

legislative updates – covid-19

current as at 7 july 2020

State	Bill	Relevant Act/ Regulation	Amendment
New South Wales	<p>The COVID-19 Legislation Amendment (Emergency Measures) Act 2020</p> <p>The Retail and other Commercial Leases (COVID-19) Regulation 2020</p>	<p>Retail Leases Act 1994</p> <p>Residential Trading Act 2010</p> <p>Retail Leases Act 1994</p> <p>Conveyancing (General) Regulation 2018</p>	<p>Minister has been granted power to recommend to the Governor for the following regulations to be made to respond to the COVID-19 pandemic:</p> <ol style="list-style-type: none"> 1. prohibiting the recovery of possession of premises from a tenant, lessee or resident of the premises; 2. prohibiting the termination of a lease, residential tenancy agreement, occupancy agreement or site agreement; 3. regulating or preventing the exercise or enforcement of another right of a landlord, proprietor of premises or operator of a community relating to the premises; and 4. exempting a tenant, lessee, resident or home owner, or a class of tenants, residents or home owners, from the operation of a provision of the relevant Act or any agreement relating to premises. <p>Who the Regulation applies to: Consistent with the Code, the Regulation applies to Lessees (Impacted Lessee) who:</p> <ol style="list-style-type: none"> 1. qualify for the Jobkeeper program; and 2. have a turnover of less than \$50 million for the 2019 financial year, determined accordingly: <ol style="list-style-type: none"> a. if the lessee is a franchisee – the turnover of the business conducted at the premises; b. if the lessee is a member of a group – the turnover of the group; and c. if any other case – the turnover of the business conducted by the lessee. <p>Period to which the Regulation applies – Prescribed Period 6 months from 24 April 2020, being 24 October 2020 (Prescribed Period).</p>

State	Bill	Relevant Act/ Regulation	Amendment
New South Wales (cont.)	The Retail and other Commercial Leases (COVID-19) Regulation 2020 (cont.)	Retail Leases Act 1994 Conveyancing (General) Regulation 2018 (cont.)	<p>Lessors must not take Prescribed Action against Impacted Lessees</p> <p>The Regulation prohibits the Lessor from taking Prescribed Action against Impacted Lessees for a breach of the lease. Prescribed Action is defined as:</p> <ol style="list-style-type: none"> 1. evicting the Lessee; 2. exercising a right of re-entry; 3. recovering the premises/land; 4. the distraint of goods; 5. forfeiture; 6. damages; 7. requiring payment of interest on unpaid rent; 8. recovering a security bond; 9. taking possession; 10. terminating the lease; or 11. any other remedy available to a Lessor at common law or under the law of NSW. <p>Prohibitions and restrictions</p> <ol style="list-style-type: none"> 1. A Lessor must not take a Prescribed Action against an Impacted Lessee due to: <ol style="list-style-type: none"> a. a failure to pay rent; b. a failure to pay outgoings; or c. the business not operating during the hours specified in the lease. 2. Rent payable cannot be increased (other than rent determined by reference to turnover). 3. A Lessor must not take a Prescribed Action against an Impacted Lessee after the Prescribed Period on the grounds of a breach of the lease for the failure to pay an amount equivalent to a rent increase referred to above. 4. If an Impacted Lessee is required under the lease to pay an amount for land tax (or other statutory charge) or insurance, if the amount payable by the Lessor for land tax or insurance is reduced, the Lessee is exempted from the operation of the provision to the extent of the reduction. 5. An act or omission of an Impacted Lessee required under a Commonwealth or State Law in response to the pandemic is not taken to be a breach of a lease and does not constitute grounds for termination or any Prescribed Action being taken by the Lessor. <p>Obligation to renegotiate rent and other terms before prescribed action</p> <p>Lessor must not take or continue a Prescribed Action against an Impacted Lessee unless they have complied with the following:</p> <ol style="list-style-type: none"> 1. Requested the parties to renegotiate the rent and other terms of the lease; 2. Renegotiated in good faith, having regard to: <ol style="list-style-type: none"> a. The economic impacts of the pandemic; and b. Leasing principles of the Code. <p>It is important to note that an Impacted Lessee is required to provide the Lessor with the following:</p> <ol style="list-style-type: none"> a. a statement to the effect that the lessee is an Impacted Lessee; and b. evidence that the lessee is an Impacted Lessee. <p>If an Impacted Lessee fails to do so, the Lessor may commence a Prescribed Action against the lessee.</p> <p>Dispute Resolution – Mediation before proceedings can be commenced</p> <p>If agreement cannot be reached between the parties, the matter must be referred to mediation.</p> <p>Lessor action for non-Covid-19 related reasons</p> <p>Lessors are not precluded from taking a Prescribed Action on grounds not related to the economic impacts of Covid-19. For example, a Lessor may terminate if the Lessee has damaged the premises or a Lessee fails to vacate after the expiry of a fixed term.</p>

