



Western Australia

Commercial Tenancies (COVID-19 Response) Act 2020

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Western Australia

Commercial Tenancies (COVID-19 Response) Act 2020

**An Act to respond to the impact of the COVID-19 pandemic on
certain commercial leases, and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Commercial Tenancies (COVID-19 Response) Act 2020*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 comes into operation on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Parts 2 and 3 are deemed to have come into operation on 30 March 2020;
- (c) the rest of the Act comes into operation on the day after assent day.

Part 2 — Terms used and application

3. Terms used

In this Act —

adopted code of conduct means a code of conduct adopted by regulations made under section 13;

emergency period means the period —

- (a) beginning on 30 March 2020; and
- (b) ending on —
 - (i) a day prescribed by regulations for the purposes of this paragraph; or
 - (ii) if a day has not been prescribed for the purposes of this paragraph before 29 September 2020 — 29 September 2020;

land includes any part of land;

landlord —

- (a) means the person who, under a lease, grants the tenant the right to occupy the land or premises that are the subject of the lease; and
- (b) includes a personal representative, successor or assignee of a landlord;

lease —

- (a) means any lease, sub-lease, licence or other agreement under which a person grants a right to another person to occupy land or premises —
 - (i) whether or not the right is a right of exclusive occupation; and
 - (ii) whether the lease, sub-lease, licence or agreement is made orally or in writing;

but

s. 3

- (b) does not include any of the following —
- (i) a long-stay agreement to which the *Residential Parks (Long-stay Tenants) Act 2006* applies;
 - (ii) a residential tenancy agreement to which the *Residential Tenancies Act 1987* applies;
 - (iii) a pastoral lease as defined in the *Land Administration Act 1997* section 3;
 - (iv) a mining tenement as defined in the *Mining Act 1978* section 8;
 - (v) any other lease, sub-lease, licence or other agreement that is of a class prescribed by regulations for the purposes of this paragraph;

operating expenses has the meaning given in the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 12(3);

premises includes any part of premises;

rent includes any money, goods, services or other valuable consideration in the nature of rent to be paid or supplied under a lease by the tenant;

small business has the meaning given in the *Small Business Development Corporation Act 1983* section 3(1);

small commercial lease means —

- (a) a retail shop lease as defined in the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 3(1); or
- (b) a lease where the tenant owns or operates a small business and uses the land or premises that are the subject of the lease for the purpose of carrying on that business; or
- (c) a lease where the tenant is an incorporated association as defined in the *Associations Incorporation Act 2015* section 3; or
- (d) any other lease that is of a class prescribed by regulations for the purposes of this paragraph;

tenant means the person who, under a lease, is entitled to occupy the land or premises that are the subject of the lease.

4. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

5. Application

This Act has effect despite anything to the contrary in any written law.

6. Leases, contracts and agreements taken to be modified

The provisions of any lease or any other contract or agreement are taken to be modified to the extent necessary to give effect to the operation of this Act.

7. No contracting out

- (1) A lease or any other contract or agreement is of no effect to the extent that it purports to exclude or restrict the operation of this Act.
- (2) A purported waiver of a right, remedy or benefit conferred on a person under this Act is of no effect.

Part 3 — Prohibited actions in respect of small commercial leases and related matters

8. Term used: prohibited action

In this Part —

prohibited action means action under, or in respect of, a small commercial lease (including seeking orders, or commencing proceedings, in a court or tribunal) for any of the following —

- (a) eviction of the tenant from the land or premises that are the subject of the small commercial lease;
- (b) exercising a right of re-entry to the land or premises that are the subject of the small commercial lease;
- (c) possession;
- (d) recovery of land;
- (e) distraint of goods;
- (f) forfeiture;
- (g) termination of the small commercial lease;
- (h) damages;
- (i) requiring a payment of interest on unpaid rent or on any other unpaid amount of money payable by the tenant to the landlord under the small commercial lease (including, without limitation, operating expenses);
- (j) recovery of the whole or part of any security for the performance of the tenant's obligations under the small commercial lease (including, without limitation, a security bond);
- (k) performance of obligations by the tenant or any other person under a guarantee given in respect of the small commercial lease (including, without limitation, making a demand on a bank guarantee);
- (l) any other remedy otherwise available to the landlord against the tenant at common law or under a written law.

