

Alert

PROPERTY

State Government Announces Changes Affecting Commercial Tenancies

By William Esau & Victoria Malcolm

On 12 May 2020, the Honourable Vickie Chapman MP announced that new legislative measures would be introduced in response to the ongoing COVID-19 pandemic.

The Government announced that a new bill would be introduced into State Parliament which, inter alia, was aimed at providing protection to both commercial landlords and tenants impacted by COVID-19.

Consistent with the announcement, the *COVID-19 Emergency Response (Further Measures) Amendment Bill 2020* ('Bill') was introduced into and passed by the House of Assembly on 12 May 2020.

The Bill provides for an amendment to the *Covid-19 Emergency Response Act 2020* ('Act'), which received Royal assent on 9 April 2020, by deleting the provisions relating to commercial leases

set out in Section 7 of the Act and replacing that section with provisions which essentially enable the issues relating to commercial leases to be dealt with by regulation.

There is an extensive scope of regulations that may be made by the Governor under the Bill. The scope of regulations include, but are not limited to:

- the provision of rent relief under a commercial lease;
- prohibiting or limiting the ability of a lessor to seek orders or issue proceedings;
- prohibiting or restricting the ability of a lessor to terminate a commercial lease;
- the circumstances in which a person will be taken to be suffering financial hardship;
- requiring the parties to have regard to particular matters or principles, or a

prescribed standard, code or other document, in respect of negotiations or disputes;

- a requirement that parties to a dispute participate in mediation arranged by the Commissioner or a court; and
- fines and fees for offences against the regulations.

In addition, the Bill provides that any regulations made may have retrospective effect to 30 March 2020 and the provisions relating to the Expiry of the Act are also amended to ensure that any regulations made will expire on 30 September 2020.

It is still unclear to what extent the Mandatory Code announced by National Cabinet on 7 April 2020 will be adopted by the State of South Australia. However, the Bill provides for 'a code, standard or other document to be incorporated by regulation'.

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The Bill has already passed the Lower House, and it is expected that it will be passed shortly by the Upper House after which we expect the regulations to follow shortly thereafter.

In addition to the announcement by the State Government, the Small Business Commissioner of South Australia has released a COVID-19 Guidance Note relating to commercial information “requests” by Commercial Lessors. The Guidance Note sets out guidelines as to what information may be reasonably requested by Lessors from Lessees and details what would not constitute a ‘reasonable’ request. In addition, the Guidance note sets out what information should be provided to Lessors where the Lessee is seeking financial accommodation from the Lessor.



[MORE INFO](#)

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