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Covid-19 Response Legislation Bill: Impacts for Commercial Leases

By Andrea White - 30 Sep 2021

Both landlords and tenants were surprised by the Government's sudden announcement that it had introduced changes to help ease the impacts of COVID-19 restrictions on both commercial and residential tenancies, to take effect from 28 September 2021. The changes to commercial tenancies had been foreshadowed last year but did not become law.

The measures included in the Covid-19 Response Legislation Bill have been proposed to help businesses resolve disputes over commercial rent, as well as provide greater certainty for landlords and tenants by protecting residential tenancies from being terminated during alert level 4.

We have already had several clients make contact to see what these changes mean for them in relation to their commercial tenancies, so have compiled a list of the most common concerns below.

What does this mean for my commercial tenancy?

The Government has introduced a bill which will amend the Property Law Act 2007 (**PLA**) to imply into every commercial lease, where there is not already one, a clause that provides for a fair proportion of rent to cease to be payable for the period during which there is an epidemic and the tenant is unable to gain access to its premises to conduct fully its operation from the premises for health and safety reasons.

Health and safety reasons include restrictions imposed by any competent authority on occupation of the leased premises.

In determining what is a fair proportion the parties must consider what rent relief has been offered since 18 August 2021 for the restriction on access to the premises because of the epidemic.

Any disputes under the implied provision are to be referred to arbitration.



Where the implied term applies to a lease, any action to cancel the lease or obtain an order for possession of the premises will be considered not to comply with the PLA's requirements (which are mandatory) unless the landlord has also complied with the obligations under the implied term.

The provisions clearly apply to the situation where, for example, a COVID-19 lockdown prevents the tenant accessing its premises to carry on its business in its usual fashion. If the parties do not reach agreement on the amount of the rent or outgoings reduction, the tenant or the landlord will be able to force the other party to arbitration.

The new law is proposed to come into effect from 28 September 2021 which means that tenants whose leases into which the provision will be implied can begin to feel some relief right now, given the likely backdating. Note, though, that the full statement yesterday by the Minister does invite submissions as to the date when these changes will become effective.

I already have a no-access clause in my lease, what does this mean for me?

The proposed change will apply only to leases which do not already provide for adjusted rent or outgoings payments during an emergency situation (such as COVID-19) where a tenant is unable to conduct fully its operations from the premises because of health and safety reasons.

I have already reached agreement regarding rent relief, does this change anything for me?

If a landlord and tenant have already agreed on a reduction of rent, this will not alter that agreement. However there may be situations where (for example) a tenant was forced to accept a reduction of rent for only part of the affected period. In that situation a tenant may still be able to request further relief and force arbitration in the event that agreement could not be reached.

My lease does not contain a no-access clause and we have no agreement yet, what should I do?

If you are a tenant and haven't done so already, you can contact your landlord to begin discussions about your respective circumstances and to work out what is a fair proportion of rent that should cease to be payable. If agreement cannot be reached either party does have the right to invoke arbitration. We would be happy to assist you in that action.

If you are a landlord and have been approached by your tenant and would like more specific advice, we can assist you with expanding on your obligations in your specific situation.

Can a tenant force arbitration from 28 September 2021 if no rent relief has been offered?

We think it would be difficult for a tenant to exercise that right from today and actually give formal notice to its landlord that it invokes arbitration, because the law is not yet in place. However, the knowledge that the law will shortly be in place should assist the tenant in immediate negotiations with its landlord.

The [Property Team](#) at Martelli McKegg has significant leasing experience, with a particular focus on retail. Over the last 18 months our team has represented both landlords and tenants from numerous shopping centres and privately owned properties in the negotiation and preparation of agreements for COVID-19 rent relief. If you need assistance or advice regarding your commercial lease, contact our team today.

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