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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Residential Tenancies (COVID-19 Emergency Response)
Declaration 2021 (No 3)**

DI2021-216

EXPLANATORY STATEMENT

**Presented by
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Residential Tenancies (COVID-19 Emergency Response) Declaration 2021 (No 3)

OVERVIEW OF THE DECLARATION

The *Residential Tenancies (COVID-19 Emergency Response) Declaration 2021 (No 3)* (the Declaration) is a disallowable instrument made under section 156 of the *Residential Tenancies Act 1997* (RTA). The Declaration revokes the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2021 (No 2)* (DI2021-166).

On 12 August 2021, the Chief Minister announced that the ACT would be entering into a seven-day lockdown as a result of a positive COVID-19 case, and positive wastewater detections. On 16 August 2021, this was extended until 2 September 2021.

This instrument introduces a moratorium on evictions for those in our community who are in quarantine and for those who are unable to meet their commitments under a residential tenancy agreement due to the impact of coronavirus (COVID-19).

The Declaration provides that in circumstances where a household is subject to a COVID-19 public health direction issued by the Chief Health Officer under the *Public Health Act 1997* to quarantine or self-isolate, and the household has been issued with a notice to vacate or an order from the ACT Civil and Administrative Tribunal (ACAT) to vacate the property for any reason, they be allowed to remain in the property until their quarantine period ends plus a further 2 weeks to comply with a notice or order to vacate. These measures are included to ensure compliance with a public health direction and reduce the spread of COVID-19 in the community.

The moratorium on eviction for rent arrears applies only to those households that have been impacted by COVID-19. Landlords of COVID-19 impacted households are prevented from issuing their tenants with a notice to vacate for rent arrears (or applying for orders from the ACAT as a result of unpaid rent during the moratorium period).

This Declaration also applies to tenants who have been issued with a notice to vacate, or who have failed to pay rent, prior to the commencement of this Declaration but who fall under the circumstances contemplated in the Declaration.

The Declaration also provides that lessors, tenants, grantors and occupants may vary existing agreements to allow for temporary rent and occupancy fee reductions or deferrals, effective immediately, and that where a reduction is agreed, there is no impediment to rents or occupancy fees reverting to their previous rates after the agreed period. The Declaration further prohibits landlords from unilateral rent increases for premises of impacted households during the moratorium period (unless the rent is calculated with reference to the person's income).

This Declaration also prohibits tenants from being added to residential tenancy databases due to a breach of residential tenancy agreements for failure to pay rent

during the moratorium period, where the tenant is a member of a COVID-19 impacted household.

Restrictions are also introduced on accessing premises under residential tenancy agreements to undertake physical inspections and non-urgent repairs. These measures are included to assist in observing social distancing measures where possible.

The Declaration further provides that a COVID-19 impacted household may terminate a fixed-term tenancy agreement without penalty by providing a landlord with 3 weeks' notice. Currently, tenants can apply to ACAT to seek early termination of fixed-term tenancies on the basis of severe hardship. This measure will provide an additional support to tenants who are COVID-19 impacted. To ensure that this measure is not misused by those who are not COVID-19 impacted, safeguards have been included in the relevant provisions so that a tenant is required to provide evidence to their landlord to substantiate their claim.

While the Declaration is not retrospective as to commencement, certain measures in the Declaration have impacts on actions that may have already occurred in accordance with existing requirements under the RTA and residential tenancy agreements (retrospective impact). Specifically, the moratorium to prevent landlords from taking measures to evict COVID-19 impacted households which are in rental arrears will apply even where the household was in rental arrears prior to the commencement of the moratorium period (including where the landlord had previously issued a termination notice, or ACAT had previously made an order in relation to unpaid rent, in respect of the household). This approach is adopted because the effects of COVID-19 may have impacted households' ability to pay rent prior to the moratorium commencing, and because it is also recognised that COVID-19 impacted households may be in a particularly vulnerable situation if forced to seek new rental accommodation while in the context of current restrictions due to COVID-19.

The Declaration also modifies the operation of section 49 of the RTA so that ACAT is required to consider the making of a payment order as an alternative to making a termination and possession order for a tenant who is or was a member of an impacted household during the moratorium and transitional periods.

