

legislative updates – covid-19

current as at 20 January 2021

State	Bill	Relevant Act/ Regulation	Amendment
New South Wales	The Retail and Other Commercial Leases (COVID-19) Regulation (No 3) 2020	Retail Leases Act 1994	<p>Who the Regulation applies to:</p> <p>Consistent with the Code, the Regulation applies to Lessees (Impacted Lessee) who:</p> <ol style="list-style-type: none">1. continues to qualify for the JobKeeper program; and2. have a turnover of less than \$5 million for the 2018-2019 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; andc. if any other case – the turnover of the business conducted by the lessee. <p>NB: The current regulation only applies to Retail Leases.</p> <p>Period to which the Regulation applies – Prescribed Period</p> <p>1 January 2021 to 28 March 2021 (Prescribed Period).</p> <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;

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New South Wales (cont.)	The Retail and Other Commercial Leases (COVID-19) Regulation (No 3) 2020 (cont.)		<p>6. damages;</p> <p>7. requiring payment of interest on unpaid rent;</p> <p>8. recovering a security bond;</p> <p>9. taking possession;</p> <p>10. terminating the lease; or</p> <p>11. any other remedy available to a Lessor at common law or under the law of NSW.</p> <p>Prohibitions and restrictions</p> <p>1. A Lessor must not take a Prescribed Action against an Impacted Lessee due to:</p> <ol style="list-style-type: none"> a failure to pay rent; a failure to pay outgoings; or the business not operating during the hours specified in the lease. <p>2. Rent payable cannot be increased (other than rent determined by reference to turnover).</p> <p>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.</p> <p>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.</p> <p>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> <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"> Requested the parties to renegotiate the rent and other terms of the lease; Renegotiated in good faith, having regard to: <ol style="list-style-type: none"> The economic impacts of the pandemic; and 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 statement to the effect that the lessee is an Impacted Lessee; and 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 a="" action="" after="" are="" covid-19.="" damaged="" economic="" example,="" expiry="" fails="" fixed="" for="" from="" grounds="" has="" if="" impacts="" lessee="" lessor="" lessors="" may="" not="" of="" on="" or="" p="" precluded="" premises="" prescribed="" related="" taking="" term.<="" terminate="" the="" to="" vacate=""> </p>

State	Bill	Relevant Act/ Regulation	Amendment
Victoria	COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020		<p>Period to which the Regulation applies</p> <p>Regulations commence on 29 March 2020 and expire on 28 March 2021.</p> <p>Who the Regulation applies to:</p> <p>Eligible classes of lease – tenant that is a SME entity and participates in or is entitled to, the JobKeeper scheme.</p> <p>General obligations</p> <p>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 and outgoings during relevant period</p> <p>Tenant under an eligible lease is not in breach of the eligible lease if they do not pay the amount of rent required or outgoings and otherwise comply with the requirements of the Regulation in respect of requests for rent relief.</p> <p>A Landlord under an eligible lease must not:</p> <ol style="list-style-type: none"> 1. Evict or attempt to evict the tenant; 2. Re-enter or otherwise recover, or attempt to re-enter or otherwise recover, the premises; and 3. Recourse or attempt to have recourse, to any security relating to the non-payment of rent. <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 and provides evidence of the decline in turnover associated with that premises. The request must include: <ul style="list-style-type: none"> · a statement that the Tenant's lease is an eligible lease; · a statement that the lease is not excluded under the COVID-19 Omnibus (Emergency Measures) Act 2020; · set out the Tenant's decline in turnover that is associated with the premises; · provide information that evidences that the Tenant is an SME entity; · provide information that evidences that the Tenant is an entity entitled under section 6, 11 or 12A of the JobKeeper rules to a JobKeeper payment, including: <ul style="list-style-type: none"> – the receipt number issued by the Commissioner of Taxation when the Tenant elected to participate in the JobKeeper scheme; and – a copy of the Tenant's most recent notice under the JobKeeper rules to the Commissioner of Taxation. · information that evidences the Tenant's decline in turnover, including the following: <ul style="list-style-type: none"> – extracts from the Tenant's accounting records; – the Tenant's business activity statements relating to the relevant turnover test period; – statements by an ADI in respect of the Tenant's account; and – a statement prepared by a practicing accountant. 2. Upon receipt of tenant's 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 up 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.

