



New South Wales

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*.

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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.

[2] Clause 4 Meaning of “impacted lessee”

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

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

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.