of the event date
- attempted rent increase – within six months of the event date
- modification of terms of agreement (from fixed-term to periodic) – within six months of the event date

Certain matters can still go straight to court/tribunal including:

- undue hardship
- serious injury/damage to premises
- termination of perpetrator’s interest in lease due to family and domestic violence

## Residential Rent Relief Grant Scheme

The Western Australian government has introduced a grant for tenants who are suffering financial hardship due to the COVID-19 response. To be eligible for the grant, the tenant must have either:

- completed Consumer Protection’s conciliation service to negotiate a new agreement with their landlord; or
- negotiated with the landlord a rent reduction or deferral of payments, and lodged this agreement with Consumer Protection.

The grant will be paid to the landlord, on behalf of the tenant, and is the equivalent of 4 weeks rent up to a maximum of \$2000, whichever is the lesser.

## Key issues identified

We are concerned about the emphasis on negotiation which leaves open the possibility of landlords refusing to come to the table. The commissioner has indicated they are prepared to issue fines to parties who refuse to participate in the mandatory conciliation process. They have the power to issue fines of up to \$5000 under the COVID Response Act. However we are yet to see matters proceed through this process so are waiting to see what kind of outcomes tenants get from the new process.

There is currently nothing compelling or requiring landlords who have capacity to offer rent reductions to impacted tenants. It remains to be seen how effective the mandatory conciliation scheme will be in assisting tenants to get equitable outcomes. The first matters to go through the mandatory conciliation process are only just getting going.

Many renters are stuck in a situation where, whilst unable to be evicted during the emergency period, they are accumulating rent arrears if the landlord refuses to engage in good faith negotiations. We are aware that many tenants are getting pressured into signing a “rent repayment agreement”. We are concerned about what will happen in 6 months are we simply kicking the can along the road?

Many tenants when faced with an intractable situation with regard to trying to negotiate a rent reduction, are simply choosing to end the fixed term agreement early. These are not evictions but they still amount to compelled vacation of properties. For tenants who have somewhere else to go for the short or mid-term (perhaps staying with family or friends, etc) this may not be a catastrophic outcome. However for disadvantaged or vulnerable renters without the security of that option many are being forced into homelessness. We do not have a public housing system that is able to absorb and quickly house people falling out of the private rental market due to sudden loss of income.

The definition of financial hardship has been left deliberately open as not to exclude people experiencing financial hardship due to COVID-19 where the loss of income was indirect. This may lead to issues with inconsistency and ambiguity, especially in situations where conciliation stalls and the matter is escalated to the Magistrates Court. We would like to see action taken to ensure a consistent application or interpretation of ‘financial hardship’.

There are also many people at risk who are ineligible for the rent relief scheme due to the criteria.

## Other problems observed during COVID:

There are a number of other issues we have identified during COVID-19, including:

- **Access:** Real estate agents insisting on physical entry to properties during the period of restrictions where this was counter to public health advice.
- **Withholding of bond:** Instances of lessors and real estate agents issuing tenants with instructions to conduct ‘COVID cleans’ of properties at the end of a tenancy and withholding bond for this purpose.
- **Inappropriate financial advice:** Real estate agents asking for evidence of financial hardship before negotiating with tenants which included advice on drawing on superannuation and/or asking for detailed personal information regarding income and expenditure
- **Misleading conduct:** Real estate agents misrepresenting situation and/or law and pressuring tenants to sign rent repayment agreements on unfavourable terms.