

These sections of the RTA take effect from the 29th March 2020 and are repealed 6 months after their commencement (Section 615 – Repeal of Part)

S.538 What is reasonable and proportionate?

Each possession application at VCAT has to pass the reasonable and proportionate test. Such as the nature, frequency and conduct of the tenant, whether the breach is trivial, whether it was caused by someone other than the tenant, whether the breach has or can be remedied, the effect of the conduct of the tenant, if there is any other course of action reasonable available instead of making the order that has been sought.

S.539 Suspension of rent increases

A landlord must not increase the rent payable under a tenancy agreement or give the tenant a notice of proposed rent increase under section 44 to a tenant

S.540 Reduction in rent & payment Plans

A tenant may apply to tribunal and the tribunal may order the following:

- Reducing the rent payable under the tenancy agreement for a period specified in the order; or
- The tenant enter into and abide by a payment plan to pay the rent or reduced rent and any outstanding arrears of rent for a period specified in the order

If the tribunal makes an order they can vary the terms of the agreement in line with the reduced rent or payment plan, the tribunal may cancel or amend an order and the tribunal must specify the terms of a payment plan.

S.541 Landlord must allow payment of rent by Centrepay

A Landlord must allow a tenant to pay rent via Centrepay, administered by DOH.

S.542 No breach of duty if COVID-19 reason

A Tenant or Landlord, will be unable to breach Under Section 89, a Tenant has a

right to permit entry if COVID-19 was the reason for not allowing access.

S.543 Reduction in fixed term tenancy agreement

The tribunal may make an order on application by a tenant or landlord to reduce the term of the agreement by a period stated in the order, or vary the terms of the agreement that are necessary because of the reduction of the term. They may only make an order if they are satisfied that the severe hardship which the applicant would suffer if the term wasn't reduced is greater than the severe hardship on the other party if the term was reduced.

S.544 No notices to vacate

A Landlord must not give a tenant a Notice to vacate rented premises. The following apply: 243 Damage, 244 Danger, 245 Condition of premises, 246 Non-Payment of rent, 247 Failure to pay bond, 248 Failure to comply with Tribunal Order, 249 Successive breaches by tenant, 250 Illegal purpose, 251 Permitting child to reside in the premises, 252 False statement to housing authority, 253 Assignment or subletting without consent, 254 Landlords principal place of residence, 255 Repairs, 256 Demolition, 257 Use for business, 258 Occupied by Landlord or family, 259 Sold, 260 Public purpose, 261 End of fixed term tenancy, 262 Tenant no longer meets eligibility criteria, 262AA Pet kept without consent, 263 No specified reason.

S.545 When a tenant can give notice of intention to vacate

A tenant must not give a Landlord a notice of intention to vacate rented premises unless they require special or personal care, they have a written offer of public housing with DOH, they require temporary crisis accommodation, the tenant is suffering severe hardship. The tenant can give 14 days notice to vacate on or after the end of fixed term or if the tenancy is periodic.

S.546 Tenants not liable for compensation or lease break fees, charges, etc...

A tenant is not liable to compensate a Landlord for loss suffered including loss of rent due to a lease break if the tenant is subject to a situation in Section 545, including severe hardship

S.547 Terminations

A tenancy agreement does not terminate unless the tribunal makes an order of termination, or it is terminated under section 217 Termination by agreement, 218 Termination by consent, 219 Termination after notice to vacate, 220 Termination by abandonment, 221 Termination where premises are sub-let, 224 Termination by merger, 225 Termination by disclaimer, 226 Termination by tenant before possession and 228 Termination after death of sole tenant. (Section 216 applies despite any law or act to the contrary, a tenancy agreement does not terminate and must not be terminated except in accordance with Division 1 or Part 6 or Part 7 or 8)

S.548 Application to Tribunal for order to terminate

A Landlord under a tenancy agreement can apply to the Tribunal for an order terminating a tenancy agreement.