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Victoria	COVID-19 Omnibus (Emergency Measures) Act 2020		The Governor in Council, on recommendation of the Minister for Small Business, may implement regulations in relation to temporarily modifying laws relating to retail leases and non-retail commercial leases.
	COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020		<p>Period to which the Regulation applies Regulations commence on the 29 March 2020 and expire on the 29 September 2020.</p> <p>Who the Regulation applies to Eligible classes of lease – tenant that is a SME entity and participates in the JobKeeper scheme. Excluded classes of lease – Agricultural, poultry and dairy farming, grazing and any activity that falls within the definition of farming operation in s 3(c) of the Farm Debt Mediation Act 2011.</p> <p>General obligations Landlords and tenants must cooperate and act reasonably and in good faith in all discussions and actions associated with matters to which these regulations apply.</p> <p>Non-payment of rent during relevant period Tenant under an eligible lease is not in breach of the eligible lease if they do not pay the amount of rent required. Landlord under an eligible lease must not:</p> <ol style="list-style-type: none"> 1. Evict or attempt to evict tenant; 2. Re-enter or otherwise recover, or attempt to re-enter or otherwise recover, the premises; and <p>Recourse or attempt to have recourse, to any security relating to the non-payment of rent.</p> <p>Rent Relief</p> <ol style="list-style-type: none"> 1. A tenant under an eligible lease may request rent relief. A request must be in writing and be accompanied by a statement that the lease is eligible and include evidence that the tenant is a SME entity and qualifies/ participates in the JobKeeper scheme. 2. Upon receipt of tenants request, the landlord must offer rent relief within 14 days of receiving the request, or a different time frame as agreed between the landlord and tenant. 3. Landlords offer of rent relief must be based on all the circumstances and relate to 100% of the rent payable during the relevant period. No less than 50% of the rent relief offered by the landlord must be in the form of a waiver of rent, unless otherwise agreed in writing. 4. Landlord's offer of rent relief must be based on: <ol style="list-style-type: none"> a. the reduction in tenants turnover; and b. any waivers by the landlord of tenants outgoings or expenses; and c. whether failure to provide rent relief would compromise tenants capacity to fulfil the tenant's ongoing obligations, including the payment of rent; and d. landlords financial ability to offer rent relief, including any relief provided to landlord by its lenders; and e. any reduction to any outgoings charged, imposed or levied in relation to the premises. 5. Following receipt of landlords offer by a tenant, both parties must negotiate in good faith with a view to agreeing on the rent relief to apply for the relevant period. 6. Rent relief may be given effect by: <ol style="list-style-type: none"> a. A variation to the eligible lease; or b. Any other agreement between them that gives effect to the rent relief, either directly or indirectly.

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Victoria (cont.)	COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 (cont.)		<p>Subsequent rent relief</p> <p>If the financial circumstances of a tenant materially change after a variation has been made or an agreement has been reached, the tenant may make a further request to the landlord for rent relief under reg. 10.</p> <p>Landlord and tenant must follow the process set out in reg. 10 in relation to the request.</p> <p>Prohibition on rent increases</p> <p>Landlord not to increase the rent payable under the lease at any time during the relevant period, unless the landlord and the tenant agree in writing that this regulation does not apply</p> <p>This does not apply to retail leases where rent is determined by reference to the volume of trade of a tenant's business.</p> <p>Extension of the term</p> <p>If payment of any rent is deferred by variation or agreement, the landlord under the eligible lease must offer the tenant an extension of time on their eligible lease on the same terms and conditions that applied before these regulations.</p> <p>This extension must be equivalent to the period for which rent is deferred, unless a landlord and a tenant agree in writing that this regulation does not apply to their eligible lease.</p> <p>Recovery of outgoings or expenses</p> <p>Landlord must consider waiving recovery of outgoings or other expenses payable by tenant for any part of the relevant period that the tenant is not able to operate the business at the premises.</p> <p>If tenant not able to operate their business for any part of the relevant period, the landlord must cease to provide, or reduce provision of, any services at the premises that is reasonable in the circumstances and in accordance with any reasonable request of the tenant.</p> <p>Reduction in outgoings</p> <p>If outgoings are reduced, landlord must not require a tenant to pay any amount greater than a tenant's proportional share. If tenant has paid in excess, landlord must reimburse the excess.</p> <p>Payment of deferred rent</p> <p>Landlord must not request payment of any part of the deferred rent until the earlier of—</p> <ol style="list-style-type: none"> a. Expiry of the relevant period; and b. Expiry of the term of the eligible lease; and c. The lease must be varied so the tenant must pay the deferred rent to the landlord amortised over the greater of— <ol style="list-style-type: none"> i. The balance of the term of the lease and ii. A period of no thank than 24 months iii. Or as otherwise agreed in writing. <p>Method of amortisation is to be agreed to by the landlord and the tenant.</p> <p>No fees, interest or charges</p> <ol style="list-style-type: none"> 1. A landlord must not require a tenant to pay interest or any other fee or charge in relation to any payment of rent deferred by variation to the eligible lease or an agreement mentioned under regulation 10(6). 2. Tenant may reduce business hours or cease business during relevant period.

