



FOR LEASE

A new line of Credit? Extension of Queensland COVID-19 Leasing Regulations

By Adam Raleigh, Special Counsel

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The initial period of compliance under the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (Regulations)* was expected to finish on 30 September 2020 but since COVID-19 continues to compound business uncertainty the Queensland Government passed the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2020 (Amendment Regulations)* extending the period with limited relief options until 31 December 2020 (**Extension Period**).

Relief for Lessees

For relief to apply, a lessee must establish they are a party to an "affected lease" during the Extension Period. There is no automatic extension of the relief which may have been available up to 30 September 2020.

Relief during the new Extension Period is available if a lessee is eligible for the updated JobKeeper scheme which applies for the period 28 September 2020 to 4 January 2021.

However, a key difference with the updated JobKeeper scheme is the requirement to

show an **actual reduction** (of at least 30%) in turnover for July to September 2020 compared with the same period in 2019. The ability for a lessee to "**anticipate**" a reduction in turnover is no longer acceptable.

The main forms of relief for affected leases during the Extension Period include:

- Lessees can request rent relief in the form of a rent deferral however, rent waivers no longer apply.
- Rent deferrals agreed during the Extension Period are payable from 1



January 2021. Rent deferrals agreed during the initial Response Period are still payable from 1 October 2020.

- Lessors cannot take "prescribed action" until 1 January 2021, where "prescribed action" includes:
 - » recovery of possession;
 - » termination of the lease;
 - » eviction of the lessee;
 - » exercising a right of re-entry to the premises;
 - » seizure of any property;
 - » forfeiture;
 - » damages;
 - » the payment of interest; and
 - » a claim on a bank guarantee, indemnity or security deposit.
- Rent increases cannot be implemented until 1 January 2021.
- Lessors must continue to offer a lessee an extension of lease term for the period for which the rent is waived or deferred, on the same conditions as the lease (except that the rent payable during the extension must be adjusted for the waiver or deferral).
- The dispute resolution procedures involving the Queensland Small Business Commissioner will continue to apply.

If a lessee is no longer able to establish that it is a party to an "affected lease", the relief provided by the Amended Regulations will not be available and lessors are able to take enforcement action, the full amount of the rent will be payable and rent reviews can proceed.

When a lessee has established that it is a party to an "affected lease" under the Amended Regulations, the specific form of relief and related arrangements which are agreed by the parties should be formalised by way of a Deed or Form 13 Amendment of Lease.

How will this impact Lessees and Lessors?

Whilst the extension of relief for certain lessees will help minimise the ongoing severe financial impact of Covid-19 on some businesses, there are many shortcomings for both parties with the nature of relief available.

In particular, the current key form of relief by way of deferral may only provide temporarily delay of an inability to pay rent for many lessees. The obligation to pay deferred rent will then be on top of their normal rent (or after the lease has expired) and is likely to arise at a time when the impact of the health and economic issues created by COVID-19 have not yet been resolved.

Unless the period of availability for relief is extended further, removal of the restriction to take "prescribed action" is expected to result in a significant influx of enforcement actions.

The process for complying with, establishing, formalising, administering and managing these new rent deferral obligations is onerous for both parties. The extent of the potential fallout of this system of "rent on credit" is yet to be determined and will need to be carefully managed in order to prevent significant business closures in the near future.

If you would like to discuss this article further please contact:

[Adam Raleigh | Special Counsel](#)

D (07) 3223 9116

E adam.raleigh@brhlawyers.com.au

[Michael Byrom | Head of Property Services](#)

D (07) 3223 9109

E michael.byrom@brhlawyers.com.au