State	Bill	Relevant Act/ Regulation	Amendment
Victoria (cont.)	COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 (cont.)		<p>4. Landlord's offer of rent relief must be based on:</p> <ol style="list-style-type: none"> the reduction in the tenant's turnover; and any waivers by the landlord of the tenant's outgoings or expenses; and whether failure to provide rent relief would compromise the tenant's capacity to fulfil the tenant's ongoing obligations, including the payment of rent; and the landlord's financial ability to offer rent relief, including any relief provided to landlord by its lenders; and any reduction to any outgoings charged, imposed or levied in relation to the premises. <p>If rent charged under an eligible lease is inclusive of outgoings, the landlord must offer rent relief with respect to the rent payable inclusive of outgoings.</p> <p>5. Following receipt of the landlord's 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.</p> <p>6. Rent relief may be given effect by:</p> <ol style="list-style-type: none"> A variation to the eligible lease; or Any other agreement between them that gives effect to the rent relief, either directly or indirectly. <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 regulation 10.</p> <p>Landlord and tenant must follow the process set out in regulation 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, the 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>

State	Bill	Relevant Act/ Regulation	Amendment
Victoria (cont.)	COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 (cont.)		<p>Payment of deferred rent</p> <p>Landlord must not request payment of any part of the deferred rent until expiry of the relevant period, being 28 March 2021; and</p> <p>The lease must be varied so the tenant must pay the deferred rent to the landlord amortised over the greater of—</p> <ol style="list-style-type: none"> The balance of the term of the lease and A period of no less than 24 months 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> <p>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).</p> <p>Change in Trading Hours</p> <ol style="list-style-type: none"> Tenant may reduce business hours or cease business during relevant period. Tenant not in breach of eligible lease is they reduce opening hours to cease trading. 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>Dispute Resolution</p> <p>A landlord or a tenant under an eligible lease may refer a dispute about 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>The Small Business Commissioner may make a binding order in respect of rent relief if a Tenant has made a request to the Landlord for rent relief and the Landlord has failed to respond to the Tenant's request or has not engaged in mediation in good faith</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>

State	Bill	Relevant Act/ Regulation	Amendment
Queensland	COVID-19 Emergency Response Bill 2020	Retail Shop Leases Act 1994	<p>NB: The below Regulations for Queensland expired on 31 December 2020 and their terms no longer have effect. No replacement Regulations currently exist.</p> <p>Enabling the Minister to make regulations in respect of retail 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 retail shop 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). <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 RSLA 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> <p>Period to which the Regulations apply – Response Period</p> <p>The Regulations apply from 29 March 2020 to 31 December 2020 (Response Period).</p>

State	Bill	Relevant Act/ Regulation	Amendment
Queensland (cont.)	COVID-19 Emergency Response Bill 2020 (cont.)	Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020	<p>Who the Regulations apply to</p> <p>The Regulations apply to an Affected Lease.</p> <p>An Affected Lease is:</p> <ol style="list-style-type: none"> 1. a retail shop lease (or a prescribed lease); 2. the lessee is a SME entity; and 3. the lessee (or an entity that is connected with or an affiliate of the lessee) is eligible for JobKeeper. <p>If the lessee is a franchisee, where a lease under which the franchisor is a lessee of the premises is occupied by the franchisee, the franchisee is also an Affected Lessee.</p> <p>Parties must cooperate</p> <p>Parties to an Affected Lease must cooperate and act reasonably and in good faith.</p> <p>Prohibited Action</p> <p>A lessor under an Affected Lease must not take a Prescribed Action against a lessee for the following during the Response Period:</p> <ol style="list-style-type: none"> 1. failure to pay rent; 2. failure to pay outgoings; or 3. the business not being open during hours required under the lease. <p>However, a lessor is not prevented from taking a Prescribed Action for the following:</p> <ol style="list-style-type: none"> 1. an agreed variation of the lease, settlement agreement or court/tribunal order in respect of matters determined under these Regulations; 2. a lessee substantially failing to comply with their negotiation obligations under the Regulations; or 3. a ground that is not related to the effects of COVID-19. <p>A Prescribed Action includes the following:</p> <ol style="list-style-type: none"> 1. recovery of possession; 2. termination; 3. eviction; 4. exercising a right of re-entry; 5. seizure of any property, including for the purpose of securing payment of rent; 6. forfeiture; 7. damages; 8. payment of interest for unpaid rent or outgoings; 9. claim on a bank guarantee, indemnity or security deposit for unpaid rent or outgoings; 10. performance of an obligation by the lessee or another person under a guarantee; or 11. exercising or enforcing another right by the lessor under the lease <p>Increase in rent</p> <p>A lessor under an Affected Lease must not increase the rent payable by the lessee during the Response Period. If the lease provides for a review during the Response Period, the lessor may review the rent under the lease but not give effect to an increase in rent to until after the Response Period.</p>