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Victoria (cont.)	COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 (cont.)		<p>3. Tenant not in breach of eligible lease is they reduce opening hours to cease trading.</p> <p>4. The landlord must not evict or attempt to evict, re-enter or otherwise recover or attempt to re-enter or otherwise recover, have recourse or attempt to have recourse, when this regulation applies.</p> <p>Confidentiality of information</p> <p>1. Landlord or tenant must not divulge information obtained in connection with regulations except: with the consent of the person, to a professional advisor, to a actual or prospective financier, as authorised by Small Business Commissioner, as authorised by law or for the purposes of any proceeding in a court or tribunal.</p> <p>2. Landlord may use the information given by tenant in rent relief request for applying for tax relief.</p> <p>Dispute Resolution</p> <p>A landlord or a tenant under an eligible lease may refer a dispute amount the terms of an eligible lease arising in relation to a matter to which these Regulations apply to the Small Business Commission for mediation.</p> <p>A referral must be in writing.</p> <p>Jurisdiction of VCAT</p> <p>Jurisdiction of VCAT – an eligible lease dispute may only be the subject of a proceeding in VCAT or a court (other than the Supreme Court) if the Small Business Commission has certified in writing that mediation under Division 1 has failed or is unlikely to resolve the dispute.</p> <p>Nothing in this Part prevents a dispute from being dealt with through a compulsory conference, mediation or any other alternative dispute resolution process under the Court rules, the VCAT Act 1998 or the Civil Procedure Act 2010.</p>
Queensland	COVID-19 Emergency Response Act 2020	Retail Shop Leases Act 1994	<p>Enabling the Minister to make regulations in respect of leases for the purpose of responding to the COVID-19 emergency.</p> <p>Period to which the Act applies</p> <p>Any regulation made under the Act can have retrospective application to 23 April 2020 and expires on 31 December 2020.</p> <p>Notwithstanding the above, depending how long it will take for the current “lock down” measures to be lifted, the regulations may potentially regulate landlord and tenant conduct well after businesses have recovered.</p> <p>Who the Act applies to</p> <p>The Act applies to certain tenancies experiencing financial hardship as a result of COVID-19.</p> <p>Prohibited Action</p> <p>The Act allows regulations to be made in respect to “relevant leases” which:-</p> <ol style="list-style-type: none"> 1. prohibit lessors from recovering possession of premises; 2. prohibit lessors from terminating a lease; 3. regulate and/or prevent the exercise and/or enforcement of another right of a lessor; 4. exempt a lessee (or class of lessees) from the operation of a provision of an Act, lease and/or other agreement relating to the premises; 5. require parties to have regard to principles or a code in negotiating or disputing matters; 6. require mediators to have regard to principles or a code when mediating; 7. provide for a dispute resolution process; 8. prescribe other matters necessary to facilitate the above; and 9. provide for a maximum penalty of 20 penalty units for a breach of the regulation (1 penalty unit equates to \$133.45).

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Queensland (cont.)	COVID-19 Emergency Response Act 2020 (cont.)	Retail Shop Leases Act 1994 (cont.)	<p>The definition of “relevant leases”</p> <p>The definition of “relevant lease” is set out under Part 7 of the Act. It includes a retail shop lease under the Retail Shop Leases Act 1994 and/or a lease prescribed by regulation.</p> <p>A “lease” under Part 7 of the Act includes a sub-lease, licence and/or other agreement under which a person grants a right to another person to occupy a premises for purposes other than residential.</p> <p>Dispute resolution</p> <p>Part 6 of the Act provides for the appointment of a Small Business Commissioner to provide dispute resolution support for small businesses including mediation for tenancy disputes.</p>
	COVID-19 Emergency Response Act 2020	Retail Shop Leases Act 1994 Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020	<p>General Overview</p> <p>The Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (Qld) (“the Regulation”) was made on 28 May 2020 to mitigate effects of the COVID-19 pandemic on Queensland commercial leases.</p> <p>The Regulation was made under section 23 of the COVID-19 Emergency Response Act 2020 (Qld) (“the Act”) and expires on 31 December 2020 (pursuant to section 23(6) of the Act).</p> <p>The Regulation implements the National Cabinet Mandatory Code of Conduct – SME Commercial Leasing Principles During COVID-19 (“the Code”).</p> <p>Requirements</p> <p>Section 11 of the Act provides parties of an “affected lease” must cooperate and act reasonably and in good faith in all discussions and actions associated with mitigating the effects of the COVID-19 emergency on the parties to a lease.</p> <p>Affected Lease</p> <p>An “affected lease” is:-</p> <ol style="list-style-type: none"> 1. a lease that is: <ol style="list-style-type: none"> a. a retail shop lease; or b. a lease under which the leased premises are wholly or predominantly used for carrying on a business (prescribed lease); and 2. on commencement of the Regulation, the lease or an agreement to enter into the lease is binding on the tenant, regardless of whether the lease has commenced or not; and 3. the tenant is an SME entity; and 4. the tenant is eligible for the JobKeeper scheme (i.e. generally it will have suffered a 30% reduction in revenue). <p>SME entity</p> <p>An SME entity is an entity with an annual turnover of less than \$50 million.</p> <p>Franchisees</p> <p>If the tenant under an affected lease is a franchisee, a lease under which the franchisor is lessee of the premises occupied by the franchisee is also an affected lease.</p> <p>General Obligations</p> <p>The Regulation imposes a number of obligations on landlords and tenants to reflect the Code, which will apply for the response period starting on 29 March 2020 and ending on 30 September 2020 (“the Response Period”). The general obligations include:-</p>

