

House of Assembly

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South Australia

COVID-19 Emergency Response (Expiry) (No 3) Amendment Bill 2021

A BILL FOR

An Act to amend the *COVID-19 Emergency Response Act 2020* and to make a related amendment to the *Local Government Act 1999*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *COVID-19 Emergency Response (Expiry) (No 3) Amendment Act 2021*.

2—Commencement

- (1) Subject to subsection (2), this Act comes into operation on the day on which it is assented to by the Governor.

- (2) Section 5 is taken to have come into operation on 2 September 2021 (immediately after the expiry of sections 8, 9 and 10 of the *COVID-19 Emergency Response Act 2020* pursuant to the *COVID-19 Emergency Response Residential Tenancies, Residential Parks and Supported Residential Facilities Expiry Notice 2021* (see Gazette 20 May 2021 p.1434)).

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *COVID-19 Emergency Response Act 2020*

4—Amendment of section 6—Expiry of Act

- (1) Section 6(1)(a)(i)—after "Part 2" insert:
(other than sections 8, 9 and 10)
- (2) Section 6(2)(b)—delete paragraph (b) and substitute:
(b) 1 December 2021,

5—Reinsertion of expired sections

After the heading to Part 2 insert:

8—Provisions applying to residential tenancies

- (1) Subject to this section, the operation of the *Residential Tenancies Act 1995* is modified as follows:
- (a) the terms of any residential tenancy agreement will be taken to be modified to such extent necessary to give effect to the modifications made by this section;
 - (b) the landlord must not increase the rent payable under a residential tenancy agreement (whether under section 55 of that Act or otherwise) if the tenant is suffering financial hardship as a result of the COVID-19 pandemic;
 - (c) despite any other provision of that Act, or any other Act or law, an act or omission of the tenant required under the laws of the State in response to the COVID-19 pandemic will be taken not to amount to a breach of a residential tenancy agreement or otherwise amount to grounds for termination of the agreement;
 - (d) a tenant may have repairs carried out on the premises (in accordance with any agreement with the landlord relating to such repairs) without seeking prior approval (and section 68(3)(e) and (5) of that Act will be taken to apply to costs or compensation incurred by or owing to the tenant accordingly);

- (e) section 78A of that Act will be taken not to apply in respect of—
 - (i) a breach of a residential tenancy agreement consisting of a failure to pay rent where the tenant is suffering financial hardship as a result of the COVID-19 pandemic; or
 - (ii) any act or omission of the tenant required under the laws of the State in response to the COVID-19 pandemic;
- (f) a residential tenancy cannot be terminated under that Act solely on the grounds of a breach of a residential tenancy agreement consisting of a failure to pay rent where the tenant is suffering financial hardship as a result of the COVID-19 pandemic;
- (g) the Tribunal cannot terminate a residential tenancy or make an order for possession of the premises in respect of a breach of a residential tenancy agreement consisting of a failure to pay rent where the tenant is suffering financial hardship as a result of the COVID-19 pandemic;
- (h) on an application under section 89 of that Act relating to financial hardship suffered as a result of the COVID-19 pandemic, the Tribunal may, instead of or in addition to an order terminating the agreement, make such orders as the Tribunal thinks fit;
- (i) on an application under section 89 of that Act, as modified by paragraph (h), the Tribunal must have particular regard to the circumstances of the COVID-19 pandemic (including the need to ameliorate the effects of the pandemic in the State and the need to avoid homelessness during such a public health emergency);
- (j) despite any other Act or law, the Tribunal may, on application or otherwise in proceedings under that Act, make any order it considers appropriate in the circumstances of the COVID-19 pandemic (including an order that specified costs associated with the termination of a residential tenancy agreement be reduced or waived);
- (k) the Tribunal, on an application under section 93 of that Act (whether the application was made before or after the commencement of this section)—
 - (i) must have regard to the circumstances of the COVID-19 pandemic (including the need to ameliorate the effects of the pandemic in the State and the need to avoid homelessness during such a public health emergency); and