S.549 Tribunal may terminate tenancy agreement in certain circumstances

The Tribunal may make an order terminating a tenancy agreement if it is satisfied that it is reasonable and proportionate to do so (Taking into account section 538). The reasons for making an order terminating an agreement are: serious damage caused by tenant or visitor, endangered the safety of neighbours, the Landlord, Agent, contractors or employees of the agent/landlord, tenant or visitor threats or intimidates the landlord, agent, contractor or employee, tenant failed to comply with tribunal order under section 212, illegal use, tenant has failed to comply with their obligations, including by not paying rent, in circumstances where the tenant could comply with the obligations without suffering severe hardship, the landlord has engaged an agent to sell or prepared or entered into a contract of sale, premises unfit for human habitation or destroyed to the extent of being rendered unsafe, subletting without consent, occupied by landlord or family, public authority to acquire land for public purpose, Pet kept without consent. If the tribunal does make an order they must specify the date the tenancy terminates and the tenancy agreement terminates at the end of that day. The tribunal will not make an order if the tenant failed to comply with their

obligations such as not paying rent due to COVID-19 being the reason.

S.550 When can a Landlord apply for a possession order?

A Landlord may apply to the Tribunal for a possession order if the Tribunal has made an order under section 549(1) terminating the tenancy agreement and has not made an order under Section 594(4); and the tenant has not delivered up vacant possession by the end of the termination date specified in the order under Section 549(1). A Landlord must not apply to the Tribunal for a possession order under Section 322 or the Alternate Procedure for possession (Section 335 & 337(3)).

S.551 Tribunal may make a possession order

The Tribunal may make a possession order under section 550 ordering a tenant to vacate the rented premises if the Tribunal is satisfied that the tenant is still in possession of the premises after the termination date specified in the order, and it is reasonable and proportionate to do so.

S.596 Listing cannot be made in relation to certain breaches

A Landlord must not list personal information about a person in a tenancy database such as NTD or TICA if the person was unable to pay the rent due to a COVID-19 reason.

S.596A Further matters to be considered by Tribunal

The Tribunal will calculate any compensation payable on application under section 210 such as; determine advertising costs and reletting fees incurred by the Landlord on a basis that is proportionate to the actual cost of securing the tenant, example:

A tenant has lived in rented premises under a tenancy agreement, on terms including a 12 month fixed term, rent of \$500 per week and a reletting fee of \$500. The tenant notifies the property manager that the tenant will terminate the tenancy agreement 6 months before the end of the fixed term. The property manager advertises the rented premises for rent immediately and finds a new tenant. The advertising costs were \$250. The new tenant enters the premises one week after

the previous tenant vacates the premises. The landlord's costs of advertising and reletting fees are \$1000, which is the sum of one week's rent (\$500), the reletting fee pro-rated for 6 months of the unexpired term of the agreement (\$250) and advertising costs (\$250).

Determine the amount of compensation for loss of rent by taking into account what loss could reasonably have been mitigated if the property was promptly relet. Have regard to any severe hardship the tenant would have suffered due to an unforeseen change in circumstances if the tenancy continued. Not award any compensation for loss of future rent if the Landlord served a NTV on the tenant. Determine compensation payable after a tenant gives the landlord a notice of intention to vacate under section 237 Reduced period of notice or 237a Fixed term agreement of more than 5 years.

S.612 Transitional Provision – Applications to Tribunal

This section applies to an application made before the commencement of the COVID legislation. The application must be dealt with in accordance with this Act and VCAT Act as in force at the time the application was made.

S.613 Transitional Provision – Possession Orders

A person who obtained a possession order under Part 7 before the 29th March 2020 is not entitled to a warrant of possession at any time on or after that date, unless the possession order could have been made under this Part had this Part been in operation at the time.

S.614 Transitional Provision – Notices to Vacate

A notice to vacate given to a person before the 29th March 2020 that specifies a termination date on or after the 29th March 2020 is of no effect.

S.615 Repeal of Part

This Part is repealed on the day that is 6 months after its commencement.