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	COVID-19 Emergency Response Act 2020 (cont.)	Retail Shop Leases Act 1994 Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (cont.)	<ol style="list-style-type: none"> 1. landlords and tenants must cooperate and act reasonably in good faith; 2. a landlord must not take “prescribed action” on any of the following grounds:- <ol style="list-style-type: none"> a. a failure to pay rent and/or outgoings during the Response Period; b. the business operating at the premises not being open for business during the hours contemplated by the lease. 3. a landlord must not increase the rent payable by the tenant throughout the response period. The landlord may review the rent as contemplated by the lease but must not make any increase until the Response Period ends. 4. a landlord must not take prescribed action after the Response Period ends where the tenant fails to pay the amount equivalent to the increase in rent. <p>Prescribed Action</p> <p>The landlord is prohibited from taking the following “prescribed action” during the Response Period:-</p> <ol style="list-style-type: none"> 1. Recovery of possession; 2. Termination of the lease; 3. Eviction of the tenant; 4. Exercising a right of re-entry to premises; 5. Requiring the payment of interest on unpaid rent or outgoings; 6. Making a claim on a bank guarantee or security deposit for unpaid rent and/or outgoings; 7. Requiring the performance of an obligation by the tenant or another person under a guarantee; and 8. Exercising or enforcing any other right under the lease. <p>Renegotiating Rent</p> <p>Parties can renegotiate rent payable by making a request in writing and by providing the landlord with sufficient information.</p> <p>The landlord has 30 days after it receives sufficient information to offer the tenant a reduction in rent payable.</p> <p>The landlord’s offer must:-</p> <ol style="list-style-type: none"> 1. relate to the rent payable under the lease during the Response Period; and 2. provide for at least 50% of the rent reduction offered to be in the form of a rent waiver (for example if the landlord offered a \$10,000 reduction in rent then at least \$5,000 of that rent reduction must be waived); and 3. have regard to a range of factors including all of the tenant’s circumstances and the affected lease, the reduction in turnover of the tenant’s business during the response period, the extent to which a failure to reduce the rent would compromise the tenant’s ability to comply with the tenant’s obligations under the lease, the landlord’s financial position and any reduction in land tax, rates and/or statutory charges. <p>The Regulation does not require the rent reduction to be proportionate to the tenant’s reduction of turnover.</p> <p>Deferred Rent</p> <p>In relation to an agreement where the landlord has agreed to defer a portion of the rent:</p> <ol style="list-style-type: none"> 1. The tenant is not required to repay the deferred rent until after the end of the Response Period; 2. Repayment of the deferred rent must be in instalments over a period of at least 2 years but no more than 3 years; and 3. The landlord must not require the tenant to pay interest on the deferred rent, unless the tenant fails to comply with the conditions on which the rent has been deferred. <p>In securing payment for the deferred rent, a landlord may continue to hold any security deposit provided under the lease (even after the lease has expired) until such time that the deferred rent has been paid.</p>