State	Bill	Relevant Act/ Regulation	Amendment
Queensland (cont.)	COVID-19 Emergency Response Bill 2020 (cont.)	Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (cont.)	<p>Obligation to renegotiate rent and other terms</p> <p>A party (Initiator) to an Affected Lease may request in writing for the other party to renegotiate the rent and other terms of the lease. Accordingly, the parties are then required to give each other information that is true and sufficient to enable the parties to negotiate fairly and transparently. For example, the Initiator should clearly state the terms they are seeking to negotiate and provide evidence on why the lease is an Affected Lease (for example, providing financial information/ evidence of eligibility for JobKeeper).</p> <p>Within 30 days of receiving the sufficient information as required above, the lessor must offer the lessee a reduction in rent payable (and any other proposed changes). Accordingly, the offer must:</p> <ol style="list-style-type: none"> 1. relate to the rent payable under the Affected Lease; 2. provide no less than 50% of the rent reduction in the form of a waiver; and 3. have regard to the lessee's reduction in turnover, the lessor's financial position and if a portion of the rent relates to an amount for land tax, rates, statutory charges, insurance premiums or other outgoings, any reduction or waiver of those amounts payable. <p>Once agreed, if a ground on which the renegotiations were based on materially change (for example, the lessee's turnover does not increase as anticipated or their income decreases substantially), a party to the Affected Lease may ask the other party to negotiate a further reduction. If so, the above conditions apply, except for the requirement that the lessor must provide no less than 50% of the rent reduction in the form of a waiver when offering the further reduction.</p> <p>Requirements for deferred rent</p> <p>If rent is deferred, the agreement between the parties:</p> <ol style="list-style-type: none"> 1. must not require payment of the deferred rent until the day after the end of the Response Period; 2. must require the deferred rent to be amortised over a period of at least 2 years but no more than 3 years; and 3. must not require the lessee to pay interest or any other fee or charge in relation to the deferred rent, unless the lessee fails to comply with the conditions on which the rent is deferred. <p>Extending lease for period of waiver or rent deferral</p> <p>The Lessor must offer the lessee an extension of the term of the lease equivalent to the period for which rent is waived or deferred.</p> <p>Dispute resolution</p> <p>Before starting mediation, the parties must attempt to resolve the dispute. In doing so, each party must cooperate and act reasonably and in good faith in all discussions. If this is unsuccessful, a party may apply to the small business commissioner for the purpose of mediation.</p> <p>If the parties cannot reach a settlement agreement, a party may apply to QCAT to resolve the dispute.</p> <p>Suspension of Prescribed Action</p> <p>If any Prescribed Action was commenced against a lessee of an Affected Lease prior to the date these Regulations came into effect, the Prescribed Action is taken to be stayed or suspended until the end of the Response Period.</p>

State	Bill	Relevant Act/ Regulation	Amendment
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 currently ending on 28 March 2021 (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"> 1. retail shop lease as defined in the Commercial Tenancy (Retail Shops) Agreements Act 1985 (CTA Act); 2. lease where the tenant is a small business as defined in the Small Business Development Corporation Act 1983 (SBDC Act); 3. lease where the tenant is an incorporated association as defined in Associations Incorporation Act 2015 (AI Act); or 4. 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"> 1. evicting the Tenant; 2. exercising a right of re-entry; 3. taking possession; 4. recovering the premises/land; 5. the distraint of goods; 6. forfeiture; 7. damages; 8. termination 9. requiring payment of interest on unpaid rent; 10. recovering a security bond; 11. performance of obligations by the Tenant or any person under a guarantee; or 12. 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"> 1. The Tenant's failure to pay rent or any other amount payable by a Tenant; or 2. 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> <p>Rent Increases</p> <p>Rent increases during the Emergency Period are prohibited (other than rent determined by reference to turnover).</p> <p>Dispute Resolution</p> <p>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>

