

CLAUSE NOTES

COVID-19 Disease Emergency (Commercial Leases) Bill 2020

PART 1 – PRELIMINARY

Clause 1 Short title

Specifies the name of the proposed Act.

Clause 2 Commencement

Provides that the Act will commence on a day or days to be proclaimed.

Clause 3 Objectives of the Act

Provides for the objectives of the Act.

PART 2 – INTERPRETATION PROVISIONS

Clause 4 Interpretation

Defines certain terms for the purposes of the Act.

Clause 5 Protected leases and protected lessee

Provides a definition for protected lease and protected lessee. A protected lease is a lease to which certain protections provided by the Act apply.

Clause 6 Eligible person

Provides a definition for eligible person, which forms part of the criteria in determining if a lease is a protected lease for the purposes of the Act.

Clause 7 Meaning of prohibited lessor action

Provides a definition of lessor actions which may be prohibited in the context of a protected lease for certain breaches by the lessee, where provided for by other provisions of the Act. This includes termination, eviction, repossession, forfeiture or seeking damages.

PART 3 – APPLICATION OF THE ACT

Clause 8 Act binds the Crown

Provides that the Act binds the Crown.

Clause 9 Application of the Act

Provides for the scope of application of the Act and clarifies that the provisions of a protected lease are taken to be modified to the extent necessary to give effect to the Act.

Clause 10 Effect of actions taken in relation to protected lease before commencement day

Provides that actions taken under a lease prior to commencement of the Act that is not yet complete is of no effect if that action would be prohibited under the Act if taken during the financial hardship period.

Clause 11 Certain acts or omissions, relating to legal requirements in relation to disease are authorised

Provides a protection for a lessee or lessor that breaches a term of their lease in order to comply with the law as it relates to COVID-19.

PART 4 – TAKING OF CERTAIN ACTIONS IN RELATION TO PROTECTED LEASES

Clause 12 Parties to protected leases to take certain actions in relation to protected leases

Requires that parties to a protected lease are to negotiate in good faith regarding certain matters, during the financial hardship period.

Clause 13 Prohibited lessor action not to be taken in relation to protected lease during financial hardship period

Provides that prohibited lessor actions (as defined by clause 9) cannot be taken, during the financial hardship period, by a lessor in relation to a protected lease where the breach relates to failure to pay rent or other moneys (including fees, charges, outgoings), meet sales or turnover criteria or hours of operation, as specified in the lease.

Clause 14 Lessor not to punish protected lessee for ceasing normal trading during financial hardship period

Provides that a lessor cannot take action under the terms of a protected lease relating to ceasing normal business hours during the financial hardship period.

Clause 15 Lessor, on lessee request, to extend protected lease during financial hardship period

Requires that a lessor extend a protected lease during the financial hardship period in most circumstances.

Clause 16 Communication or provision of information

Provides that parties cannot divulge personal, financial or business information obtained in connection with the Act without consent or as provided for by this section. Penalties apply for contravention of this section.

PART 5 – RENT, COSTS AND BENEFITS

Clause 17 Rent payable under protected lease not to be increased during financial hardship period

Provides that rent payable under a protected lease cannot be increased during the financial hardship period.

Clause 18 Rent payable under protected lease to be renegotiated

Provides for rent payable under a protected lease during financial hardship period to be waived reduced or deferred.

Clause 19 **Parties to bear own costs in relation to preparation of protected lease, &c., during financial hardship period**

Provides that each party is to bear their own costs as it relates to preparation or variation to a lease for the purposes of the Act.

PART 7 – MEDIATION AND ARBITRATION

Clause 20 **Mediation Provider**

Provides for the Director of Consumer Affairs and Fair Trading to be the Mediation Provider.

Clause 21 **Delegation by Mediation Provider**

Provides for the Mediation Provide to delegate the functions and powers conferred by the Act.

Clause 22 **Parties to protected leases to attempt to resolve disputes**

Requires parties to a protected lease to attempt to resolve disputes prior to applying for mediation.

Clause 23 **Party to protected lease may apply for mediation of dispute**

Provides for a party to a protected lease to apply for mediation of a dispute if one or both have made a reasonable attempt, during the financial hardship period to resolve by direct negotiation.

Clause 24 **Mediation Provider may require information to be provided if application for mediation made**

Provides for the Mediation Provider to require certain information to be provided if an application for mediation is made. Penalties apply for contravention of this section.

Clause 25 **Costs of mediation**

Provides that, unless agreed by the parties, each party is responsible for their own costs.

Provides for the Mediation Provider to charge for mediation services.

Clause 26 **Arbitration**

Provides parties with the option for disputed to be arbitrated under the *Commercial Arbitration Act 2011*.

Clause 27 **Immunity from liability, &c.**

Provides the Mediation Provider with immunity to civil and criminal liability for actions taken in good faith under the Act.

PART 7 – COMMERCIAL CODE ADMINISTRATION COMMITTEE

Clause 28 **Commercial Code Administration Committee**

Provides for establishment and membership of the Commercial Code Administration Committee

Clause 29 Functions of Code Committee

Provides for the functions of the Code Committee

Clause 30 Procedure of Code Committee

Provides for the Code Committee to determine its own procedures

Clause 31 Financial hardship cessation day

Provides for the Treasurer to determine a day the financial hardship cessation day, at which time the financial hardship period ends and a lease is no longer a 'protected lease'.

PART 8 – MISCELLANEOUS

Clause 32 Regulations

Provides that the Governor may make regulations for the purposes of this Act, including for the circumstances for which a lease is or is not a protected lease, to modify any provision of the Act or to adopt a code or standard.

Clause 33 Administration of Act

Provides that until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*, administration of the Act is assigned to the Minister for Building and Construction and is to be administered by the Department of Justice.