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	COVID-19 Emergency Response Act 2020 (cont.)	Retail Shop Leases Act 1994 Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (cont.)	Dispute Resolution If an agreement cannot be reached, then a party may give notice of the dispute to the Small Business Commissioner. On receiving a notice of the dispute, the Small Business Commissioner must nominate a mediator and the date for a mediation conference must be at least seven days after the notice is given. At a mediation conference, a party is permitted to be represented by an agent or in the case of a corporation, an officer or employee of the corporation. A party may be represented by a lawyer only with the approval of the mediator and only in certain circumstances. In the event that the dispute is not resolved during mediation, then an application may be made by either party to QCAT for an order to resolve the dispute.
	COVID-19 Emergency Response Act 2020	Residential Tenancies and Rooming Accommodation Act 2008 Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020	Period to which the Act applies Any regulation made under the Act can have retrospective application to 19 March 2020 and expires on 31 December 2020. Who the Act applies to The Act applies to residential tenancies experiencing excessive hardship during the COVID-19 pandemic. What the Act imposes The Act imposes the following:- <ol style="list-style-type: none">1. a moratorium on certain evictions;2. a moratorium or cap on “break costs”, depending on the circumstances;3. an obligation for landlords to offer to extend residential leases (that would otherwise expire before 29 September 2020) to 30 September 2020 or an earlier date requested by a tenant;4. restrictions on entry to leased premises for health and safety reasons; and5. releases landlords from their obligations to undertake routine repairs and maintenance where prevented for health and safety reasons, or the unavailability of qualified personnel or materials. Dispute resolution Part 6 of the Act provides for the appointment of a Small Business Commissioner to provide dispute resolution support for small businesses including mediation for tenancy disputes. Period to which the Act applies Any regulation made under the Act can have retrospective application to 19 March 2020 and expires on 31 December 2020. Who the Act applies to The Act applies to residential tenancies experiencing excessive hardship during the COVID-19 pandemic. What the Act imposes The Act imposes the following:- <ol style="list-style-type: none">1. a moratorium on certain evictions;2. a moratorium or cap on “break costs”, depending on the circumstances;3. an obligation for landlords to offer to extend residential leases (that would otherwise expire before 29 September 2020) to 30 September 2020 or an earlier date requested by a tenant;4. restrictions on entry to leased premises for health and safety reasons; and

State	Bill	Relevant Act/ Regulation	Amendment
Queensland (cont.)	COVID-19 Emergency Response Act 2020 (cont.)	Residential Tenancies and Rooming Accommodation Act 2008 (cont.)	<p>5. releases landlords from their obligations to undertake routine repairs and maintenance where prevented for health and safety reasons, or the unavailability of qualified personnel or materials.</p> <p>The definition of “excessive hardship”</p> <p>The Acts regulations protect tenants who are suffering from “excessive hardship” which includes the following circumstances:-</p> <ol style="list-style-type: none"> 1. they have COVID-19, are subject to a quarantine direction or are self-isolating because they are a vulnerable person or live with or care for, such a person; 2. their place of employment has closed or is restricted because of a public health direction (e.g. cafes only being permitted to offer takeaway); or 3. a travel restriction, imposed by law, prevents tenants from being able to work or return home; and <ol style="list-style-type: none"> a. if a sole tenant: they have suffered a loss of income of 25% or more; b. if there is more than one tenant: the combined income (income is defined as the net weekly income after tax of a tenant and includes any governmental financial assistance) of all tenants has been reduced by 25% or more; c. if the rent normally payable under the residential tenancy agreement is 30% or more of the combined total income of the tenants. <p>Rent relief and dispute resolution</p> <p>A tenant may contact the landlord and request rent relief due to excessive hardship.</p> <p>A landlord is entitled to request evidence from the tenant to confirm that it has suffered a loss of income. If a landlord does not believe that the evidence provided from the tenant confirms “excessive hardship”, it may make a dispute resolution request with the Residential Tenancies Authority (“the RTA”).</p> <p>The RTA may request additional evidence from the tenant to support its rent relief claim. Based on the additional evidence provided, the RTA will decide whether it is satisfied that the tenant is suffering excessive hardship.</p> <p>Parties may vary the terms of a residential tenancy agreement by entering into a Variation Agreement.</p> <p>Circumstances where tenant can terminate</p> <p>In some circumstances, a tenant may terminate its lease for excessive hardship on the following basis:-</p> <ol style="list-style-type: none"> 1. negotiations between the landlord and tenant must have broken down (or never started due to the recalcitrance of (presumably only) the landlord); 2. the tenant must have made a dispute resolution request to the RTA; 3. despite that resolution request, the parties were unable to reach a conciliation agreement; and 4. finally, the tenant must have made application to the RTA for a termination order. <p>The RTA can only make such a termination order if it is satisfied that the above particulars have been satisfied and that the tenant is in fact suffering from excessive hardship.</p> <p>Break costs</p> <p>If a residential tenancy agreement is terminated as a result of the RTA issuing a termination order, no break costs are payable by the tenant.</p> <p>Notwithstanding the above, if the residential tenancy agreement is for a fixed term, the landlord is entitled to claim reasonable costs incurred for reletting the property, and where the tenant has terminated the agreement in a fashion which is not permitted under the Act, and;</p>

