

## **Covid-19: Legislative Impact on Residential Tenants and Landlords**

*Last update: 24 April 2020*

**Disclaimer:** *This publication contains comments of a general nature only and is provided as an information service. It is not intended to be relied upon as, nor is it a substitute for specific professional advice.*

### **LEGISLATIVE CHANGES TO RESIDENTIAL TENANCIES**

Since the COVID-19 lockdown rules and social distancing measures took effect in Victoria in late March, many people living in residential tenancies who have lost their jobs or their businesses or who have otherwise been impacted by COVID-19 have found themselves in dire financial circumstances and in danger of being evicted by their landlords due to being unable to pay their rent.

In response, the Victorian Government announced on 15 April 2020 a series of measures to protect and assist tenants and landlords who have been impacted by the lockdowns.

These measures were given legal effect when the Victorian Parliament convened on 23 April 2020 for an emergency sitting and passed the *COVID-19 Omnibus (Emergency Measures) Act 2020 (the Act)*.

The Act applies for six months from 29 March 2020 and provides amendments to the *Residential Tenancies Act 1997* to include a suite of new temporary provisions that change the way residential tenancies operate during the six-month moratorium period.

Some of the key legislative amendments are:

#### **Suspension of Rent Increases**

A landlord must not increase rent payable under a tenancy agreement or give a notice of proposed rent increase to a tenant.

#### **Reduction in Rent and Payment Plans**

A tenant can apply to VCAT for a reduction in rent payable under a tenancy agreement or to enter into a payment plan with the landlord to pay the rent, the reduced rent and any outstanding amounts of rent for a certain period.

#### **Payment of Rent by Centrepay**

A landlord must permit a tenant to pay their rent through Centrepay.

#### **No Breach of Tenancy Agreement If Covid-19 Reason**

A tenant or landlord is taken not to have breached a term of a tenancy agreement if they were unable to comply with the term, or it was not reasonably practical for them to comply, because of a COVID-19 reason. The Act provides a broad set of circumstances in which a tenant may be unable to comply with the terms of their tenancy agreement as a result of COVID-19 or the lockdown.

#### **Reduction in Fixed Term Tenancy Agreement**

A party to a fixed term tenancy agreement may make an order reducing the term of the agreement and making any variations to the terms of the agreement.

#### **Landlords Cannot Give Notices to Vacate**

Landlords' statutory rights to give notices to vacate are limited.



### **When Tenants Can Give Notices to Vacate**

A tenant can give the landlord notice to vacate only in certain circumstances, such as the tenant requiring special or personal care and needs to vacate the premises to obtain that care, or the tenant suffering severe financial hardship, without incurring lease break fees and other compensation.

### **Application to VCAT For Termination of Tenancy Agreement**

The Act also sets out the process by which a tenant or a landlord may make an application to VCAT to terminate the tenancy agreement.

### **Residential Tenancies Dispute Resolution Scheme**

The Act provides for the creation of a new Residential Tenancies Dispute Resolution Scheme, with the aim to set up a new body that can provide a cheaper and more efficient way for tenants and landlords to resolve to disputes caused by the COVID-19 pandemic. It is unclear yet how this scheme and the new body will operate.

### **KEY TAKEAWAYS**

The Act implements a broad moratorium on residential tenancy evictions, subject to specified exceptions, such as where a tenant is wilfully causing serious damage to premises or is using them for an illegal purpose. It suspends rent increases; stops tenants from being blacklisted for non-payment of rent; enables severe hardship cases to be heard by VCAT; and establishes a dispute resolution scheme.

While the Government's expectation is that tenants will continue to meet their rental obligations where possible, a tenant may not be evicted for non-payment of rent where they are experiencing financial distress during the moratorium. The moratorium on evictions will be for the six-month period from **29 March 2020 to 26 September 2020**.

Residential tenancies disputes, including eviction matters, will be referred to a 'single front door' administered by Consumer Affairs Victoria, where landlords and tenants will receive information and support to reach agreements, primarily to reduce rent. Landlords and tenants will be expected to negotiate in good faith. Where parties need additional support, they will be referred to a new specialist mediation service to be provided through the Dispute Settlement Centre of Victoria.

In certain circumstances a dispute referred by Consumer Affairs Victoria may be assessed as unsuitable for resolution by the Dispute Settlement Centre. Matters deemed as unsuitable for resolution will be referred directly to VCAT for hearing.

The mediation service will have the ability to make binding orders. If the order is breached, the matter will be referred to the Victorian Civil and Administrative Tribunal (VCAT) for hearing. VCAT will consider the order and the action of the parties since it was made and then determine the dispute accordingly.

### **HOW NEVILE & CO CAN ASSIST YOU**

In our view, the Act introduces many amendments in relation to residential tenancy arrangements but these measures in the Act do not have a lot of detail to them.

Solutions will be unique to each situation, so it is important to seek legal advice. A poorly negotiated arrangement or a hastily drafted document will have a longer lasting impact than the Covid-19 pandemic.

If you require assistance with navigating issues pertaining to residential tenancies, including negotiations with landlords/tenants and documenting agreed variations to existing arrangements, Nevile & Co can assist you in this regard.



You are more than welcome to contact us for a consultation should you require bespoke advice.

Yours Sincerely



**Meng Cheong**  
Senior Associate



**Michael Xu**  
Lawyer

Nevile & Co. Level 11, 100 Collins Street Melbourne VIC 3000 Australia

**T +61 3 9664 4700 F +61 3 9654 6784 | [nevilleco@neville.com.au](mailto:nevilleco@neville.com.au)**

*Liability limited by a scheme approved under Professional Standards Legislation*