- (ii) may, in a case where a tenant is suffering financial hardship as a result of the COVID-19 pandemic, despite section 93(4)(a), suspend the operation of an order under that section for such period, and on such conditions, as the Tribunal thinks fit; and
 - (iii) may, in a case where a tenant is suffering financial hardship as a result of the COVID-19 pandemic, despite section 93(4a), modify a residential tenancy agreement during such a period of suspended operation so as to reduce the tenant's immediate financial obligations under the agreement;
- (l) the Tribunal may, in relation to an order made under section 93(4)(a) of that Act before the commencement of this section, on an application by a tenant or landlord, further suspend the operation of the order for possession if the tenant is suffering financial hardship as a result of the COVID-19 pandemic;
- (m) the preceding paragraphs will be taken to apply in relation to a rooming house agreement under that Act (where a reference in a preceding paragraph to a provision of that Act will be taken to be a reference to a provision of a corresponding kind under Part 7 of that Act);
- (n) despite any other Act or law, the Tribunal must not make an order requiring interest to be paid on an amount payable by a tenant under a residential tenancy agreement;
- (o) despite a provision of any other Act or law, an order of the Tribunal contemplated by a preceding paragraph may have retrospective effect;
- (p) section 99(4) of that Act does not apply in circumstances where the tenant, or another person lawfully residing in the premises, is self-isolating because they have, or may have, COVID-19;
- (q) section 115 of that Act will be taken not to apply to an agreement or arrangement required by this section or otherwise required to give effect to this section;
- (r) the following matters must not be recorded on a residential tenancies database:
 - (i) a matter consisting of, or relating to, a failure to pay rent due where the tenant is suffering financial hardship as a result of the COVID-19 pandemic;
 - (ii) any other matter that the Tribunal orders not to be so recorded;
 - (iii) any other matter prescribed by the regulations.

- (2) A purported termination or other action in contravention of the *Residential Tenancies Act 1995* (as modified by this section) will be taken to be void and of no effect.
- (3) A provision of the *Residential Tenancies Act 1995* not referred to in a preceding subsection will be taken to be modified to the extent necessary to give effect to the modifications set out in this section.
- (4) The Tribunal may, on application by a landlord or tenant under a residential tenancy agreement (whether or not the agreement is still in force), make such of the following orders as the Tribunal thinks fit:
 - (a) an order modifying or suspending any prescribed order of the Tribunal made during the prescribed period in relation to a residential tenancy period;
 - (b) an order confirming, varying or quashing any prescribed action done, or purportedly done, by a landlord under the *Residential Tenancies Act 1995* in respect of a residential tenancy agreement during the prescribed period;
 - (c) any other order the Tribunal thinks appropriate to address the consequences of the retrospective commencement of this section.
- (5) An application under subsection (4) must be made within 28 days after the commencement of this section (or such longer period as the Tribunal may allow).
- (6) In making orders under this section, the Tribunal must have regard to the intended effect of the operation of this section as it relates to matters of the relevant kind.
- (7) Section 111 of the *Residential Tenancies Act 1995* applies in relation to orders under this section.
- (8) To avoid doubt, the jurisdiction conferred by this section comes within the original jurisdiction of the Tribunal.
- (9) Subject to any regulations under section 20, an order of the Tribunal under this section will be taken to be revoked on the day on which this section expires.
- (10) In this section, a reference to the payment of rent will be taken to include a reference to the payment of an amount relating to water supply and usage.
- (11) A term or phrase used in this section will, unless the contrary intention appears, have the same meaning as in the *Residential Tenancies Act 1995*.
- (12) In this section—

prescribed action, by a landlord, means an action taken by the landlord that would, if it occurred after the commencement of this section, contravene the *Residential Tenancies Act 1995* (as modified by this section);

prescribed order means an order of the Tribunal made, or having effect, during the prescribed period;

prescribed period means the period commencing on 30 March 2020 and ending on 9 April 2020.

9—Provisions applying to residential parks

- (1) The operation of the *Residential Parks Act 2007* is modified such that the modifications made by section 8 to the *Residential Tenancies Act 1995* (including, to avoid doubt, the provisions of section 8 relating to the Tribunal) apply in relation to the *Residential Parks Act 2007* as if a reference in that section to a residential tenancy agreement were a reference to a residential park tenancy agreement, residential park site agreement or residential park agreement (as the case requires).
- (2) A purported termination or other action in contravention of the *Residential Parks Act 2007* (as modified by this section) will be taken to be void and of no effect.
- (3) A term or phrase used in this section will, unless the contrary intention appears, have the same meaning as in the *Residential Parks Act 2007*.