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Queensland (cont.)	COVID-19 Emergency Response Act 2020 (cont.)	Residential Tenancies and Rooming Accommodation Act 2008 (cont.)	<ol style="list-style-type: none"> a sole tenant has suffered loss of income of 75% or more and has less than \$5,000.00 in savings; or multiple tenancy occupants have suffered a reduction of 75% or more in the combined total income of all tenants and the combined savings of the tenants is less than \$5,000.00; <p>the break costs are restricted to one week's rent (pre-rent relief).</p> <p>The landlord however may still evict the tenant for breaching its lease for reasons other than failure to pay rent as a result of excessive hardship.</p>
Western Australia	Commercial Tenancies (COVID-19 Response) Act 2020		<p>Period to which the Act applies – Emergency Period</p> <p>Beginning on 30 March 2020 and ending on a day prescribed by regulations. If a day has not been prescribed, 29 September 2020 (Emergency Period).</p> <p>Who the Act applies to</p> <p>The Act applies to small commercial leases. A small commercial lease is a:</p> <ol style="list-style-type: none"> retail shop lease as defined in the Commercial Tenancy (Retail Shops) Agreements Act 1985 (CTA Act); lease where the tenant is a small business as defined in the Small Business Development Corporation Act 1983 (SBDC Act); lease where the tenant is an incorporated association as defined in Associations Incorporation Act 2015 (AI Act); or another type of lease prescribed in the regulation (yet to be determined). <p>Prohibited action</p> <p>The Act prohibits the Landlord from taking Prohibited Action against Tenants for a breach of the lease. Prohibited Action is defined as:</p> <ol style="list-style-type: none"> evicting the Tenant; exercising a right of re-entry; taking possession; recovering the premises/land; the distraint of goods; forfeiture; damages; termination requiring payment of interest on unpaid rent; recovering a security bond; performance of obligations by the Tenant or any person under a guarantee; or any other remedy available to a Landlord at common law or under the law of WA. <p>Prohibited Action cannot be taken against Tenants</p> <p>Landlords must not take Prohibited Action during the Emergency Period for the following:</p> <ol style="list-style-type: none"> The Tenant's failure to pay rent or any other amount payable by a Tenant; or The Tenant's business not operating for the hours or times specified in the lease. <p>Act or omission</p> <p>An act or omission of a Tenant during the Emergency Period in response to COVID-19 is not to be regarded as a breach of the lease, a grounds for termination or a grounds for taking prohibited action.</p>

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Western Australia (cont.)	Commercial Tenancies (COVID-19 Response) Act 2020 (cont.)		<p>Rent increases Rent increases during the Emergency Period are prohibited (other than rent determined by reference to turnover).</p> <p>Dispute resolution If a dispute arises whereby the Tenant has breached a term of the lease and the Landlord claims that the breach was not as a result of the Tenant suffering financial hardship, a party to the dispute may apply to the Tribunal to have the dispute determined.</p> <p>If a Landlord has already commenced action against a Tenant If, during the relevant period (being between 30 March 2020 and 23 April 2020):</p> <ol style="list-style-type: none"> A Landlord has taken or commenced a Prohibited Action; A Landlord has taken or commenced the performance of any other measures that the Landlord would be unable to undertake or commence under the Act; The operation of a term of the lease has an effect contrary to the Act; or Rent payable has been increased in contrary to the Act, <p>the Prohibited Action or other measure is as valid and effective as it would have been had the Act not come into operation but, so far as the Prohibited Action or other measure remains incomplete or ongoing, it is to be stayed or suspended until the end of the Emergency Period.</p>
South Australia	COVID-19 Emergency Response Act 2020		<p>Period to which the Act applies The Prescribed Period commences 30 March 2020 and expires on the day on which all relevant declarations relating to COVID-19 have ceased or on the day falling 6 months from 9 April 2020.</p> <p>Who the Act applies to The Act applies to Lessees suffering “financial hardship”. The <i>Covid-19 Emergency Response (Commercial Leases) Regulations 2020</i> provides that a Lessee will be suffering financial hardship if the Lessee is eligible for, or receiving, a JobKeeper payment.</p> <p>The Act applies to commercial leases during the prescribed period. A commercial lease is:</p> <ol style="list-style-type: none"> a retail shop lease within the meaning of the Retail and Commercial Leases Act 1995; or a lease under the Landlord and Tenant Act 1936, including a retail shop lease to which Part 4 of that Act applies; or any other agreement under which a person grants or agrees to grant another person for value a right to occupy premises for carrying on a business— <ol style="list-style-type: none"> whether or not the right is a right of exclusive occupation; and whether the agreement is expressed or implied; and whether the agreement is oral or in writing, or partly oral and partly in writing, <p>but does not include—</p> a lease under the Pastoral Land Management and Conservation Act 1989; or a lease under the Crown Land Management Act 2009

