



Australian Capital Territory

Residential Tenancies Amendment Act 2018

A2018-20

An Act to amend the *Residential Tenancies Act 1997*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Residential Tenancies Amendment Act 2018*.

2 Commencement

- (1) This Act (other than sections 6, 7 and 8) commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

- (2) Sections 6, 7 and 8 commence on the day after this Act's notification day.

3 Legislation amended

This Act amends the *Residential Tenancies Act 1997*.

4 Sections 41 to 42B

substitute

41 Warrant—termination and possession order

On application by a lessor, the registrar must issue a warrant for the eviction of a tenant if—

- (a) the ACAT has made a termination and possession order in relation to the tenant; and

- (b) the tenant fails to vacate the premises in accordance with the order.

Note The ACAT must also direct the registrar to issue a warrant for the eviction of a tenant if it makes a termination and possession order under s 49C.

5 Section 49

substitute

49 Failure to pay rent—termination and possession order

- (1) This section applies if—
 - (a) a tenant has failed to pay rent that has become payable under a residential tenancy agreement; and
 - (b) the lessor has served a termination notice on the tenant because of the tenant's failure to pay rent; and
 - (c) the tenant has not vacated the premises in accordance with the notice.
- (2) The lessor may apply to the ACAT for a termination and possession order.
- (3) The ACAT may—
 - (a) make a termination and possession order; or
 - (b) make a payment order; or
 - (c) refuse to make a termination and possession order or payment order if—
 - (i) the tenant has paid any rent that has become payable and is, in the ACAT's opinion, reasonably likely to pay future rent as it becomes payable; and
 - (ii) the ACAT considers it just and appropriate to do so.

- (4) If the ACAT makes a termination and possession order, it may suspend the order for a stated period of not more than 3 weeks if satisfied that—
 - (a) were the order not suspended for the stated period, the tenant would suffer significant hardship; and
 - (b) the tenant's hardship would be greater than the hardship that would be suffered by the lessor if the order were suspended for the stated period.

49A Failure to pay rent—payment order

- (1) This section applies if a lessor applies to the ACAT for a termination and possession order under section 49 (2).
- (2) Instead of making a termination and possession order, the ACAT may make an order (a *payment order*) requiring the tenant to pay—
 - (a) the rent, or a stated part of the rent, that has become payable; and
 - (b) future rent as it becomes payable.
- (3) If the ACAT makes a payment order for part of the rent that has become payable, the ACAT may also make an order under section 83 (c) for payment of the remaining part.
- (4) A payment order—
 - (a) expires on the date stated in the order (which must not be more than 1 year after the day the order is made); and
 - (b) must state that if the tenant fails to comply with the payment order, the lessor may apply for a termination and possession order under section 49B.
- (5) On application to the ACAT, an order under this section may be varied if—
 - (a) both parties agree to the variation; and

- (b) the variation does not postpone the expiry date of the order;
and
- (c) the ACAT considers it just and appropriate to vary the order.

49B Failure to comply with payment order

- (1) This section applies if—
 - (a) the tenant has failed to comply with a payment order in the last 60 days; and
 - (b) the order has not expired; and
 - (c) the tenant continues to live at the premises.
- (2) The lessor may apply to the registrar for a termination and possession order.
- (3) On receiving an application for a termination and possession order, the registrar must—
 - (a) list the application for hearing before the ACAT not earlier than 1 week after the day the notice under paragraph (b) is given to the tenant; and
 - (b) give notice to the tenant stating—
 - (i) that an application for a termination and possession order has been made; and
 - (ii) the time when, and the place where, the application is to be heard; and
 - (iii) that the tenant should seek legal advice about the application if the tenant wants to continue to live at the premises.
- (4) If the lessor does not apply to the ACAT under subsection (2), the payment order, residential tenancy agreement and any debt under the residential tenancy agreement is not affected.

49C Hearing of application—failure to comply with payment order

- (1) After considering an application under section 49B and hearing the parties who attend the hearing, the ACAT must—
 - (a) make a termination and possession order; or
 - (b) refuse to make a termination and possession order.
- (2) If the ACAT makes a termination and possession order, the ACAT—
 - (a) must direct the registrar to issue a warrant for the eviction of the tenant; and
 - (b) may make an order to pay any unpaid rent that is payable.
- (3) If the ACAT refuses to make a termination and possession order, the ACAT may—
 - (a) confirm the payment order; or
 - (b) make another payment order; or
 - (c) set aside the payment order.
- (4) If the ACAT makes a termination and possession order, it may suspend the order for a stated period of not more than 3 weeks if satisfied that—
 - (a) were the order not suspended for the stated period, the tenant would suffer significant hardship; and
 - (b) the tenant's hardship would be greater than the hardship that would be suffered by the lessor if the order were suspended for the stated period.

**6 Application for registration of standard guarantee contract
Section 103 (1)**

after

commissioner for fair trading

insert

, on or after a day declared by the Minister,

7 New section 103 (3)

after the notes, insert

- (3) A declaration under subsection (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

8 New part 15

insert

**Part 15 Transitional—Residential
Tenancies Amendment Act 2018**

151 Meaning of *commencement day*—pt 15

In this part:

commencement day means the day the *Residential Tenancies Amendment Act 2018*, section 6 commences.

152 Applications for registration of standard guarantee contract

- (1) This section applies if—
- (a) an application for registration of a standard guarantee contract is made under section 103 before the commencement day; and

(b) the application—

(i) is not decided by the commissioner before the commencement day; or

(ii) is refused by the commissioner.

(2) The application is taken not to have been made.

153 Registered standard guarantee contracts

(1) This section applies if a standard guarantee contract is registered under section 104 before the commencement day.

(2) On the commencement day, the registration of the standard guarantee contract is taken to have ended.

Note A term of a commercial guarantee that is inconsistent with, or is in addition to, a registered standard guarantee contract is void (see s 16 (3)).

(3) To avoid any doubt, any commercial guarantee entered into before the commencement day that is consistent with the registered standard guarantee contract is not affected by subsection (2).

154 Expiry—pt 15

This part expires 12 months after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

9 Section 151

substitute

151 Meaning of commencement day—pt 15

In this part:

commencement day means—

- (a) for sections 152 and 153—the day the *Residential Tenancies Amendment Act 2018*, section 6 commences; and
- (b) for section 154—the day the *Residential Tenancies Amendment Act 2018*, section 4 commences.

10 Section 154

substitute

154 Conditional termination and possession orders in force immediately before commencement day

- (1) This section applies to a conditional termination and possession order made under the pre-amendment Act, section 49 (4) and in force immediately before the commencement day.
- (2) The order is taken to be a payment order made under this Act, section 49A.
- (3) The order expires on the date stated in it, unless sooner ended under this Act.
- (4) In this section:

pre-amendment Act means this Act as in force immediately before the commencement day.

155 Expiry—pt 15

This part expires 12 months after the day the *Residential Tenancies Amendment Act 2018*, section 4 commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

11 Dictionary, definition of *conditional termination and possession order*

omit

12 Dictionary, new definition of *payment order*

insert

payment order—see section 49A (2).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 May 2018.

2 Notification

Notified under the [Legislation Act](#) on 14 June 2018.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Residential Tenancies Amendment Bill 2018, which was passed by the Legislative Assembly on 5 June 2018.

Clerk of the Legislative Assembly

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