



New South Wales

Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2022

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*.

ELENI PETINOS, MP
Minister for Small Business

Explanatory note

The object of this Regulation is to remove requirements in relation to impacted leases that—

- (a) required parties to an impacted lease to renegotiate the rent payable under, and other terms of, the lease, and
- (b) prevented rent payable under an impacted lease from being increased.

Provisions requiring compulsory mediation are to remain in place.

This Regulation is made under—

- (a) the *Retail Leases Act 1994*, including section 85, the general regulation-making power, and 87, and
- (b) the *Conveyancing Act 1919*, including section 202, the general regulation-making power.

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

Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2022

under the

Retail Leases Act 1994

1 Name of Regulation

This Regulation is the *Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2022*.

2 Commencement

This Regulation commences at the beginning of 14 March 2022 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Retail and Other Commercial Leases (COVID-19) Regulation 2022

[1] Section 3 Definitions

Omit “13 March 2022” from section 3, definition of *prescribed period*.
Insert instead “30 June 2022”.

[2] Section 4 Meaning of “impacted lessee”

Omit section 4(a)(iii). Insert instead—

- (iii) 2021 JobSaver Payment,
- (iv) 2022 Small Business Support Program, and

[3] Section 4(b)

Omit “\$50 million”. Insert instead “\$5 million”.

[4] Section 8 Obligation to not increase rent

Omit the section.

[5] Section 9 Compulsory mediation

Insert after section 9(1)—

- (1A) Section (1)(b) does not apply if the prescribed breach of the impacted lease occurs after 13 March 2022.

[6] Section 10 Obligation to renegotiate

Omit “A party” from section 10(1). Insert instead “For the purposes of section 9, a party”.

[7] Section 10(8)

Omit the subsection.

[8] Section 15 Tribunal and court consideration of National Code of Conduct leasing principles

Insert at the end of the section—

- (2) This section does not apply if—
 - (a) the decision or order is sought in relation to a prescribed action on the grounds of a prescribed breach, and
 - (b) the lessor, if requested by the lessee, would not be obliged to renegotiate under section 10 in relation to the prescribed action.

Example— if the prescribed action is for a breach of an impacted lease occurring after 13 March 2022

Schedule 2 Amendment of Conveyancing (General) Regulation 2018

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

Omit “13 March 2022” from clause 1, definition of *prescribed period*.

Insert instead “30 June 2022”.

[2] Schedule 5, clause 2(a)(iii) and (iv)

Omit clause 2(a)(iii). Insert instead—

(iii) 2021 JobSaver Payment,

(iv) 2022 Small Business Support Program, and

[3] Schedule 5, clause 2(b)

Omit “\$50 million”. Insert instead “\$5 million”.

[4] Schedule 5, clause 6

Omit the clause.

[5] Schedule 5, clause 7(1A)

Insert after clause 7(1)—

(1A) Clause (1)(b) does not apply if the prescribed breach of the impacted lease occurs after 13 March 2022.

[6] Schedule 5, clause 8(1)

Omit “A party”. Insert instead “For the purposes of section 7, a party”.

[7] Schedule 5, clause 8(8)

Omit the subclause.

[8] Schedule 5, clause 12(2)

Insert at the end of the clause 12—

(2) This clause does not apply if—

(a) the decision or order is sought in relation to a prescribed action on the grounds of a prescribed breach, and

(b) the lessor, if requested by the lessee, would not be obliged to renegotiate under clause 8 in relation to the prescribed action.

Example— if the prescribed action is for a breach of an impacted lease occurring after 13 March 2022