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South Australia (cont.)	COVID-19 Emergency Response Act 2020 (cont.)		<p>Lessor cannot take any Prescribed Action against a Lessee</p> <p>A Lessor cannot take any Prescribed Action against a Lessee on grounds of a breach of the following during the Prescribed Period:</p> <ol style="list-style-type: none"> 1. A failure to pay rent; 2. A failure to pay outgoings; or 3. The Lessee not operating for the hours specified in the lease. <p>Provisions applying to commercial leases</p> <ol style="list-style-type: none"> 1. An act or omission of a Lessee during the Emergency Period in response to COVID-19 is not to be regarded as a breach of the lease, a grounds for termination or a grounds for taking prohibited action. 2. Unless otherwise agreed, rent must not be increased if the Lessee is suffering financial hardship as a result of COVID-19 (other than rent determined by turnover). 3. Lessor cannot require a Lessee who is suffering financial hardship as a result of COVID-19 to pay land tax. <p>Dispute resolution</p> <p>A party to a commercial lease may apply to the Commissioner for mediation of a dispute in relation to a lessee suffering financial hardship as a result of COVID-19 or to make a determination on whether a Lessee is suffering financial hardship as a result of COVID-19.</p> <p>If a Lessor has already commenced action against a Lessee</p> <p>If a Lessee is suffering financial hardship due to COVID-19 and during the relevant period (being between 30 March 2020 and 9 April 2020):</p> <ol style="list-style-type: none"> a. a Lessor has taken or commenced, but not yet finalised a Prescribed Action; b. a Lessor has taken or commenced, but not yet finalised the performance of any other measure that the Lessor would not have been able to undertake or commence by virtue of the Act; or c. the operation of a term of the lease has an effect contrary to the Act, <p>the action, operation or effect will be taken to be stayed or suspended until the end of the Prescribed Period.</p>
Tasmania	COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020	Residential Tenancy Act 1997 Fair Trading (Code of Practice for Retail Tenancies) Regulations 2010	<p>The Minister may, by notice, declare that, despite any provision of a lease, that a lease (which is of a specific class within the notice):</p> <ol style="list-style-type: none"> 1. must not be terminated in the emergency period; 2. rent payable under the lease cannot increase, <p>within the emergency period.</p>
	COVID-19 Disease Emergency (Commercial Leases) Act 2020		<p>Who the Act applies to</p> <p>The Act predominately applies to a Protected Lease.</p> <p>A Protected Lease is one where:</p> <ol style="list-style-type: none"> 1. the Lessee: <ol style="list-style-type: none"> a. is entitled to a Jobkeeper payment or qualifies for the Jobkeeper scheme; and b. becomes an SME entity for the purpose of the <i>Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020</i> of the Commonwealth (Protected Lessee).

State	Bill	Relevant Act/ Regulation	Amendment
	COVID-19 Disease Emergency (Commercial Leases) Act 2020 (cont.)		<p>2. is a Commercial Lease, being:</p> <ol style="list-style-type: none"> a. a lease of premises to which Schedule 1 of the Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998 applies; and b. a lease of premises occupied, or to be occupied, wholly or predominately for business purposes. <p>Prohibited Action</p> <p>A Lessor is prohibited from taking the following Prohibited Action from 1 April 2020 until a date declared by the Treasurer (if no date is declared, to until 3 June 2021) (Financial Hardship Period) against a Protected Lessee:</p> <ol style="list-style-type: none"> 1. exercising or attempting to exercise any right, power or remedy under law or a term of the lease; 2. seeking orders or issuing court proceedings; 3. eviction; 4. exercising a right of re-entry; 5. recovering land; 6. distraining goods; 7. seeking forfeiture; 8. seeking or recovering damages; 9. requiring payment of interest or other fee or charge on unpaid rent; 10. recovering the whole or part of a security bond or bank guarantee; 11. requiring performance pursuant to a guarantee or indemnity; 12. taking possession; 13. terminating the lease; or 14. seeking any other remedy available to a Lessor. <p>Lessor must not take Prohibited Action in relation to a Protected Lease</p> <p>A Lessor must not take Prohibited Action in relation to a Protected Lease during or after the Financial Hardship Period in relation to:</p> <ol style="list-style-type: none"> 1. failure to pay rent, fees, levies or charges 2. failure to meet criteria on sales performance 3. failure to pay outgoings 4. business not operating during hours specified in the lease <p>If a Lessor has already commenced action against a Protected Lessee</p> <p>If a Lessor has taken or commenced (but not yet completed) a Prohibited Action, the action is stayed or suspended until the end of the Financial Hardship Period.</p> <p>Act or omission</p> <p>If an act or omission of a Lessee or a Lessor in relation to a commercial lease (whether or not it is a Protected Lease) during or before the Financial Hardship Period is required in response to the disease under the law or is reasonably required in response to the disease in order for the Lessee to comply with the law, such act or omission does not amount to a breach of the lease or constitute grounds for the taking of Prohibited Action.</p> <p>Actions required by parties to a Protected Lease during the Financial Hardship Period</p> <p>Parties to a Protected Lease must:</p> <ol style="list-style-type: none"> 1. continue to or enter into negotiations during the Financial Hardship Period in relation to rent, renewal of the lease (if requested by the Lessee) and exercise of an option (if requested by the Lessee)

