

TASMANIA

**COVID-19 DISEASE EMERGENCY
(COMMERCIAL LEASES) REGULATIONS 2020**
STATUTORY RULES 2020, No. 50

CONTENTS

1. Short title
2. Commencement
3. Interpretation
4. Prescribed factor for purposes of section 17
5. Frequency of rent renegotiation
6. Reduction of statutory charge
7. Mediation under *Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998* not to occur

**COVID-19 DISEASE EMERGENCY
(COMMERCIAL LEASES) REGULATIONS 2020**

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *COVID-19 Disease Emergency (Commercial Leases) Act 2020*.

Dated 20 July 2020.

C. WARNER
Governor

By Her Excellency's Command,

ELISE ARCHER
Minister for Building and Construction

1. Short title

These regulations may be cited as the *COVID-19 Disease Emergency (Commercial Leases) Regulations 2020*.

2. Commencement

These regulations take effect on the day on which their making is notified in the *Gazette*.

*COVID-19 Disease Emergency (Commercial Leases)
Regulations 2020
Statutory Rules 2020, No. 50*

r. 3

3. Interpretation

In these regulations –

statutory charge means –

- (a) land tax, within the meaning of the *Land Tax Act 2000*; and
- (b) rates payable under the *Local Government Act 1993*; and
- (c) any fee or charge, payable under an Act, that, if it is not paid, becomes, under an Act, a charge on land;

the Act means the *COVID-19 Disease Emergency (Commercial Leases) Act 2020*.

4. Prescribed factor for purposes of section 17

- (1) For the purposes of the definition of *rent* in section 17(1) of the Act, turnover is prescribed to be a factor.
- (2) For the purposes of subregulation (1), turnover includes gross takings, gross receipts, gross income and any similar concept.
- (3) For the purposes of calculating turnover, in relation to a protected lease, for the purposes of section 17(1) of the Act, the following are not to be included:

*COVID-19 Disease Emergency (Commercial Leases) Regulations
2020
Statutory Rules 2020, No. 50*

r. 4

- (a) the amount of losses incurred in the resale or disposal of merchandise reasonably and properly purchased from customers as trade-ins in the usual course of business;
- (b) the amount of deposits and instalments that are received on account of lay-bys, hire purchase or credit sales and that are refunded to customers;
- (c) the amount of a refund on a transaction when the proceeds of the transaction have been included as part of turnover;
- (d) the amount of any service charge, finance charge, or interest charge, payable to any financier in connection with provision of credit to customers (other than commission on credit cards or store cards);
- (e) the price of merchandise exchanged between shops of the lessee, if the exchange is made solely for the convenient operation of the business of the lessee and not for the purpose of concluding a sale made at or from the premises to which the lease relates;
- (f) the price of merchandise returns to shippers, wholesalers or manufacturers;
- (g) the proceeds of sales, of the fixtures and fittings of the lessee in respect of the premises to which the protected lease

*COVID-19 Disease Emergency (Commercial Leases)
Regulations 2020
Statutory Rules 2020, No. 50*

r. 4

- relates, after their use in the conduct of business at or from those premises;
- (h) the amount of discounts allowed to customers in the normal course of business;
 - (i) the amount of uncollected credit accounts that are written off;
 - (j) the amount paid or payable as GST by the lessee in respect of the premises to which the protected lease relates;
 - (k) the amount of delivery charges;
 - (l) the amount received from the sale of lottery tickets or similar tickets (other than commission on sales of lottery tickets or similar tickets);
 - (m) the amount of revenue from online transactions, other than online transactions –
 - (i) where the goods or services concerned are delivered or provided from or at the premises to which the protected lease relates (or a shopping centre of which the premises to which the protected lease relates forms part); or
 - (ii) where the transaction takes place while the purchaser is at the

premises to which the protected lease relates, whether or not the goods or services concerned are delivered or provided from or at the premises.

5. Frequency of rent renegotiation

Section 18 of the Act does not apply in relation to a party to a protected lease at a time if the time occurs within the 3-month period after the day on which renegotiation of the rent payable under the lease most recently concluded, unless the parties to the protected lease have agreed in writing that this regulation does not apply in relation to a period in which the time occurs.

6. Reduction of statutory charge

(1) If –

- (a) a protected lessee is required by a provision of a protected lease to pay (otherwise than as part of rent) a fixed amount that represents an amount of a statutory charge, or insurance premium, payable by the lessor; and
- (b) the amount of the statutory charge, or insurance premium, payable by the lessor is reduced –

the fixed amount that the protected lessee is required under the provision of the protected

*COVID-19 Disease Emergency (Commercial Leases)
Regulations 2020
Statutory Rules 2020, No. 50*

r. 7

lease to pay is reduced in the same proportion as the proportion by which the amount of the statutory charge, or insurance premium, payable by the lessor has been reduced.

- (2) Subregulation (1) does not apply in relation to a protected lessee if the protected lessee agrees, in writing, with the lessor that the subregulation does not apply to the protected lessee.

7. Mediation under *Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998* not to occur

If a dispute in relation to a protected lease is a dispute to which section 22(a) of the Act applies, clause 39 of Schedule 1 to the *Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998* does not apply in relation to the dispute.

*COVID-19 Disease Emergency (Commercial Leases) Regulations
2020
Statutory Rules 2020, No. 50*

Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 24 July 2020.

These regulations are administered in the Department of Justice.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations made under the *COVID-19 Disease Emergency (Commercial Leases) Act 2020* prescribe –

- (a) that turnover is prescribed to be a factor in relation to rent, or a component of rent, for the purposes of section 17 of that Act, with the effect that rent, or a component of rent, determined by turnover may be increased; and
- (b) that certain fixed amounts payable by protected lessees are reduced in certain circumstances; and
- (c) the frequency with which rent may be renegotiated under that Act; and
- (d) that mediation under the *Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998* may not occur in relation to a dispute to which the Act applies.