10—Provisions applying to supported residential facilities

- (1) Subject to this section, the operation of the *Supported Residential Facilities Act 1992* is modified as follows:
 - (a) a proprietor cannot take any other action under that Act for the purpose of terminating a resident contract, where—
 - (i) the grounds for termination are a failure of the resident to pay fees and charges under the resident contract; and
 - (ii) the resident is suffering financial hardship as a result of the COVID-19 pandemic;
 - (b) a proprietor cannot increase fees and charges payable in relation to a resident contract;
 - (c) a resident will be taken not to have breached a term of a resident contract or other agreement by complying with a direction or law relating to the COVID-19 pandemic that applies to or regulates residents of supported residential facilities;
 - (d) a proprietor must not give a notice to a resident under section 39 of that Act that purports to be notice of a proposed termination on grounds of failure to pay fees or charges if the resident is suffering financial hardship as a result of the COVID-19 pandemic;

- (e) a proprietor cannot make an application under section 43 of that Act in relation to a dispute consisting of a failure to pay fees and charges if the resident is suffering financial hardship as a result of the COVID-19 pandemic (and, to avoid doubt, a licensing authority cannot make orders under that section on an application relating to any other kind of dispute that purports to terminate a resident contract or otherwise require payment of fees and charges in relation to such a resident);
 - (f) the Tribunal must not, on a review under section 44 of that Act, make an order that purports to terminate a resident contract or otherwise require a resident to pay fees and charges to the proprietor if the resident is suffering financial hardship as a result of the COVID-19 pandemic;
 - (g) the operation of section 47 of that Act is modified such that—
 - (i) a visit or attendance by a person will only fall within the ambit of that section if it complies with any direction or law applying to or regulating such visits or attendances; and
 - (ii) a person does not commit an offence under section 47(2) if the person is acting in accordance with a direction or law referred to in subparagraph (i);
 - (h) section 50 of that Act will be taken not to apply to an agreement or arrangement required by this section or otherwise required to give effect to this section;
 - (i) a proprietor will be taken not to commit an offence against that Act, or breach a term of a licence or resident contract or other agreement, to the extent that an act or omission of the proprietor is reasonably required to give effect to the modification made by this section, or by any direction or law relating to the COVID-19 pandemic that applies to or regulates supported residential facilities;
 - (j) the Tribunal or a licensing authority, in performing a function or exercising a power under that Act, must have regard to the circumstances of the COVID-19 pandemic (including the need to ameliorate the effects of the pandemic in the State and the need to avoid homelessness during such a public health emergency).
- (2) For the purposes of this section, a reference to fees and charges payable in relation to a resident contract will be taken to include a reference to any costs (however described) payable by a resident under the resident contract (whether for accommodation, personal care services or otherwise).

- (3) A term or phrase used in this section will, unless the contrary intention appears, have the same meaning as in the *Supported Residential Facilities Act 1992*.

6—Amendment of Schedule 2—Temporary modification of particular State laws

Schedule 2, clause 1—after paragraph (e) insert:

- (ea) after section 25 insert:

25A—Special provisions relating to directions under section 25

- (1) The Transition Committee established by the State government in relation to the COVID-19 pandemic (or any other committee formed in substitution for that committee) must include a regional representative tasked with representing the interests of persons living in areas outside of metropolitan Adelaide.
- (2) The regional representative must be a person who has knowledge of, and interest in, matters affecting communities located close to the South Australian border.
- (3) If a direction is issued under section 25 that affects any person's ability to enter South Australia from another State or Territory of Australia, applications for exemptions from that direction, or for any approval required before the person is permitted to travel into the State while the direction is in force, must be dealt with expeditiously and the Minister for Health must ensure that sufficient resources are available for that purpose such that most applications are able to be dealt with within 21 days after they have been received.
- (4) The Minister must ensure that Members of Parliament are briefed on the effect of any directions or requirements of a kind referred to in section 25(3) within 7 days.
- (5) The committee referred to in subsection (1) must ensure that minutes of any meeting of the committee are provided to the COVID-19 Response Committee of the Legislative Council within 10 days after the meeting.

Schedule 1—Related amendment of *Local Government Act 1999*

1—Amendment of section 302B—Public health emergency

Section 302B(8) and (9)—delete subsections (8) and (9) and substitute:

- (8) The Minister must ensure that a report on a review of the operation of this section is tabled in each House of Parliament before 31 December 2021.