

COVID-19: (AUSTRALIA): PM MORRISON ANNOUNCES MORATORIUM LAWS TO PREVENT TENANT EVICTIONS

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**This information is accurate as of 11.00 am Wednesday 1 April 2020 and is subject to change as this situation evolves.*

On Sunday 29 March 2020, Australian Prime Minister Scott Morrison announced a series of principles agreed by the National Cabinet (representing the Commonwealth, its Territories and the States) saying:

"The most significant of those is that states and territories will be moving to put a moratorium on evictions of persons as a result of financial distress ... for the next six months."

The National Cabinet is regularly meeting, with discussion more recently focused on the impact of COVID-19 on tenants and landlords. Mathias Cormann, the Minister for Finance, has said that:

"The key here is to come up with a way forward that is fair and that is sustainable and that equitably spreads some of the pain, so that everyone has the best possible, appropriate chance to get safely to the other side of this crisis."

NSW has been the first off the mark to enact a foreshadowed new law, followed closely by Tasmania. In fact, NSW enacted its law before the PM's announcement.

Whilst the other States and Territories are clearly expected to introduce their own new laws, whether and how uniformity can be achieved across the nation remains unclear. Already a comparison of NSW and Tasmanian laws shows potentially significant differences between them.

Whilst a uniformity in approach appears to be an unstated aim of National Cabinet for the States and Territories, the local circumstances and interests can be expected to still drive differences in the State and Territory laws being introduced in coming days.

This will present some unique challenges, especially for our tenants and landlords managing a portfolio of national premises.

Following is a state by state assessment of the latest new laws in force to protect tenants.

NSW – A NEW EMERGENCY LAW

The NSW State Parliament has passed the COVID-19 *Legislation Amendment (Emergency Measures) Act 2020* (Emergency Act), a new emergency law attempting to combat the impacts of COVID-19.

This Emergency Act includes amendments with potential to impact existing laws in relation to property leasing (including commercial, retail and residential).

It introduces significant new powers under both the *Residential Tenancies Act 2010* and the *Retail Leases Act 1994* for the relevant Minister (NSW Minister) to make regulations, including the power to generally:

...exempt a class of lessees ... from the operation of a provision of ... any agreement relating to ... leasing
...

It appears that regulations can now be made by the NSW Minister with the effect to prohibit, in certain circumstances and for certain leases, the exercise by a landlord of a right to retake possession of leased premises or to terminate a lease. Effectively, the new law appears directed to the protection of tenants, and not landlords.

Under the Emergency Act, the NSW Minister may exercise regulation-making powers:

- a) prohibiting the recovery of possession of premises by a lessor or owner from a lessee or tenant of the premises or land under the relevant Act;
- b) prohibiting the termination of a lease or tenancy by a lessor or owner of premises or land under the relevant Act;
- c) regulating or preventing the exercise or enforcement of another right of a lessor or owner under the relevant Act or an agreement relating to the premises or land; and
- d) exempting a lessee or tenant, or a class of lessees or tenants, from the operation of a provision of the relevant Act or any agreement relating to the leasing or licensing of premises or land.

The "relevant Acts" go beyond the two Acts under which the power to make regulations is granted and include:

- all Acts relating to the leasing of land for residential purposes
- the *Agricultural Tenancies Act 1990*
- the *Retail Leases Act 1994*
- any other Act relating to the leasing of premises or land for commercial purposes

As there is no specific Act relating to the leasing of land for commercial purposes, it remains unclear how this power will be used in relation to commercial premises and commercial landlords and tenants will need to continue to monitor developments in this area.

HOW LONG WILL THIS NSW EMERGENCY ACT APPLY FOR?

Any regulations made under the Emergency Act will expire within six months, or earlier if the NSW Parliament chooses to repeal them.

THE NSW REGULATIONS

Although the Emergency Act establishes the broad emergency powers for regulations to be made, no regulations have as yet been made under them.

If and when regulations will be made pursuant to the Emergency Act's powers remains unclear.

WHAT HAVE OTHER STATE JURISDICTIONS DONE – WESTERN AUSTRALIA, QUEENSLAND, VICTORIA AND TASMANIA?

Western Australia

In Western Australia it appears that:

- there is currently no law equivalent to the NSW Emergency Act (nor any Bill under current consideration by the parliament); and
- the WA government has announced that:
 - o the WA government, along with the NSW government, will develop model rules "to help prevent evictions and ease pressure on commercial tenants"; and
 - o rent for tenants in buildings owned by Government agencies and enterprises will be waived for 6 months.

Queensland

In Queensland it appears that:

- there is currently no law that is equivalent to the NSW Emergency Act (nor any Bill under current consideration by the parliament); and
- the Queensland Government has announced a series of measures to support businesses during COVID-19. This includes 6 months' rent relief for businesses that rent government premises. Other operators who hold a lease or licence for tourism purposes and receive rental invoices quarterly, will be able to apply for a land rent deferral.

Victoria

In Victoria it appears that:

- there is currently no law that is equivalent the NSW Emergency Act (nor any Bill under current consideration by the parliament); and
- the Premier and Treasurer of Victoria have announced an economic survival and jobs package to help businesses and workers combat the consequences of COVID-19. Under this package, commercial tenants in Government buildings can apply for rent relief and 2020 land tax payments will be deferred for eligible small businesses.

Tasmania

Similar to NSW, the Tasmanian parliament has introduced the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* in response to the COVID-19 pandemic.

The Tasmanian Act broadly empowers the Minister to give notice to landlords to stop them from terminating leases or increasing rent payments during this time.

FEDERAL GOVERNMENT

Instead of the enactment of a legislative provision similar to NSW and Tasmania, the Morrison Government has indicated it may consider providing rental property owners with tax relief as a compensation for the waiver or reduction of their tenant's rent.

WHAT'S NEXT?

Even if landlords voluntarily suspend or otherwise provide rent relief to their tenants, many landlords and tenants alike will still require the support of financiers and the Government.

Consequently, we expect most tenants and landlords will be focused keenly on keeping themselves informed, with many potentially also seeking to be active in influencing further developments and policies as they continue to emerge.

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