



New South Wales

Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2020

under the

Retail Leases Act 1994

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Retail Leases Act 1994*.

DAMIEN TUDEHOPE, MLC
Minister for Finance and Small Business

Explanatory note

The objects of this Regulation are as follows—

- (a) to clarify that lessors are prohibited from taking certain action in respect of commercial leases to which impacted lessees are party,
- (b) to require impacted lessees to give lessors—
 - (i) a statement to the effect that the lessee is an impacted lessee, and
 - (ii) evidence that the lessee is an impacted lessee,
- (c) to clarify the application of certain clauses to impacted lessees.

This Regulation is made under the *Retail Leases Act 1994*, including sections 85 (the general regulation-making power) and 87 and under section 202 (the general regulation-making power) of the *Conveyancing Act 1919*.

This Regulation is made with the agreement of the Minister for Customer Service, being the Minister administering the *Conveyancing Act 1919*.

Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2020

under the

Retail Leases Act 1994

1 Name of Regulation

This Regulation is the *Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Retail and Other Commercial Leases (COVID-19) Regulation 2020

- [1] **Clause 6 Prohibitions and restrictions relating to commercial leases**
Omit “a lessee” from clause 6(5). Insert instead “an impacted lessee”.
- [2] **Clause 6(5)(a)**
Omit “a commercial lease”.
Insert instead “the commercial lease to which the impacted lessee is a party”.
- [3] **Clause 6(5)(b) and (6)**
Insert “impacted” before “lessee” wherever occurring.
- [4] **Clause 7 Obligation to renegotiate rent and other terms of commercial leases before prescribed action**
Insert before clause 7(1)—
(1A) This clause applies to a commercial lease to which an impacted lessee is a party (an *impacted lease*).
- [5] **Clause 7(1), (3) and (4)**
Omit “a commercial lease” and “the commercial lease” wherever occurring.
Insert instead “an impacted lease” and “the impacted lease”, respectively.
- [6] **Clause 7(1)**
Omit “an impacted lessee”. Insert instead “the impacted lessee concerned”.
- [7] **Clause 7(2)**
Omit the subclause. Insert instead—
(2) Any party to an impacted lease may request the other parties to renegotiate the rent payable under, and other terms of, the impacted lease.
- [8] **Clause 7(3A) and (3B)**
Insert after clause 7(3)—
(3A) An impacted lessee must give the lessor the following in respect of the impacted lease—
(a) a statement to the effect that the lessee is an impacted lessee,
(b) evidence that the lessee is an impacted lessee.
(3B) If the impacted lessee does not comply with subclause (3A), the lessor is taken to have complied with this clause.
- [9] **Clause 10 Lessor action for non-COVID-19 pandemic related reasons**
Omit “See leasing principle No. 2 in the National Code of Conduct.” from the note to the clause.
- [10] **Clause 13**
Insert after clause 12—

13 Evidence of impacted lessee status—savings provision

- (1) The amendments to clause 7 made by the *Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2020* extend to renegotiations commenced but not completed before the commencement of the amendments.
- (2) For the avoidance of doubt, the amendments do not extend to a matter for which a retail tenancy claim has been made under section 71 of the Act.

Schedule 2 Amendment of Conveyancing (General) Regulation 2018

- [1] **Schedule 5 Commercial leases—COVID-19 pandemic special provisions**
Omit “a lessee” from clause 4(5) to the Schedule. Insert instead “an impacted lessee”.
- [2] **Schedule 5, clause 4(5)(a)**
Omit “a commercial lease”.
Insert instead “the commercial lease to which the impacted lessee is a party”.
- [3] **Schedule 5, clause 4(5)(b) and (6)**
Insert “impacted” before “lessee” wherever occurring.
- [4] **Schedule 5, clause 5(1A)**
Insert before clause 5(1)—
(1A) This clause applies to a commercial lease to which an impacted lessee is a party (an *impacted lease*).
- [5] **Schedule 5, clause 5(1), (3) and (4)**
Omit “a commercial lease” and “the commercial lease” wherever occurring.
Insert instead “an impacted lease” and “the impacted lease”, respectively.
- [6] **Schedule 5, clause 5(1)**
Omit “an impacted lessee”. Insert instead “the impacted lessee concerned”.
- [7] **Schedule 5, clause 5(2)**
Omit the subclause. Insert instead—
(2) Any party to an impacted lease may request the other parties to renegotiate the rent payable under, and other terms of, the impacted lease.
- [8] **Schedule 5, clause 5(3A) and (3B)**
Insert after clause 5(3)—
(3A) An impacted lessee must give the lessor the following in respect of the impacted lease—
(a) a statement to the effect that the lessee is an impacted lessee,
(b) evidence that the lessee is an impacted lessee.
(3B) If the impacted lessee does not comply with subclause (3A), the lessor is taken to have complied with this clause.
- [9] **Schedule 5, clause 8**
Omit “See leasing principle No. 2 in the National Code of Conduct.” from the note to the clause.
- [10] **Schedule 5, clause 11**
Insert after clause 10—

11 Evidence of impacted lessee status—savings provision

- (1) The amendments to clause 5 made by the *Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2020* extend to renegotiations commenced but not completed before the commencement of the amendments.
- (2) For the avoidance of doubt, the amendments do not extend to a matter for which proceedings have commenced in a court.