



## Rent Relief Measures Extended for Commercial Tenants

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As the Omicron variant continues to impact small business across the country, New South Wales has extended its rent relief measures. With staff shortages, reduced foot traffic and forced closures taking hold of many small businesses, the move attempts to balance these impacts to ensure business survival.

### The Changes

In New South Wales, an extension through to 13 March 2022 of the [Retail and Other Commercial Leases \(COVID-19\) Regulation 2021](#) (Regulation) for businesses with turnover of less than \$5 million has been effected.

Recent amendments to the Regulation requires landlords to renegotiate rent and provide rent relief in proportion with their tenant's decline in turnover. Of this rent relief provided, at least 50 per cent of the rent had to be in the form of a waiver and the remainder could be deferred. This applies to both retail and office landlords. The aim of the legislation is to ensure that the economic impact of COVID-19 is shared by both property owners and tenants rather than just the tenant.

### Protection of Commercial Tenants

The extended measures deviate slightly from the original rental support measures brought in nationally at the start of the pandemic in 2020. A \$50 million threshold was originally prescribed as the ceiling for relief and the measures were adopted beyond New South Wales. Regardless, these extensions will be welcomed by many businesses who have been negatively impacted by the latest surge in COVID-19 cases.

These changes are just one aspect of the Regulation, which seeks to protect commercial tenants and prohibits landlords from taking certain actions against the tenant without prior negotiation and mediation. This Regulation incorporates the [National Code of Conduct](#) for commercial tenancies. The code of conduct includes but is not limited to, a prohibition on terminating leases for the non-payment of rent, a requirement that landlords pass on any reduction in statutory charges and not charge certain penalties on tenants among other principles.

### Impact on Commercial Landlords

On the other hand, commercial landlords in New South Wales will be forced to take a hit for a little while longer. The landlord has to provide rent relief for as long as the tenant is impacted by public health order restrictions. Another important point for landlord's to remember is that they must respond to a lessee's rent relief request within 14 days of the date that the application is made. With the rapidly changing nature of the pandemic, there is no guarantee that March 2022 will be the end of the rent relief measures currently in place. However, the legislation aims to maximise the number of business that can resume normal operation when public health orders are lifted.

If you would like any further information or would like to discuss your legal rights and obligations as either a commercial landlord or tenant, please contact [Greg Lee](#) on 02 8235 1254 or your usual ClarkeKann contact.