The Declaration includes a number of transitional measures to provide support to residential tenants and lessors at the end of the COVID-19 eviction moratorium. While some of the moratorium measures are extended into transitional measures, the Declaration implements the following additional transitional measures:

- a twelve-week transitional period is implemented which commences at the end of the moratorium period. The transitional period will provide tenants who were COVID-19 impacted during the moratorium period with a longer timeframe to work towards clearing any rental debt before they could face eviction on the basis of arrears that accrued before or during the moratorium period;

- a tenant may apply to the ACAT to vary or set aside an order made by ACAT before the moratorium period. This measure applies to an order made in relation to a tenant's failure to pay rent for a premises under a residential tenancy agreement where that order was suspended under section 9 of this Declaration.

The transitional period has been implemented in order to ease cost of living pressures for ACT residential tenants impacted by the COVID-19 pandemic and to allow those who have accrued debts during the moratorium with a longer period to address those debts before they will face eviction on the basis of those debts.

CONSULTATION ON THE PROPOSED APPROACH

In developing the proposed approach, the Justice and Community Safety Directorate either consulted with or considered public comments from the Real Estate Institute of the ACT, the Tenancy Advice Service provided by Legal Aid ACT, the ACT Civil and Administrative Tribunal, Canberra Community Law, Better Renting ACT, the Tenants Union of the ACT and other ACT Directorates. This diverse range of stakeholders assisted the Directorate in developing an approach which balances the rights of all parties involved in residential tenancies.

COMPATIBILITY WITH HUMAN RIGHTS

The measures in the Declaration positively engage the right to protection of family and children and the right to privacy and home in the *Human Rights Act 2004* (HRA).

A number of measures under the Declaration promote the right to protection of family and children in section 11 of the HRA. These measures enable parties to a residential tenancy agreement to reduce or defer the rent payable because of the COVID-19 pandemic, introduce a moratorium on evictions due to rent arrears for COVID-19 impacted households, introduce a protection against eviction for any reason while a person is required to self-isolate or quarantine due a public health direction, require ACAT to consider payment orders for COVID-19 impacted households and introduce a transitional period to prohibit evictions due to rent arrears accrued before or during the moratorium period for COVID-19 impacted households. These measures prevent evictions and work to keep the family unit together during a period of considerable stress, providing time for families to complete their quarantine or self-isolation period safely, improve their financial situation or consider alternative options.

The measures also promote the right to privacy and home in section 12 of the HRA including by prohibiting certain tenants from eviction.

The Declaration also promotes the right to information privacy which protects the storing, use and sharing of personal and confidential information.

Preventing tenants from impacted households from being placed on residential tenancy databases due to a failure to pay rent during the moratorium period protects their privacy and prevents them from later being treated adversely in the rental market because of COVID-19 pressures that were out of their control.

The Declaration also engages and may limit the right to privacy as the definition of a household “impacted” by the COVID-19 pandemic in clause 5, and the early termination by tenants provision in clause 19, may require tenants to provide personal information to their real estate agents or landlords to demonstrate a loss of income and/or that they have been diagnosed with, or are caring for someone who has COVID-19. The right to privacy may be further limited by clauses 22 and 23 which may require tenants to provide personal information from ACT Health to their real estate agents, landlords and/or ACAT to demonstrate that they are subject to a COVID-19 public health direction to quarantine or self-isolate and for that reason are unable to comply with a notice to vacate, a termination and possession order or a warrant for eviction.

These limitations are reasonable and proportionate in accordance with the test in section 28 of the HRA. The measures in the Declaration have an important purpose, which is to mitigate the risk of homelessness arising from financial stress due to the COVID-19 pandemic and to prevent a person or people from being required to vacate a property when they are under a direction to self-isolate or quarantine. The limitation on the right to privacy is necessary as landlords may reasonably expect tenants to demonstrate that protections under the Declaration apply because the tenant is COVID-19 impacted. This ensures that landlords may otherwise exercise their normal statutory rights under residential tenancy law if circumstances extraneous to the pandemic permit. There are no other reasonably available and less restrictive alternatives that would not require the tenant to provide personal information to a third party.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of instrument

This clause is a formal provision setting out the name of the instrument as the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2021 (No 3)* (the Declaration).

