

COMMERCIAL LEASES – PART TWO

On 1 October 2021 we wrote about the proposed changes to the Property Law Act 2007 under the COVID-19 Response (Management Measures) Legislation Bill. The proposed amendments would imply a clause into all commercial leases requiring a ‘fair proportion’ of the abatement of the rent where a tenant has been unable to fully conduct their business in their premises due to an epidemic emergency.

The amendments went through a shortened Select Committee process with submissions made by both landlords and tenants. On 27 October 2021 Kris Faafoi announced that the legislation had passed its third reading in Parliament and received Royal Assent on 2 November 2021. The legislation changed the original proposals as follows:

- It will apply retrospectively from 18 August 2021 being the first day of the current COVID-19 Level 4 lockdown.
- It will include a requirement to consider a commercial tenant’s loss of income in determining what a ‘fair proportion’ of rent relief would be.
- There is now a requirement that the parties to a commercial lease with the implied clause must respond to each other within 10 working days of communication about seeking rental relief under the implied clause.
- The parties may seek to resolve disputes through mediation or other forms of alternative dispute resolution before a referral to arbitration. The Disputes Tribunal’s jurisdiction is not excluded as an option.

Tenants have been asking for assistance from the Government since March 2020 so this a significant win for tenants who can now rely on legislation in the event that they cannot access their premises.

However, the issue of how to assess ‘**fair proportion**’ has not been addressed, apart from requiring that a landlord take into account the tenant’s loss of income. Many tenants have not come to an agreement with their landlords regarding rental relief, so it will be interesting to see how landlords assess what they believe to be a ‘**fair proportion**’ given the new requirements.

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