



New South Wales

Retail and Other Commercial Leases (COVID-19) Amendment (Eligibility) Regulation 2021

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—

- (a) to clarify that a Commonwealth COVID-19 Disaster Payment made to a lessee, which makes the lessee ineligible for certain New South Wales payments or grants, does not prevent the lessee from being an impacted lessee, and
- (b) to enable a lessor to request evidence at any time that it is reasonably necessary to ensure that a lessee continues to be an impacted lessee, and
- (c) to enable further rent renegotiation for a period if the lessee ceases to be an impacted lessee during the period, and
- (d) to provide that when renegotiating a reduction in rent—
 - (i) certain New South Wales payments or grants made to the lessee must be taken into account, and
 - (ii) the lessor is not required to reduce rent in relation to periods during which the lessee is not an impacted lessee.

This Regulation is made under the *Retail Leases Act 1994*, including sections 85, the general regulation-making power, and 87.

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Retail Leases Act 1994

1 Name of Regulation

This Regulation is the *Retail and Other Commercial Leases (COVID-19) Amendment (Eligibility) Regulation 2021*.

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 2021

[1] Clause 4 Meaning of “impacted lessee”

Insert “, or would qualify but for a COVID-19 Disaster Payment made to the lessee by the Commonwealth” after “following” in clause 4(1)(a).

[2] Clause 6 Application of Part

Insert “at any time” after “if,”.

[3] Clause 6A Provision of information

Insert after clause 6A(2)—

- (3) The lessor may request the information under this clause at any time if the information is reasonably required to ensure that the lessee continues to be an impacted lessee, but may not request the information more than once every 2 weeks.

[4] Clause 6D Obligation to renegotiate

Insert “unless the lessee ceases to be an impacted lessee during the period” after “this clause” in clause 6D(2)(b).

[5] Clause 6D(4A)

Insert after clause 6D(4)—

- (4A) When renegotiating the rent payable—
 - (a) a grant or payment referred to in clause 4(1)(a) that is made to a lessee is to be treated as if it were part of the trade or turnover of the lessee, and
 - (b) a lessor is not required to reduce rent for periods when the lessee is not an impacted lessee, and
 - (c) a lessor is entitled to provide that a negotiated rent reduction will not apply at times during which the lessee ceases to be an impacted lessee.

Schedule 2 Amendment of Conveyancing (General) Regulation 2018

[1] Schedule 5 Commercial leases—COVID-19 pandemic special provisions

Insert “, or would qualify but for a COVID-19 Disaster Payment made to the lessee by the Commonwealth” after “following” in clause 2(1)(a).

[2] Schedule 5, clause 4

Insert “at any time” after “if”.

[3] Schedule 5, clause 4A(3)

Insert after clause 4A(2)—

- (3) The lessor may request the information under this clause at any time if the information is reasonably required to ensure that the lessee continues to be an impacted lessee, but may not request the information more than once every 2 weeks.

[4] Schedule 5, clause 4D(2)(b)

Insert “unless the lessee ceases to be an impacted lessee during the period” after “this clause”.

[5] Schedule 5, clause 4D(4A)

Insert after clause 4D(4)—

- (4A) When renegotiating the rent payable—
- (a) a grant or payment referred to in clause 2(1)(a) that is made to a lessee is to be treated as if it were part of the trade or turnover of the lessee, and
 - (b) a lessor is not required to reduce rent for periods when the lessee is not an impacted lessee, and
 - (c) a lessor is entitled to provide that a negotiated rent reduction will not apply at times during which the lessee ceases to be an impacted lessee.