Clause 2 Commencement

This clause provides for commencement of the Declaration on the day after its notification day.

The note to this clause explains that the naming and commencement provisions automatically commence on the notification day and refers the reader to section 75 (1) of the *Legislation Act* for further information.

Clause 3 Expiry

This clause provides that the instrument will expire on the earlier of either the day the transitional period ends (as defined in clause 6), or the day mentioned at section 156 (3) of the *Residential Tenancies Act 1997* (RTA), namely on the day the *Public Health (Emergency) Declaration 2020 (No 1)* ends or, if the Minister considers the effect of the COVID-19 pandemic justifies a later day, a later day notified by the Minister but no later than 3 months after the *Public Health (Emergency) Declaration 2020 (No 1)* ends.

Clause 4 Revocation

This clause revokes a prior instrument, the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2021* (DI2021-166).

Clause 5 Definitions

The purpose of the definitions in this clause and clause 7 is to ensure that the benefit of the measures in the Declaration is restricted to persons who have been impacted by the COVID-19 pandemic. This ensures that the rights and obligations of landlords and tenants in circumstances extraneous to the COVID-19 pandemic continue unaffected.

‘Household’ means the tenants and any other people living in premises that are the subject of a residential tenancy agreement.

‘Impacted’ by the COVID-19 pandemic is further defined in clause 7.

‘Impacted household’ means a household ‘impacted by the COVID-19 pandemic’, or, a household in which a member became eligible for the Commonwealth Disaster

Payment or the ACT Government Business Support Grant on or after 12 August 2021. 'Impacted by the COVID-19 pandemic' is defined in clause 7 and is an alternative method of qualifying for certain protections under the Declaration. See further discussion under clause 7.

'Moratorium period' means the period beginning on the notification day and ending 12 weeks after the notification day, or if the period is extended under clause 6, at the end of the extended period.

'Transitional period' means the period beginning on the day after the moratorium period ends and ending 12 weeks after the moratorium period ends, or if the period is extended under clause 6, at the end of the extended period.

Clause 6 Extension of *moratorium period* and *transitional period*

This clause provides that the Minister may extend the moratorium period in clause 5 for a period of no more than 12 weeks. Any extension made is a notifiable instrument.

This clause also provides that the Minister may extend the transitional period in clause 5 for a period of no more than 12 weeks. Any extension is made by notifiable instrument.

The ability for the Minister to extend the duration of both the moratorium and transitional periods has been included in acknowledgement that the COVID-19 situation is rapidly evolving in the ACT, and measures may need to be extended if the impacts of the current public health emergency continue for a longer period than initially anticipated.

Clause 7 When is a household *impacted* by COVID-19 pandemic?

This clause outlines when a household is considered to be ***impacted*** by the COVID-19 pandemic for the purpose of the Declaration.

A household is impacted by the COVID-19 pandemic where one or more rent-paying household members have stopped earning income, or had a reduction in income, either for health-related reasons (i.e. because a member of the household is ill with COVID-19 or the rent-paying member has carer responsibilities for a family member ill with COVID-19, whether or not in the same household), or for reasons arising from COVID-19 response measures (whether by the ACT Government or another Australian Government). In addition, in order to meet the definition of being impacted:

- the household's gross weekly income or an individual rent-paying member of the household's gross weekly income on or after 12 August 2021 must be at least 20% less than the household's or member's gross weekly income before their income was stopped or reduced; or

- a rent-paying household member's weekly hours of work on or after 12 August 2021 have been reduced by 8 or more hours compared with those they worked prior to 12 August 2021.

If a rent-paying household members income is irregular, their gross weekly income before 12 August 2021 will be an average of the person's actual weekly gross income in each week income was earned in the 12 weeks prior to 12 August 2021 (i.e. since 12 May 2021).

In this clause, '**rent-paying household member**' means a member of the household who regularly pays a share of the rent payable under the agreement.

'**Weekly gross income**' of a household means the total of the weekly gross income, including any government payment, received by each rent-paying household member.

