

Article Information

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NSW Lockdown 2021: rent relief, lessor hardship fund and land tax concession

The Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2021 and amendments to the Conveyancing (General) Regulation 2018 (together, Regulations) commenced on 13 August 2021 to require lessors and impacted lessees to renegotiate the rent and other terms of an impacted lease. The NSW Government has also announced a 'Hardship Fund' for small lessors granting rent relief.

National Code of Conduct and new COVID-19 Commercial Leasing Regulations

In response to the prolonged NSW lockdown, the Regulations were introduced to require lessors and lessees to take into consideration the economic impacts of the COVID-19 pandemic and the leasing principles set out in the National Code of Conduct.

The National Code of Conduct was initially introduced during the first COVID-19 major outbreak in Australia in April 2020. NSW introduced the COVID-19 commercial leasing regulations to implement the National Code of Conduct in NSW. These regulations were subsequently varied and ultimately phased out as COVID-19 cases in NSW declined and commercial and retail premises re-opened.

At the start of the most recent NSW lockdown, further regulations were introduced to provide limited protection to impacted lessees – see our [previous article here](#).

Further to the changes outlined in our previous article, these latest Regulations:

- allow impacted lessees to request, during the prescribed period, renegotiation of rent and other terms of an impacted lease, in accordance with the leasing principles in the National Code of Conduct;
- extend the prescribed period to 13 January 2022; and
- require a Tribunal or court to take into account the leasing principles set out in the National Code of Conduct when making a decision in relation to:
 - recovery of possession of premises or land from an impacted lessee;
 - termination of an impacted lease by a lessor; and
 - the lessor's exercise or enforcement of any other right under an impacted lease.

Small lessor's Hardship Fund and Land Tax Concession

The NSW Government has announced a new \$40 million '[Hardship Fund](#)' for small lessors. According to the announcement, a small lessor granting a rent waiver to an impacted lessee may be eligible for a grant of up to \$3,000 per month.

The NSW Government has also offered 2021 land tax concession for lessors reducing rent to eligible tenants. A lessor is eligible for land tax concession up to the amount of any rent reduction given between 1 July 2021 and 31 December 2021 (capped at 100% of the 2021 land tax attributable to the land leased to the impacted lessee).

Both lessors and lessees are struggling with the prolonged NSW lockdown. The measures go some way in assisting small lessors and lessees. However, for some, the situation is very difficult and these measures may not be enough.