State	Bill	Relevant Act/ Regulation	Amendment
Western Australia (cont.)	Commercial Tenancies (COVID-19 Response) Act 2020 (cont.)		<p>If a Landlord has already commenced action against a Tenant</p> <p>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> <p>NB: The below Regulation for South Australia expired on 3 January 2021 and its terms no longer have effect. No replacement regulation currently exists.</p>
South Australia	COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020	COVID-19 Emergency Response Act 2020	<p>Who the Regulations apply to:</p> <p>The Regulations apply to an Affected Lessee.</p> <p>A lessee is an Affected Lessee if:</p> <ol style="list-style-type: none"> the lessee is eligible for or receiving JobKeeper; and has a turnover of less than \$50 million. <p>Obligation to negotiate in good faith</p> <p>Parties to a commercial lease (any guarantor or other person with an interest in the lease) must make a genuine attempt to negotiate the rent payable, and other terms of the commercial lease, in good faith during the Prescribed Period.</p> <p>Prohibited Action</p> <p>A Lessor cannot take any Prescribed Action against an Affected Lessee during the Prescribed Period for the following:</p> <ol style="list-style-type: none"> a failure to pay rent; a failure to pay outgoings; or the business not being open during the hours specified in the lease. <p>A Prescribed Action includes the following:</p> <ol style="list-style-type: none"> evicting the lessee; exercising a right of re-entry; recovery of land; distrain of goods; forfeiture; damages; requiring payment of interest on unpaid rent; recovery of the whole or part of a security bond; performance of obligations by the lessee or any other person pursuant to a guarantee; possession; termination; and any other remedy otherwise available to a lessor at common law or law in South Australia.

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South Australia (cont.)	COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020 (cont.)	COVID-19 Emergency Response Act 2020 (cont.)	<p>Further prohibitions and restrictions</p> <ol style="list-style-type: none"> rent payable by an Affected Lessee must not be increased during the Prescribed Period a lessor must not require an Affected Lessee to pay land tax or reimburse the lessor for the payment of land tax during the Prescribed Period if a lessor received a waiver of land tax or a relief payment under a scheme administered by the Treasurer for the purposes of providing land tax relief, the lessor must pass on the benefit of the waiver or relief payment in the form of a waiver of rent <p>Prohibition on continuing certain action during the Prescribed Period</p> <p>If a lessee is suffering financial hardship due to COVID-19, any Prescribed Action commenced by the lessor during the relevant period will be taken to be stayed or suspended until the end of the Prescribed Period.</p>
Tasmania	COVID-19 Disease Emergency (Commercial Leases) Act 2020		<p>Who the Act applies to:</p> <p>The Act predominately applies to a Protected Lease. A Protected Lease is one where:</p> <ol style="list-style-type: none"> the Lessee: <ol style="list-style-type: none"> is entitled to a JobKeeper payment or qualifies for the JobKeeper scheme; and becomes an SME entity for the purpose of the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020 of the Commonwealth (Protected Lessee). is a Commercial Lease, being: <ol style="list-style-type: none"> a lease of premises to which Schedule 1 of the Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998 applies; and 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. The Tasmanian Government announced that the Financial Hardship Period will continue to until 31 January 2021:</p> <ol style="list-style-type: none"> exercising or attempting to exercise any right, power or remedy under law or a term of the lease; seeking orders or issuing court proceedings; eviction; exercising a right of re-entry; recovering land; distraint goods; seeking forfeiture; seeking or recovering damages; requiring payment of interest or other fee or charge on unpaid rent; recovering the whole or part of a security bond or bank guarantee; requiring performance pursuant to a guarantee or indemnity; taking possession; terminating the lease; or seeking any other remedy available to a Lessor.