If this definition is met, the household will be considered an '**impacted household**' and the moratorium on termination for failure to pay rent and restriction on rent increases will apply (clauses 8 and 10).

As set out in clause 5 above, a household in which a member became eligible for the Commonwealth Disaster Payment or the ACT COVID-19 Business Support Grant on or after 12 August 2021 will also be considered an '**impacted household**' for the purpose of the Declaration and the moratorium on termination for failure to pay rent and restriction on rent increases will apply (clauses 8 and 10).

It is anticipated that tenants will be able to show that they are an 'impacted household' (clauses 5 and 7) through simple evidence, such as, for example:

- proof of eligibility for the Commonwealth Disaster Payment;
- proof of eligibility for the ACT Government COVID-19 Business Support Grant;
- proof of job termination or stand-down such as a letter or email from an employer;
- proof of loss of work hours (such as rosters showing a reduction in hours);
- proof of prior income; or
- a statutory declaration.

Part 2 Protection of households impacted by COVID-19 pandemic – moratorium period

The Declaration is divided into parts which reflect the period in which measures will be in place. The measures contained in Part 2 will only apply during the moratorium period. The measures contained in Part 3 will apply only during the transitional

period and the measures in Parts 4 and 5 will apply during both the moratorium and transitional periods.

Clause 8 Moratorium on termination etc for failure to pay rent

This clause applies to a residential tenancy agreement for premises in which an 'impacted household' lives.

During the moratorium period, the lessor must not give a tenant in the household a termination notice because of the tenant's failure to pay rent. The lessor must also not apply for a termination and possession order under section 49 or section 49B of the RTA; apply for a payment order under section 49A of the RTA; or apply for a warrant under section 41 of the RTA for the eviction of the tenant because of the tenant's failure to pay rent.

This clause applies regardless of when the tenant's failure to pay rent happened, and even if a termination notice was given by the lessor to the tenant before the commencement of this part. This clarifies that a termination notice has no effect where given to a tenant before the commencement of this part, provided that the tenant lives in a premises that meets the definition of an impacted household and where the tenant has not vacated the property in accordance with that notice.

Further, a termination notice given in contravention of this clause is void.

This clause (together with clause 9) has the purpose of preventing, for the period the moratorium is in force under the Declaration, the eviction of 'impacted households' for failure to pay rent, even if the tenants were in rental arrears prior to the period commencing.

Clause 9 Existing orders etc for failure to pay rent

This clause applies if an application for an order in relation to a tenant's failure to pay rent for premises under a residential tenancy agreement has been made to the ACAT and the application has not yet been decided; or an order has been made and the tenant has not yet vacated the premises, and the tenant is a member of an impacted household that live in the premises.

If an order has been made, the ACAT may, upon application by the tenant, suspend the order for a stated period. The period may not be longer than the moratorium period.

If an order has not yet been made on an application, the ACAT must not make any order until after the moratorium period has ended.

The clause clarifies that an 'order' in relation to a tenant's failure to pay rent means: a termination and possession order under section 49 of the RTA, or an order under section 49C of the RTA (hearing of application—failure to comply with payment

order), or a warrant under section 41 of the RTA. It further clarifies that ‘suspend’, for a warrant under section 41, means stay.

Clause 10 Restriction on rental increases

This clause provides that a lessor may not, except as provided for in the Declaration, increase the amount of rent payable under the residential tenancy agreement for premises in which an ‘impacted household’ lives during the moratorium period.

However, this section does not apply if the residential tenancy agreement provides that the amount of rent payable is determined by reference to the income of the person or people responsible for paying the rent under the agreement.

Clause 11 Restricted access to premises

This clause provides that for the period the moratorium is in force under the Declaration, a lessor under a residential tenancy agreement may only physically access the premises with the tenant’s consent; or to do urgent repairs to the premises; or if the lessor applies to the ACAT, in accordance with an order by the ACAT.

