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*New Regulations extend rent relief to 28 March 2021*

## **COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Amendment Regulations 2020: ("Regulations")**

### Background

The COVID-19 Omnibus (Emergency Measures) Commercial Leases and Licences) Regulations 2020 ("Old Regulations") as amended by further Regulations in September 2020 ("September Regulations"), granted a regime of rent waiver and/or deferral in respect of *eligible leases* until 31 December 2020. The new Regulations made on 22 December 2020 extend the operation of the Old Regulations until 28 March 2021 on precisely the same terms and conditions as the September Regulations.

It is impossible to summarise the consolidated Regulations in any circular and given they are some 62 pages in length, reference should be made to the actual legislation which can be found at <https://www.legislation.vic.gov.au/in-force/statutory-rules/covid-19-omnibus-emergency-measures-commercial-leases-and-licences/003>. The detail of the enabling Act, Old Regulations and September Regulations is discussed in our Leases Circulars of May and September 2020 copies of which can be obtained from <http://www.andrewgray.com.au/Leases.html>

The application for relief process is exactly the same

The Old Regulations operated only in respect of *eligible leases*. The September Regulations extend that definition to include a retail or non-retail lease to an *SME entity* which is also entitled to a *jobkeeper payment*. JobKeeper payments are excluded from the definition of *turnover*.

To request rent relief a lessee must now provide a lessor (under Regulation 10 as amended), with a statement:

- That the lease is an *eligible lease*;
- That the lease is not an excluded lease (grouped as part of a larger entity, agricultural leases, related parties and prescribed classes);
- Setting out the lessee's decline in turnover associated with the premises (and no other premises);
- The ATO's JobKeeper application receipt number together with the ATO's most recent JobKeeper notice;
- At least one of:
  - Extracts from accounting records;
  - BAS Statements;
  - Authorised Deposit Taking Institution statements of the lessee's account; or
  - A statement prepared by a practising accountantwhich evidences the lessee's decline in turnover as a percentage is calculated in accordance with the *actual decline in turnover test*.

What a lessor must offer remains the same

A lessor must now offer eligible lessees, rent relief from the date of a lessee's application until 28 March 2021 which at a minimum, is proportional to the decline in a lessee's turnover associated with the premises. The nature of rent relief has not changed and at least 50% of rent relief must be by way of waiver. Where a lease is a gross lease or inclusive of outgoings, rent relief must be offered inclusive of outgoings. A lessor cannot request payment of deferred rent until 28 March 2021 and deferred rent is interest free. Any subsequent application for relief by a lessee must also follow the Regulation 10 process set out above.

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The contents of this circular are by way of general advice only and do not take in to account the circumstances of individual transactions or, the relationship between lessors and lessees in particular situations. As such the content of this circular should be regarded as general advice only and not intended to constitute the provision of legal or other advice. Accordingly, we take no responsibility for loss and damage (howsoever arising) as a consequence of persons acting on the content of this circular without first seeking our professional advice



### Limitations of this circular

This circular is intended to provide a short summary only of new Regulations and does not purport to provide legal or other advice or, to be an exhaustive analysis of the Regulations. Reference should always be made to the actual Regulations.

Andrew Gray or Leah Holmes of our office are happy to provide further advice.

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