State	Bill	Relevant Act/ Regulation	Amendment
	COVID-19 Disease Emergency (Commercial Leases) Bill 2020 (cont.)		<ol style="list-style-type: none"> 2. must not engage in misleading or deceptive conduct in negotiations 3. must provide accurate information at the request of the other party that is sufficient to enable negotiations for the purpose of reaching agreement 4. must conduct negotiations with regard to individual circumstances, taking into account the degree of financial hardship on each party, whether the lease is expired or being held over or whether either party is in administration or receivership, or is about to, or reasonably likely to, become insolvent <p>Further provisions</p> <ol style="list-style-type: none"> 1. Lessor must not punish or penalise a Protected Lessee of a Protected Lease for ceasing to operate for normal trading hours during the Financial Hardship Period 2. If requested by a Protected Lessee, the Lessor must extend the period of the Protected Lease until the end of the Financial Hardship Period (or a longer period if agreed). This provision will not apply in certain circumstances, for example, it will not apply if the Protected Lease is a sub-lease and the head lease will cease before the end of the Financial Hardship Period 3. Rent payable under a Protected Lease must not increase during the Financial Hardship Period 4. A party to a Protected Lease may request the other party to renegotiate the rent <p>Dispute Resolution</p> <p>The parties must attempt to resolve any dispute by direct negotiation, however, a party to a Protected Lease may apply to the Mediation Provider for mediation to a resolve the dispute.</p>
ACT	COVID-19 Emergency Response Act 2020	Leases (Commercial and Retail) Act 2001	<p>The Minister may make a declaration in relation to the following for the purpose of responding to COVID-19:</p> <ol style="list-style-type: none"> 1. prohibiting the termination of a lease; 2. prohibiting recovery of possession of premises; or 3. changing, limiting or preventing the exercise or enforcement of any right the Lessor has under the Lease.
	Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020	Leases (Commercial and Retail) Act 2001	<p>Period to which the Act applies</p> <p>The Prescribed Period commences on 1 April 2020 and expires on the first day no COVID-19 emergency is in force (as declared under the Emergency Act 2004 or Public Health Act 1997) or a later day as notified by the Minister.</p> <p>Who the Act applies to</p> <p>The Act applies to an Impacted Tenant. An Impacted Tenant:</p> <ol style="list-style-type: none"> 1. qualifies for the Jobkeeper Scheme; and 2. has a turnover for the 2018-2019 financial year of less than \$50 million. <p>Good faith negotiations</p> <p>The Act defines 'good faith negotiations' by a Lessor as negotiations that acknowledge the financial hardship suffered by the Impacted Tenant because of COVID-19, and has regard to the overarching principles and leasing principles set out in the National Code of Conduct.</p> <p>Lessor's must negotiate before issuing a termination notice</p> <p>A Lessor cannot issue a termination notice to an Impacted Tenant for a Prescribed Breach unless they have engaged in food faith negotiations with the Impacted Tenant.</p>

State	Bill	Relevant Act/ Regulation	Amendment
	Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (cont.)	Leases (Commercial and Retail) Act 2001	<p>A Prescribed Breach includes any of the following during the Prescribed Period:</p> <ol style="list-style-type: none"> 1. failure to pay rent; 2. failure to pay outgoings or other amounts due under the lease; or 3. failure to operate the business for the hours required under the lease. <p>Other actions by Lessor</p> <p>A Lessor must not take a Prescribed Action against an Impacted Tenant for a Prescribed Breach unless the Lessor has engaged in good faith negotiations.</p> <p>A Prescribed Action means taking action under the lease or starting a proceeding for any of the following:</p> <ol style="list-style-type: none"> 1. evicting the Impacted Tenant; 2. exercising a right of re-entry; 3. recovering the premises or land; 4. distraint of goods; 5. forfeiture; 6. damages; 7. requiring payment of penalty interest, or a fee or charge, related to unpaid rent; 8. recovery of a security bond; 9. performance of obligations by the Impacted Tenant or any other person guaranteeing the Impacted Tenant's obligations under the lease; 10. possession of the premises; and 11. any other remedy available against the Impacted Tenant.
Northern Territory	Tenancies Legislation Amendment Act 2020	Business Tenancies (Fair Dealings) Act 2003	<p>The Minister may make provisions to regulate a business premises or a business lease.</p> <p>The Act makes it an offence for a party to negotiations between a landlord and tenant to intentionally or recklessly misrepresent the financial situation of the party or intentionally or recklessly disclose information about the other party's financial situation that was obtained in the course of negotiations.</p>

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