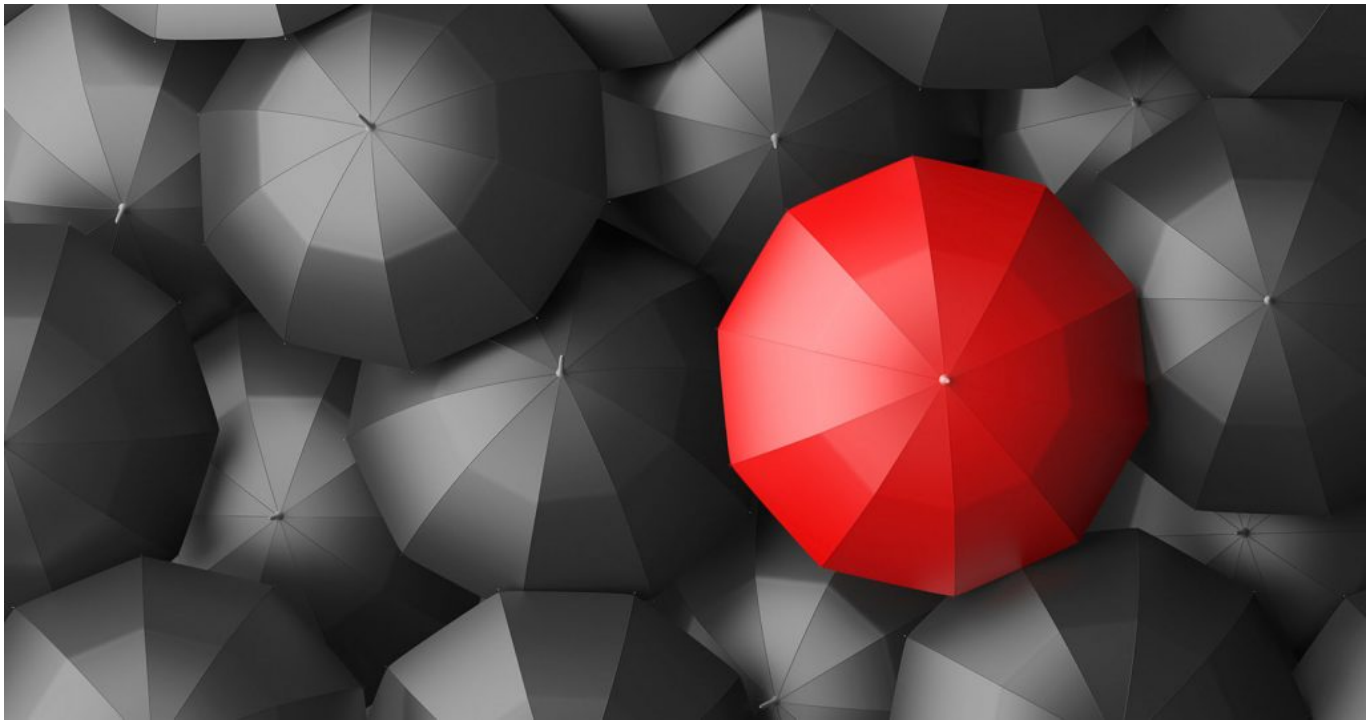
COVID-19: Critical Matters for Commercial & Retail Tenants and Landlords

Date : April 2, 2020



COVID-19: Critical Matters for Commercial & Retail Tenants and Landlords

New Laws

The NSW Government now has the power to set new rules for retail landlords and tenants, the details of which will be known in coming days.

Although the new laws (currently) only relate to retail leases, nevertheless there are substantial challenges for both commercial and retail tenants and landlords to consider as set out below arising from the COVID-19 situation.

What is expected?

For retail tenants and landlords it is expected that the new laws will address such matters as evictions, bank guarantees/bonds, tenant defaults, rent abatements, and mandatory/core trading hours.

Caution must therefore be exercised when purporting to rely upon a lease term as it may be modified or prohibited under the new regime.

What about force majeure and rent abatement clauses?

Contractual force majeure provisions (ie, events beyond the reasonable control of a party) and rent abatement clauses will have important significance and need to be carefully considered in terms of the rights, remedies and obligations they create for both landlords and tenants.

The doctrine of “frustrated contract” (ie, a frustrating event that significantly changes the nature of contractual rights or obligations) may also have application depending upon the relevant circumstances.

What are the other options?

The Prime Minister has urged landlords and tenants to work together to find creative and bespoke solutions … as an example, perhaps a tenant will agree to a longer lease term in return for a rent reduction now (all of which must be properly documented).

Is the bond a landlord holds at risk?

A landlord must give urgent consideration about whether to register a security interest on the personal property securities register in respect of any bond held, lest it potentially become partly or wholly available to other creditors of a tenant.

What if the Government forces a closure?

Subject to the terms of the lease, any mutual agreement reached, and the terms of any relevant Government orders and applicable laws, a tenant may find they must continue to abide by the terms of their lease.

What about business interruption insurance?

It is critical that both tenants and landlords immediately check their insurance policies to determine whether they cover losses suffered in respect of COVID-19 events.

What if I need advice or assistance?

As COVID-19 developments are rapidly evolving and the interaction between lease terms, Government orders, applicable laws and the outcome sought can be complex, it is vital that both tenants and landlords make time critical decisions based on current information and in accordance with relevant legal principles.

Although this is an unprecedented and stressful time for both tenants and landlords and solutions may not always appear straightforward, our **Commercial Law Team** is here to help on **9635 7966** to provide the practical, commercial and legal guidance you need.

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