

## ANNEX TO THE SUBMISSION OF THE FEDERATION OF COMMUNITY LEGAL CENTRES (VIC) INC ON THE PUBLIC HEALTH AND WELLBEING (PANDEMIC MANAGEMENT) BILL 2021

### Suggested draft wording for protection for renters<sup>1</sup>

The Bill should be amended to include a new section based on the 'no-breach' provision in place in the *Residential Tenancies Act* between 29 March 2020 to 28 March 2021<sup>2</sup> and read as follows:

***No breach of duty or term if Pandemic Reason or Emergency Declaration Reason***

*(1) A renter, rooming house resident, caravan park resident, site tenant, SDA resident or residential rental provider, rooming house operator, caravan park owner, caravan owner, site owner, or SDA provider who would have breached a term of an agreement or a relevant duty provision but for this section, is taken not to have breached the term or provision if that person was unable to comply with, or it was not reasonably practicable for them to comply with, that term or provision, because of a Pandemic Reason or Emergency Declaration Reason.*

*(2) In this section— relevant duty provision means section 89, 140, 204, 206ZZM, 498Y, or any provision of Division 5 of Part 2, Division 5 of Part 3, Division 5 of Part 4, Division 5A of Part 4, Division 5 of Part 4A, Division 4 of Part 12A.*

A Pandemic Reason and Emergency Declaration Reason could be based on the definition of a COVID-19 reason, which was in place in the in the *Residential Tenancies Act* between 29 March 2020 to 28 March 2021<sup>3</sup> and read as follows:

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<sup>1</sup> This clause has been drafted by Justice Connect Homeless Law.

<sup>2</sup> On this see, *Residential Tenancies Act 1997 (Vic)* s 542, versions 92, 93, 94, 95 and 96. This provision relates to rental agreements, similar provisions (see 555, 565, 575 or 588) applied for rooming houses, caravan parks, site agreements and SDA residency agreements.

<sup>3</sup> On this see, *Residential Tenancies Act 1997 (Vic)* s 537, versions 92, 93, 94, 95 and 96. This provision relates to rental agreements, similar provisions applied for rooming houses, caravan parks, site agreements and SDA residency agreements.

***When is a person unable to comply with a term, provision or obligation because of a Pandemic Reason or Emergency Declaration Reason?***

*For the purposes of section [XX], a person is unable to comply with, or it is not reasonably practicable for a person to comply with, a term, provision or obligation because of a Pandemic Reason or Emergency Declaration Reason if –*

- (a) the Premier has made a pandemic declaration pursuant to s 165AB of the Public Health and Wellbeing Act 2008 (**pandemic declaration**); or*
- (b) the Minister has declared a state of emergency pursuant to s 198 of the Public Health and Wellbeing Act 2008 (**emergency declaration**); and*
- (c) the person is unable to comply with, or it is not reasonably practicable for the person to comply with, the term, provision or obligation, as a result of the person's compliance with the exercise of a power or giving of a direction under the Public Health and Wellbeing Act 2008; or*
- (d) the person is unable to comply with, or it is not reasonably practicable for the person to comply with, the term, provision or obligation, as a result of the person's compliance with the exercise of a power or the giving of a direction under the Emergency Management Act 1986 or Public Health and Wellbeing Act 2008; or*
- (e) the person, in connection with the pandemic or emergency about which a pandemic declaration or emergency declaration has been made, is unable to comply with, or it is not reasonably practicable for the person to comply with, the term provision or obligation, without suffering severe hardship; or*
- (f) the person is unable to comply with, or it is not reasonably practicable for the person to comply with, the term, provision or obligation, as a result of exceptional circumstances in relation to the pandemic or emergency about which a pandemic declaration has been or emergency declaration has been made; or*
- (g) the person is unable to comply with, or it is not reasonably practicable for the person to comply with, the term, provision or obligation because they are ill, whether or not the illness is pandemic related.*