NSW: Land Tax Relief and new COVID-19 Leasing Regulations

Date : July 23, 2021

The NSW Government has reintroduced COVID-19 leasing regulations and announced new land tax concessions for landlords who provide rent relief to eligible tenants.

Land Tax Relief

Landlords who provide rent relief (ie, a waiver not a deferral of rent) to eligible tenants between **1 July 2021 – 31 December 2021** will be entitled to a reduction in their land tax payable for the 2021 land tax year.

The amount of the land tax reduction will be the lesser of:

- the amount of rent reduction provided to an eligible tenant for any period between 1 July 2021 and 31 December 2021; or
- 100% of the land tax attributable to the parcel of land leased to that tenant.

To be "**eligible**" the tenant must

- occupy land in NSW under a retail or commercial lease;
- have an annual turnover for the 2020–2021 financial year of less than $50 million (including the turnover of any corporate group which the tenant is a member of); and
- qualify for at least one of the Micro-business COVID-19 Support Grant, 2021 COVID-19 NSW Business Grant or the JobSaver scheme.

Landlords can apply for the land tax relief program online via the Service NSW website.

COVID-19 Leasing Regulations

The *Retail and Other Commercial Leases (COVID-19) Regulation 2021* (NSW) (**Regulations**) commenced on 14 July 2021.

The Regulations apply to retail and commercial leases in operation as of **26 June 2021** (including any existing leases which are renewed or extended after this date, but it otherwise does **not** include any new leases entered into on or after this date).

The Regulations provide that landlords must not take "**prescribed action**" against "**impacted lessees**" due to any "**prescribed breach**" of the lease which occurs during the "**prescribed period**", unless the parties have first attempted mediation before the NSW Small Business Commissioner. In that respect:

- "**prescribed action**" includes eviction, termination of the lease, calling on a security bond or bank guarantee, and/or seeking damages from the impacted lessee
- "**impacted lessee**" means a tenant under a commercial or retail lease who is "eligible" under the land tax relief package mentioned above
- "**prescribed breach**" means a failure to pay rent or outgoings, or not being open for business during the hours required under the lease, during the prescribed period
- "**prescribed period**" means the period commencing on 13 July 2021 and ending (at this stage) on 20 August 2021

Tenants are required to provide evidence that they are an "impacted lessee", and landlords are still able to take "prescribed action" against "impacted lessees" for reasons not related to the economic impacts of the COVID-19 pandemic (eg, if the tenant damages the premises or fails to vacate the premises following expiry of the lease).

Important differences between these Regulations and previous NSW COVID-19 rent relief regulations include:

- the Regulations do **<u>not</u>** require landlords to provide rent relief (in the form of waivers or deferrals of rent) to "impacted lessees", however, landlords will be able to claim land tax concessions as described above if they **<u>choose</u>** to provide rent reductions (in the form of waivers only) to "impacted lessees"
- landlords **may** take "prescribed action" against "impacted lessees" provided they first attempt mediation – this has now been made clear in the Regulations but was a grey

area in previous regulations

The Regulations are due to be repealed 6 months after their commencement (ie, on **14 January 2022**), which indicates that the “prescribed period” may be extended if the current lockdown affecting parts of NSW continues beyond 20 August 2021.

More Information

Please contact our commercial law team at **Matthews Folbigg Lawyers** on **9635 7966** if you would like advice or assistance in respect of your lease or any other aspect of your business operations.

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