Retail and Other Commercial Leases (COVID-19) Amendment (Impacted Lessees) 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 object of this Regulation is to provide that a lessee may still request to renegotiate for reduced rent for a temporary period even though the lessee is no longer an impacted lessee if the lessee—
(a) would have qualified for certain grants or payments, and
(b) had a turnover of less than $5 million during the 2020–2021 financial year.
This Regulation is made under—
(a) the Retail Leases Act 1994, including sections 85, the general regulation-making power, and 87, and
(b) the Conveyancing Act 1919, section 202, the general regulation-making power.
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 (Impacted Lessees) Regulation 2021

under the
Retail Leases Act 1994

1 Name of Regulation

This Regulation is the Retail and Other Commercial Leases (COVID-19) Amendment (Impacted Lessees) 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 3 Definitions
Insert in alphabetical order—

*group*, for a corporation, means the corporation and all corporations that are related bodies corporates of the corporation.

*related body corporate* has the same meaning as in the Corporations Act 2001 of the Commonwealth.

*turnover* of a business includes any turnover derived from internet sales of goods or services.

Omit clause 4(2) and (3).

[3] Clause 6D Obligation to renegotiate
Insert after clause 6D(4A)—

(4B) For the purposes of subclause (4A)(b) and (c), after 30 November 2021, a lessee is taken to be an impacted lessee if—

(a) the lessee would have qualified for 1 of the following were it still to be available—

(i) 2021 COVID-19 Micro-business Grant,
(ii) 2021 JobSaver Payment, and

(b) the following turnover in relation to the lessee in the 2020–2021 financial year was less than $5 million—

(i) if the lessee is a franchisee—the turnover of the business conducted at the premises or land concerned,
(ii) if the lessee is a corporation that is a member of a group—the turnover of the group,
(iii) otherwise—the turnover of the business conducted by the lessee.
Schedule 2 Amendment of Conveyancing (General) Regulation 2018

Insert in alphabetical order in clause 1—

- **group**, for a corporation, means the corporation and all corporations that are related bodies corporates of the corporation.
- **related body corporate** has the same meaning as in the Corporations Act 2001 of the Commonwealth.
- **turnover** of a business includes any turnover derived from internet sales of goods or services.

[2] Schedule 5, clause 2(2) and (3)
Omit the subclauses.

[3] Schedule 5, clause 4D(4B)
Insert after clause 4D(4A)—

- (4B) For the purposes of subclause (4A)(b) and (c), after 30 November 2021, a lessee is taken to be an impacted lessee if—
  - (a) the lessee would have qualified for 1 of the following were it still to be available—
    - (i) 2021 COVID-19 Micro-business Grant,
    - (ii) 2021 JobSaver Payment, and
  - (b) the following turnover in relation to the lessee in the 2020–2021 financial year was less than $5 million—
    - (i) if the lessee is a franchisee—the turnover of the business conducted at the premises or land concerned,
    - (ii) if the lessee is a corporation that is a member of a group—the turnover of the group,
    - (iii) otherwise—the turnover of the business conducted by the lessee.