Unless otherwise agreed between the parties to the residential tenancy agreement, or if the tenant vacates the premises, any inspection of the premises that the lessor must or may do under the RTA or the residential tenancy agreement may only be done by audio-visual or other electronic means, without the lessor physically accessing the premises. This measure is to support social distancing and related public health measures. This restriction does not apply where the tenant has reasonable access to audio visual or other electronic means to enable the virtual inspection and unreasonably refuses to provide reasonable assistance to the lessor to enable the virtual inspection to be undertaken.

Clause 12 Non-urgent repairs

This clause provides that for clause 57 of the standard residential tenancy terms, the lessor must undertake non-urgent repairs within a reasonable period as agreed with the tenant, rather than the previous 4-week time frame. Instead, it is for the parties to the agreement to agree on a timeframe for non-urgent repairs.

In deciding what is a reasonable period, the parties must have regard to the nature of the repair, the extent of access required to the premises to do the repair, and the hardship suffered by the tenant by the repairs not being done. What is a reasonable period will also depend on the situation in the ACT regarding COVID-19 and any COVID-19 related restrictions.

Part 3 Protection of households impacted by COVID-19 pandemic – transitional period

As noted above, the measures in this part apply only during the transitional period.

Clause 13 No termination etc in relation to moratorium arrears in transitional period

This clause implements a transitional period which commences at the end of the moratorium period. The transitional period will provide tenants who were COVID-19 impacted during the moratorium period and who fell into rent arrears during the moratorium with a longer timeframe to work towards clearing any rental debt before they could face eviction based on arrears that accrued before or during the moratorium period. This will provide tenants with more time to recover financially and allow them to enter into a payment plan with their lessors.

A tenant will only be protected from being evicted for rental arrears if the tenant pays their rent as it falls due each payment period during the transitional period. Where tenants are not able to meet rent payments as they fall due during the transitional period, the usual termination provisions in relation to rent arrears under the RTA will apply to the arrears incurred during both the moratorium period and the transitional period.

As set out in clause 5 above, ‘transitional period’ means the period beginning at the end of the moratorium period and ending 12 weeks later, or if the period is extended under clause 6, at the end of the extended period.

The note to this clause explains that, as set out in clause 20, ACAT must consider making a payment order for a tenant who was a member of an impacted household during a relevant period as an alternative to making a termination and possession order. Even in circumstances where a tenant is unable to meet their rent payments as they fall due during the transitional period, the measure (as set out in clause 20) may assist in preventing sustainable residential tenancies from being terminated. This measure will allow tenants to remain in their homes during a period of considerable financial stress and provided tenants with more time to pay their rental debts.

Clause 14 Reconsideration of orders etc for failure to pay rent

This clause applies if the ACAT suspended an order under clause 9 of this Declaration.

This clause allows a tenant to apply to ACAT to vary or set aside the order. ACAT may vary or set aside the pre-moratorium order if it is satisfied that, since the order was made, the tenant has paid part or all of the rent arrears (or the tenant can otherwise demonstrate that their financial circumstances have improved) and the tenant is reasonably likely to pay future rent as it becomes payable.

The clause clarifies that an ‘order’ in relation to a tenant’s failure to pay rent means a termination and possession order under section 49 of the RTA, or an order under section 49C of the RTA (hearing of application—failure to comply with payment order), or a warrant under section 41 of the RTA. It further clarifies that ‘suspend’, for a warrant under section 41, means stay.

Part 4 Protection of households impacted by COVID-19 pandemic – moratorium and transitional period

As noted above, the measures in this part apply during both the moratorium and the transitional periods.

Clause 15 Modification of Act, s 8 (1)—rent reduction clause

This clause provides that for section 8 (1) of the RTA, the lessor and tenant may agree to include a COVID-19 temporary rent reduction clause in the residential tenancy agreement. If a rent reduction clause is included in the agreement in a form other than the form set out in the COVID-19 temporary rent reduction clause, the clause is taken to be the COVID-19 temporary rent reduction clause set out below.

A COVID-19 temporary rent reduction clause means the following clause:

Temporary reduction of rent because of COVID-19 pandemic

- (1) The parties agree that because of financial hardship suffered by the tenant arising from the COVID-19 pandemic, for the period stated in writing by the parties, the rent payable under the agreement is reduced to an amount stated in writing by the parties.