State	Bill	Relevant Act/ Regulation	Amendment
Tasmania (cont.)	COVID-19 Disease Emergency (Commercial Leases) Act 2020 (cont.)		<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) 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 resolve the dispute.</p>

State	Bill	Relevant Act/ Regulation	Amendment
ACT	Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (No 2)		<p>Purpose of Declaration</p> <p>The Declaration relates to the issue of any termination notice, or Prescribed Action taken against, an Impacted Tenant.</p> <p>Who the Declaration applies to?</p> <p>The Declaration applies to an Impacted Tenant. An Impacted Tenant is a tenant under a Prescribed Lease who qualifies for JobKeeper at any time between 28 September 2020 and 31 January 2021 and has a turnover of less than \$50 million for the 2018-2019 financial year. Determined accordingly:</p> <ol style="list-style-type: none"> if the lessee is a franchisee – the turnover of the business conducted at the premises; if the lessee is a member of a group – the turnover of the group; and if any other case – the turnover of the business conducted by the lessee. <p>A Prescribed Lease is a lease to which the Leases (Commercial and Retail) Act 2001 applies.</p> <p>Period to which the Declaration applies</p> <ol style="list-style-type: none"> 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; or 31 January 2021. <p>Termination Notice</p> <p>A lessor must not give a termination notice to an Impacted Tenant in relation to a Prescribed Breach unless the lessor has engaged in good faith negotiations in respect of the breach.</p> <p>A Prescribed Breach means a failure by the tenant during the Prescribed Period to:</p> <ol style="list-style-type: none"> pay rent; pay outgoings; or operate the business during the hours required under the lease. <p>Prescribed Action</p> <p>A lessor must not take any Prescribed Action against an Impacted Tenant for a Prescribed Breach unless the lessor has engaged in good faith negotiations with the tenant in relation to that breach.</p> <p>A Prescribed Action means any of the following:</p> <ol style="list-style-type: none"> eviction of the tenant from the premises; exercise of a right of re-entry to the premises; recovery of the premises; distrain of goods on the premises; forfeiture; damages; requiring payment of penalty interest on, or a fee or charge related to, unpaid rent otherwise payable; recovery of the whole or part of a security bond; performance of obligations by the tenant or any other person guaranteeing the tenant's obligations under the lease; possession of the premises; or any other remedy otherwise available against the tenant.

State	Bill	Relevant Act/ Regulation	Amendment
ACT (cont.)	Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (No 2) (cont.)		<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>Continued application of repealed declaration</p> <p>If a tenant was a former Impacted Tenant i.e. eligible under previous Regulation between 1 April 2020 and 27 September 2020, the Regulation still applies in respect of that Prescribed Breach.</p>
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>
	Business Tenancies COVID-19 Modification Notice 2020		<p>Mandatory negotiation before giving a notice to quit</p> <p>During the Emergency Period, a landlord must not give a tenant a notice to quit unless the landlord has made good faith efforts for at least 30 business days to negotiate with the tenant to allow the tenant to remain in the premises. This, however, does not apply for the following:</p> <ol style="list-style-type: none"> 1. a notice to quit is given under section 126 of the Business Tenancies (Fair Dealings) Act 2003; or 2. a notice to quit is given in the reasonable belief that the tenant engaged in or intends to engage in illegal conduct or conduct that will cause substantial damage to the premises. <p>The Emergency Period is defined as being the period for which COVID-19 is declared a public health emergency under the Public and Environmental Health Act 2011 and while a declaration under the Emergency Management Act 2013 in relation to COVID-19 is in force.</p> <p>The current emergency period expires on 23 March 2021.</p>

our team



brooke glastonbury
principal lawyer
property and construction, nsw
+61 2 8298 9536
brooke.glastonbury@mk.com.au



ralph praeger
principal lawyer
property and construction, qld
+61 7 3235 0439
ralph.praeger@mk.com.au



sebastian renato
principal lawyer
property and construction, vic
+61 3 9794 2557
sebastian.renato@mk.com.au



cain sarah
principal lawyer
property and construction, nsw
+61 2 8298 9502
cain.sarah@mk.com.au



jenny thame
principal lawyer
property and construction, vic
+61 3 9794 2524
jenny.thame@mk.com.au



melanie gebbels
special counsel
property and construction, qld
+61 7 3235 0470
melanie.gebbels@mk.com.au