9. Prohibited action cannot be taken during emergency period

Except in the circumstances (if any) prescribed by regulations for the purposes of this section, a landlord cannot take prohibited action during the emergency period on the grounds of a breach by the tenant of a small commercial lease that occurs during the emergency period if the breach consists of —

- (a) a failure to pay rent or any other amount of money payable by the tenant to the landlord under the small commercial lease (including, without limitation, a requirement under the lease to pay all or any of the landlord's operating expenses); or
- (b) the land or premises that are the subject of the small commercial lease, or the business carried on there, not being open for business at hours or times specified in the small commercial lease; or
- (c) any act or omission of a kind prescribed by regulations for the purposes of this paragraph.

10. Acts and omissions of tenants required under law in response to COVID-19 pandemic

An act or omission of a tenant during the emergency period that is required under a written law in response to the COVID-19 pandemic is not to be regarded as —

- (a) a breach of a small commercial lease; or
- (b) grounds for termination of a small commercial lease; or
- (c) grounds for the taking of any prohibited action under, or in respect of, a small commercial lease.

11. Rent increases prohibited during emergency period

Rent payable under a small commercial lease (other than rent or a component of rent determined by reference to turnover) cannot be increased during the emergency period.

s. 12

12. Prohibited actions taken, and other things occurring, during relevant period

(1) In this section —

relevant period means the period —

- (a) beginning on 30 March 2020; and
- (b) ending on the day on which this Act receives the Royal Assent.

(2) This section applies if, during the relevant period —

- (a) a landlord has taken or commenced prohibited action (including a prohibited action that has a periodic or ongoing effect); or
- (b) a landlord has taken or commenced the performance of any other measure (including a measure that has a periodic or ongoing effect) that the landlord would not have been able to undertake or commence during the emergency period by virtue of the operation of this Part; or
- (c) the operation of the terms of a small commercial lease has had effect, or has a periodic or ongoing effect, contrary to the operation of this Part; or
- (d) without limiting paragraphs (a) to (c), rent payable under a small commercial lease has been increased contrary to the operation of this Part.

(3) The prohibited action or other measure is as valid and effective as it would have been had this Part not come into operation but, so far as the prohibited action or other measure remains incomplete or ongoing, or has a periodic or ongoing effect, it is taken to be stayed or suspended until the end of the emergency period.

- (4) The effect of the operation of the terms of the small commercial lease is as valid and effective as it would have been had this Part not come into operation but, so far as the effect of the operation of those terms remains incomplete or ongoing, or has a periodic or ongoing effect, it is taken to be stayed or suspended until the end of the emergency period.
- (5) The increase in rent is as valid and effective as it would have been had this Part not come into operation but the increase is taken to be stayed or suspended until the end of the emergency period.

[Parts 4-6 have not come into operation.]

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Notes

This is a compilation of the *Commercial Tenancies (COVID-19 Response) Act 2020*. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Commercial Tenancies (COVID-19 Response) Act 2020</i> Pt. 2 and 3	19 of 2020	23 Apr 2020	30 Mar 2020 (see s. 2(b))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Commercial Tenancies (COVID-19 Response) Act 2020</i> Pt. 1 and Pt. 4-6	19 of 2020	23 Apr 2020	Pt. 1: 23 Apr 2020 (see s. 2(a)); Pt. 4-6: 24 Apr 2020 (see s. 2(c))

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
adopted code of conduct	3
assent day	2
emergency period	3
land	3
landlord	3
lease	3
operating expenses	3
premises	3
prohibited action	8
relevant period	12(1)
rent	3
small business	3
small commercial lease	3
tenant	3