

COVID-19 – NSW expected to implement emergency measures to provide temporary relief to retail and residential tenants

Date: 1 April 2020

The [COVID-19 Legislation Amendment \(Emergency Measures\) Act 2020 \(NSW\)](#), which commenced on 25 March 2020, amends a number of NSW Acts, including:

- the *Residential Tenancies Act 2010* (NSW); and
- the *Retail Leases Act 1994* (NSW),

to allow for the introduction of regulations under the NSW Acts for the purpose of implementing emergency measures to respond to the public health emergency caused by COVID-19. Those regulations have not yet been introduced. The Act just allows for the introduction of regulations to implement emergency measures.

What could the emergency measures be?

The emergency measures may:

- prohibit a landlord from recovering possession of a retail or residential property in particular circumstances;
- prohibit a landlord from terminating a retail or residential lease in particular circumstances;
- regulate or prevent a landlord from exercising or enforcing a landlord's other rights under the retail leases or residential tenancies acts or under an agreement relating to the leased property in particular circumstances; or
- exempt a tenant (or a class of tenants) from the operation of a provision of the retail leases or residential tenancies acts or of any agreement relating to the leasing or licensing of a property.

What is not covered by the Act?

The Act does not:

- make it clear if the emergency measures will also apply to commercial leases (the Act states that the measures will apply to the retail leases act and “*any other Act relating to the leasing of premises or land for commercial purposes*”);
- define the “particular circumstances” under which a landlord may be prohibited from recovering possession, terminating a lease or enforcing other rights, e.g. if it would only relate to a breach directly related to the COVID-19 pandemic;

- specify what other rights (other than the right to recover possession and terminate) landlords may be prevented from enforcing. It is assumed that this would cover any standard trading obligations;
- specify what obligations with which tenants may be exempted from having to comply. It is assumed that this would cover the payment of rent and, possibly, other money payable under a lease; or
- cover what will happen after the expiry of the temporary measures in respect of the period during which the landlords may be prohibited from enforcing certain rights or the tenants may be exempted from having to comply with certain obligations.

How long would the emergency measures be in place?

The regulations, if introduced, will only be in place for 6 months from the date of the commencement of the regulations (unless parliament resolves to end them earlier).

Takeaway

Retail and residential tenants in New South Wales who are struggling financially as a consequence of the COVID-19 pandemic should note that temporary relief from the state government is expected. Landlords may be prohibited from terminating leases, recovering possession of leased properties or enforcing other rights. Tenants may also be exempted from having to comply with certain obligations. The regulations should cover the details not covered in the Act. Equally, landlords should prepare for the introduction of such regulations and, if introduced, should make sure that they do not try and enforce a right which they are prohibited from enforcing while the temporary measures are in force.