Note *Writing* includes any way of representing or reproducing words in visible form including email or text message (see Legislation Act, dict, pt 1, def of writing).

- (2) The parties may, in writing, extend the period in which rent is reduced for a further stated period if the tenant continues to suffer financial hardship because of the COVID-19 pandemic.

For a COVID-19 temporary rent reduction clause, the reduced rent period (including any extensions) may be for a period longer than the operation of this instrument; the reversion of the rent payable under the residential tenancy agreement to the original rent is not an increase in the rent under the RTA or the agreement; and the amount the rent is reduced by under the agreement between the parties is not arrears of rent or a debt due to the lessor.

The purpose of this clause is to make clear that parties can agree on a temporary rent reduction and that the usual restrictions under the RTA on rent increases will not prevent the rent from reverting to its original amount following the rent reduction period agreed by the parties. Under the COVID-19 temporary rent reduction clause, the amount of lost rent during the rent reduction period does not have to be paid by the tenant after the period ends.

Clause 16 Modification of Act s 8(1) – rent deferral clause

This clause provides that for section 8 (1) of the RTA, the lessor and tenant may agree to include a COVID-19 temporary rent deferral clause in the residential tenancy agreement.

If the lessor and tenant agree to a rent deferral clause it can be for a longer period than the declaration and the reversion of rent payable under the tenancy agreement to the original rent is not an increase for the purposes of the RTA and, unless otherwise agreed by the lessor in writing, the amount of deferred rent is arrears of rent and is a debt due to the lessor.

This provision also clarifies that if a rent deferral clause is included in a tenancy agreement in a form other than as set out in sub clause 4, the clause is taken to be a **COVID-19 rent reduction clause** in accordance with clause 15 of the Declaration.

The COVID-19 temporary rent deferral clause is set out in sub clause 4 of the declaration and is as follows:

Temporary deferral of rent because of COVID-19 pandemic

- (1) The parties agree that because of financial hardship suffered by the tenant arising from the COVID-19 pandemic, for the period stated in writing by the parties, the rent payable under the agreement is deferred for the period and for the amount stated in writing by the parties.

Note **Writing** includes any way of representing or reproducing words in visible form including email or text message (see Legislation Act, dict, pt 1, def of writing).

- (2) The parties may, in writing, extend the period in which rent is deferred for a further stated period if the tenant continues to suffer financial hardship because of the COVID-19 pandemic.
- (3) The parties agree that at the end of the period in which the rent is deferred, the amount of deferred rent is payable to the lessor in accordance with—
 - a. the arrangements agreed between the parties; or
 - b. if the parties cannot agree—the terms decided by the ACAT taking into account what is reasonable for both parties.

Clause 17 Agreement to reduce occupancy fee under occupancy agreement

This clause applies where parties to an occupancy agreement agree to a reduced occupancy fee for a stated period because of financial hardship suffered by the occupier arising from the COVID-19 pandemic.

This clause provides that if the parties agree that the occupancy fee payable under the occupancy agreement reverts to the amount payable immediately before the fee was reduced, it is not an increase in the fee for the purpose of section 71EG the RTA, and the amount the fee is reduced by under the agreement is not arrears or a debt due to the grantor.

An occupancy fee, in this section, means the amount payable by the occupier for the right to occupy the premises.

The purpose of this clause is to make clear that parties can agree on a temporary reduction in occupancy fees and that the usual restrictions on fee increases will not prevent the fee from reverting to its original amount following the period agreed by the parties. The amount of lost fees during the agreed period does not have to be paid by the occupant after the period ends.

Clause 18 Restriction on listings in residential tenancy database

This clause prohibits a lessor, lessor's agent or database operator from listing personal information about a person in a residential tenancy database in relation to a failure to pay rent during the moratorium period, where the person was a member of an impacted household at the time of their failure to pay rent.

This clause applies even if the moratorium period has ended.

This clause also applies if, after the moratorium period ends, the tenant remains in arrears for rent payable during the moratorium period, or the residential tenancy agreement is terminated because of the breach for failing to pay rent in the moratorium period.

