



Groundhog Day NSW - Retail and Other Commercial Leases

(COVID-19 Regulation 2021)

In a measure that looks a little like Groundhog Day the NSW State Government has imposed a new round of restrictions on the owners of retail property in response to the new lockdown measures.

The *Retail and Other Commercial Leases (COVID-19) Regulation 2021* has been introduced under the *Retail Leases Act*.

Despite the title of the Regulation, commercial leases are specifically excluded from its operation (s3(c)). Retail property owners are the target of the Regulation.

Unlike earlier Regulations, there is now no requirement to negotiate the rent.

Section 6 simply provides that “*the lessor must not take prescribed action against an impacted lessee on the grounds of a prescribed breach occurring during the prescribed period” unless the mediation process is first exhausted.*

Industry participants will be familiar with the concepts of “*prescribed action*” (ie re-entry or cashing security), and “*prescribed breach*” (a failure to pay rent or outgoings, or to trade). The definition “*impacted lessee*” has been amended from the earlier Regulations so as to now align with the new business support packages recently announced for affected traders. But the concept is the same, and the \$50m cap on turnover is retained (see section 4).

“*Prescribed period*” is defined to mean the period from 13 July 2021 to 20 August 2021.

The prohibition on taking enforcement action is limited to breaches occurring during the prescribed period.

This means that lessors can take enforcement action during the *prescribed period* in response to prescribed breaches occurring before 13 July. It also means that lessors cannot take enforcement action after the *prescribed period* for prescribed breaches which occurred during that period, unless they first exhaust the mediation process.



Robert Speirs
Partner
+61 2 9248 3405
rspeirs@speirsryan.com.au

Speirs Ryan is a Sydney based boutique property law firm with national coverage. The firm is uniquely placed with specialist teams in both property transactions and strata law.

Disclaimer: This article is a general summary with focus on issues of interest to the authors. It is not intended to be used as legal advice.