

Article Information

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Service: Leasing, Property & Development

Sector: Real Estate

Introduction of the COVID-19 Legislation Amendment (Emergency Measures) Act 2020 (NSW)

COVID-19 Legislation Amendment (Emergency Measures) Act 2020 (NSW) was assented to and commenced on 25 March 2020 (the Act). The Act amends legislation across a range of fields and provides specific regulation making powers for the purposes of responding to the public health emergency caused by the COVID-19 pandemic.

In the real estate sector, the Act provides for regulations to be made under any 'relevant Act' including:

- *Retail Leases Act 1994* (NSW);
- *Residential Tenancies Act 2010* (NSW); and
- *Electronic Transactions Act 2000* (NSW).

Retail Leases Act 1994 (NSW)

Amendments to the *Retail Leases Act 1994* (NSW) allows regulations to be made under any 'relevant Act' providing for the following matters:

- prohibiting the recovery of possession of premises by a landlord from a tenant under the relevant Act in particular circumstances;
- prohibiting the termination of a lease by a landlord under the relevant Act in particular circumstances;
- regulating or preventing the exercise or enforcement of another right of a landlord under the relevant Act or an agreement relating to the premises or land in particular circumstances; and
- exempting a tenant from the operation of a provision of the relevant Act or any agreement relating to the leasing or licensing of premises or land.

The 'relevant Act' is the *Agricultural Tenancies Act 1990* (NSW), the *Retail Leases Act 1994* (NSW) or any other Act relating to the leasing of premises or land for commercial purposes.

The power to make these regulations complements the general principles for commercial leases announced by the National Cabinet on 29 March 2020. These principles restrict landlords from enforcing leases and encourage parties to negotiate standstill outcomes (part of the Federal Government's 'hibernation plan').

Residential Tenancies Act 2010 (NSW)

Amendments to *Residential Tenancies Act 2010* (NSW) allows regulations to be made under any 'relevant Act' providing for the following matters:

- prohibiting the recovery of possession of premises by a landlord from a tenant under the relevant Act in particular circumstances;
- prohibiting the termination of a residential tenancy agreement, occupancy agreement or site agreement by a landlord, proprietor of premises or operator of a community under the relevant Act in particular circumstances;
- regulating or preventing the exercise or enforcement of another right of a landlord, proprietor of premises or operator of a community under by the landlord, proprietor or operator under the relevant Act or any agreement

- relating to the premises; and
- exempting a tenant, resident or home owner from the operation of a provision of the relevant Act or any agreement relating to the premises.

The 'relevant Act' is the *Boarding Houses Act 2012* (NSW), *Residential (Land Lease) Communities Act 2013* (NSW), *Residential Tenancies Act 2010* (NSW) or any other Act relating to the leasing of premises or land for residential purposes.

In light of the number of people who are now unemployed or stood down without an income (or soon will be), many people are faced with being unable to pay their rent and there is a potential for widespread homelessness. We envisage any regulations will be aimed at mitigating this risk.

Electronic Transactions Act 2000 (NSW)

Amendments to the *Electronic Transactions Act 2000* (NSW) allows regulations to be made under any 'relevant Act' providing for the following matters:

- altering the arrangements for the signature of documents provided for by an Act or another law;
- altering arrangements for witnessing signatures, including requirements for certification of certain matters by witnesses and verification of identity provided for by an Act or another law; and
- altering arrangements for attestation of documents.

The 'relevant Act' is the *Electronic Transactions Act 2000* (NSW), the *Oaths Act 1900* (NSW), the *Guardianship Act 1987* (NSW), the *Succession Act 2006* (Cth), the *Powers of Attorney Act 2003* (NSW), the *Conveyancing Act 1919* (NSW) and 'another Act administered by the Attorney General'.

It is envisaged that these regulations will provide for alternative mechanisms for signing and witnessing of documents in light of the restrictions on interpersonal contact due to COVID-19.

Expiry of Regulations

Any regulations made under the *Retail Leases Act 1994* (NSW), *Residential Tenancies Act 2010* (NSW) and *Electronic Transactions Act 2000* (NSW) expire:

- 6 months after the day on which the regulation commences; or
- an earlier day decided by Parliament by resolution of either House of Parliament.

***Environmental Planning and Assessment Act 1979* (NSW)**

The Minister for Planning and Public Spaces may during the 'prescribed period' authorise development to be carried out on land without the need for approval under the Act or consent from any person.

The order has effect despite any environmental planning instrument or development consent. The order is taken to be a grant of development consent for the development and any conditions of the order are taken to be conditions of the development consent.

The prescribed period means the period:

- starting on the commencement (ie 25 March 2020); and
- ending on:
- the day that is 6 months after commencement (ie 25 September 2020); or
- a later day, not more than 12 months after commencement, prescribed by the regulations.

An order may relate to a class of development and in that case the order is taken to be a separate development consent for each development carried out under the order.

The Minister for Planning and Public Spaces may make an order under the Act only if the Minister for Planning and Public Spaces:

- has consulted the Minister for Health and Medical Research, and
- is reasonably satisfied that the making of the order is necessary to protect the health, safety and welfare of members of the public during the COVID-19 pandemic.

It is envisaged this legislation may be used if, for example, a pop-up hospital needs to be constructed urgently or to convert empty hotels into quarantine centres.

The measures are an appropriate response to keep tenants and landlords in a holding pattern during any stand down period. However, landlords could find difficulty in repaying loans if they are not receiving rent during this period. Following the Reserve Bank emergency cash rate cut to 0.25 per cent, many banks have announced relief packages to help borrowers manage the impact of the COVID-19 crisis. Some banks have indicated that they will give some borrowers a repayment holiday for up to six months. Governments should ensure that retail, commercial and residential investment property landlords have appropriate loan relief that matches the relief available to tenants, otherwise landlords may end up squeezed between non-payment of rent and loan obligations.