Clause 19 Termination by tenant in impacted household

This clause provides that a tenant who is a member of a COVID-19 impacted household may, during the moratorium period, terminate their fixed term residential tenancy agreement by providing 3 weeks' notice.

The clause lists examples of evidence that a tenant may rely on to demonstrate they are a member of a COVID-19 impacted household, they include:

- a statutory declaration attesting to status;
- evidence of eligibility for the Commonwealth COVID-19 Disaster Payment;
- evidence of eligibility for the ACT Government COVID-19 Business Support Grant;
- a termination or stand-down letter from an employer;
- evidence of reduction household income due to the COVID-19 restrictions;
- evidence of reduced work hours such as copies of work rosters.

The lessor is not entitled to any compensation or break fee under the Act or the agreement in relation to the early termination of the fixed term agreement under this clause.

Clause 20 Modification of Act, s 49 – payment orders for COVID-19 impacted households

This clause requires ACAT to consider making a payment order for a tenant who was a member of an impacted household during a relevant period as an alternative to making a termination and possession order. This clause applies in circumstances where a tenant from an impacted household is unable to meet rent payments as they fall due during the moratorium or transitional period and a lessor has applied to ACAT for a termination and possession order.

Currently, under sections 49 to 49B of the RTA, although ACAT is able to consider a payment order as an alternative to a termination and possession order in circumstances where a tenant is in rent arrears, it is not essential that they do so. ACAT will still be able to exercise its discretion as to whether making the payment order is appropriate in the circumstances. Even in circumstances where a tenant has been unable to meet their rent payments as they fell due during the transitional period, the measure operates to provide that tenant with an further opportunity to save their tenancy. This is because a payment order allows the tenancy to continue where the tenant pays their rent and a specified amount towards any rental arrears in accordance with the ACAT order. This measure will allow tenants to remain in their homes during a period of considerable financial stress and provides tenants with an additional opportunity to pay their rental debts before facing eviction. Requiring ACAT to consider making payment orders for impacted households sends a strong message that, wherever it is reasonably possible to do so, tenancies should be sustained.

This provision clarifies that a '**relevant period**' means the moratorium period under this instrument, the moratorium period under a 2020 declaration or a transitional period under a 2020 declaration or a 2021 declaration.

A 2020 declaration means:

- the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020* (DI2020-46)
- the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 2)* (DI2020-216)
- the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 3)* (DI2020-267)

A 2021 declaration means:

- the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2021* (DI2021-55)
- the *Residential Tenancies (COVID-19 Emergency Response) Declaration 2021 (No 2)* (DI2021-166)

The provision further clarifies that '**impacted household**' means –

- a) for the moratorium period under this instrument – an impacted household under this instrument and
- b) for a moratorium period under a 2020 declaration – an impacted household under the 2020 declaration
- c) for a transitional period under the Residential Tenancies (COVID-19 Emergency Response) Declaration 2020 (No 3) (DI2020-267) – an impacted household under that Declaration
- d) for a transitional period under a 2021 declaration - and impacted household under the 2021 declaration.

The purpose of capturing impacted households during relevant periods is to allow ACAT to make payment orders in relation to impacted households that may have fallen into rent arrears at any time while declarations have been in place in 2020 and 2021.

Part 5 Protection of people subject to quarantine direction

As noted above, the measures in this part apply during both the moratorium and the transitional periods.

The purpose of this part is to prevent people who have COVID-19 or who are a close or secondary contact of someone who has COVID-19 and who are required to self-isolate or quarantine from being required to leave the rental premises at which they are quarantining during their quarantine period. The measures in this part help support the ACT’s public health response by ensuring a quarantine period can be completed without any impediments from residential tenancy requirements.

Clause 21 Definitions – pt 5

This clause provides the definitions that apply to part 5.

This provision indicates ***quarantine direction*** means a requirement under a public health direction for a person to self-isolate or quarantine because they have, or may have, been infected with COVID-19; or have, or may have, been in contact directly or indirectly with a person infected with COVID-19.

However, a quarantine direction does not include a general public health direction applicable to the community as a whole aimed at reducing the risk of COVID-19 transmission (for example, a stay-at-home direction issued under the *Public Health (Lockdown Restrictions) Emergency Direction 2021 (No 4)* (NI2021-496)).

An example of a public health order that includes a quarantine or self-isolation direction is the *Public Health (Diagnosed People and Close Contacts) Emergency Declaration 2021 (No 2)* (NI 2021-550) or the *Public Health (COVID-19 Affected Areas) Emergency Direction 2021 (No 10)* (NI 2021-424)). The definition of *quarantine direction* is intended to capture individuals subject to this kind of direction.

‘Quarantine period’ for a person is defined to mean -the period for which the person is directed to self-isolate or quarantine under a quarantine direction.

‘COVID-19 declaration’ means a declaration of a state of emergency under the *Emergencies Act 2004*, section 156 because of the coronavirus disease or a declaration of an emergency under section 119 of the *Public Health Act 1997* (including any extension or further extension) because of the coronavirus disease 2019.

‘Public health direction’ means a direction given by the chief health officer under the *Public Health Act 1997*, section 120 in relation to the COVID-19 declaration.

Clause 22 Notice to vacate of premises in quarantine period

This clause applies if a tenant under a residential tenancy agreement, or any member of the household of the tenant, is subject to a quarantine direction for a quarantine period.

The clause provides that if the lessor has issued a notice to vacate that takes effect during the quarantine period, then the tenant is not required to vacate during their quarantine period and must vacate the premises on a day the tenant nominates to the lessor in writing that is not more than 2 weeks after the end of the quarantine period or, if the tenant does not nominate a day – the day 2 weeks after the end of the quarantine period or a later day notified by the lessor.

If the tenant has issued a notice of intention to vacate which comes into effect during their quarantine period, this section clarifies that the tenant is able to withdraw their notice of intention to vacate.

The purpose of this clause is to ensure the household can comply with their legal obligations under the COVID-19 public health directions and also allows sufficient time to comply with the notice to vacate once the mandated quarantine period has ended.

It is anticipated the household will be able to show their lessor that they are subject to a quarantine direction through simple evidence such as, for example:

- A copy of a self-declaration form to ACT Health indicating they attended an exposure location and are classified as a close contact or are a secondary contact to a close contact;
- A letter from ACT Health directing them to quarantine or self-isolate;
- An email from ACT Health directing them to quarantine or self-isolate;
- A screen shot of a text message received from ACT Health directing them to quarantine or self-isolate.

This clause does not apply to the general ‘stay at home period’ applying to all residents of the ACT under the *Public Health (Lockdown Restrictions) Emergency Direction 2021 (No 4)*.

Clause 23 ACAT power to suspend certain orders due to direction to quarantine

This clause applies if a tenant under a residential tenancy agreement for premises, or any member of the household of the tenant, is subject to a quarantine direction for a quarantine period and a termination order is in place in relation to the premises under the agreement.

The clause allows a tenant to apply to ACAT to suspend the termination order and allows ACAT to suspend the order if satisfied that the order affects that ability of the tenant or a member of their household to comply with the quarantine direction for the quarantine period. ACAT can suspend the order for a period of up to 2 weeks after the end of the quarantine period, as stated in the suspension.

This clause applies to all grounds for termination and possession orders under the RTA if a member of the household is in quarantine due to a COVID-19 public health quarantine direction. The purpose of this clause is to ensure the household can comply with their legal obligation under a COVID-19 public health direction to quarantine or self-isolate for the mandated period. The additional 2 weeks will allow the household sufficient time to comply with the order and find alternate accommodation.

For this clause to apply, the household must provide ACAT with evidence of their requirement to quarantine or self-isolate as soon as practicable. It is anticipated the household will be able to show they are subject to a quarantine direction through simple evidence such as, for example:

- A copy of a self-declaration form indicating that the person has been to an exposure site or affected area.
- A letter from ACT Health directing them to quarantine or self-isolate.
- An email from ACT Health directing them to quarantine or self-isolate.
- A screen shot of a text message received from ACT Health directing them to quarantine or self-isolate.

This clause does not apply to the general 'stay at home period' applying to all residents of the ACT such as the order under the *Public Health (Lockdown Restrictions) emergency Direction 2021 (No 4)*.