

COVID-19 Legislation Amendment (Emergency Measures) Act 2020

The [COVID-19 Legislation Amendment \(Emergency Measures\) Act 2020](#), which commenced on 25 March 2020, amends a range of legislation in response to the COVID-19 pandemic. Several amendments are relevant to agencies that deal with property.

KEY POINTS

Changes include:

- ▶ new powers under the *Electronic Transactions Act 2000* to make regulations to facilitate remote execution of documents such as statutory declarations and deeds.
- ▶ a new power under the *Environmental Planning and Assessment Act 1979* that enables the Minister to make orders permitting development to be carried out without obtaining development consent or approval.
- ▶ new powers under the *Retail Leases Act 1994* and *Residential Tenancies Act 2010* to make regulations concerning the ability of landlords to enforce the obligations of residential and retail tenants.

Electronic Transactions Act 2000

A new Pt. 4 to the *Electronic Transactions Act 2000* introduces a power to make regulations "under any relevant Act" for the purposes of responding to the COVID-19 pandemic that provide "altered arrangements" for:

- (a) the signature of documents,
- (b) witnessing signatures, including requirements for certification of certain matters by witnesses and verification of identify, and
- (c) the attestation of documents.

The relevant Acts include the *Conveyancing Act 1919* and the *Oaths Act 1900*. However, they do not include the *Real Property Act 1900*.

The amendments are designed to enable the making of regulations that facilitate the execution, including witnessing, of agreements and dealings while it is impractical for people to meet in person. That is, the regulations may permit the remote signing and witnessing of legal documents, such as statutory declarations and deeds, that ordinarily require a person to witness their execution in person. Any regulations made will expire six months after their commencement

Environmental Planning and Assessment Act 1979

The new s. 10.17(1) empowers the Minister for Planning and Public Spaces to authorise, by an order published in the Government Gazette, "development to be carried out on land without the need for any approval under the Act

or consent from any person". Such orders can be for a class of development (s. 10.17(4)) and are "taken to be a grant of development consent for the development" (s. 10.17(3)). The prescribed period in which the Minister can make these orders is due to conclude in six months.

The amendments enable the Minister to permit certain types of development without the need for any approvals or consents that would usually be required under the *Environmental Planning and Assessment Act 1979*. This will enable the Minister to make orders permitting the use of premises that may not, under current planning laws, be permitted or may be permitted but only with consent or approval.

The Residential Tenancies Act 2010 and the Retail Leases Act 1994

A new Pt. 13 to the *Residential Tenancies Act 2010* and a new Pt. 11 to the *Retail Leases Act 1994* introduce powers to make regulations "under any relevant Act". Regulations can be made in respect of:

- (a) prohibiting lessors from recovering the possession of premises from lessees in particular circumstances,
- (b) prohibiting lessors terminating leases in particular circumstances,
- (c) regulating or preventing lessors from exercising enforcement rights under leases, or tenancy legislation in particular circumstances, and
- (d) exempting lessees from contractual, or statutory, obligations relating to the leasing or licensing of premises or land.

The powers clearly contemplate regulations restricting the ability of lessors to enforce their rights against commercial and residential lessees during the COVID-19 pandemic. To this end, any regulations made in exercise of these powers will expire six months after their commencement (unless otherwise provided).

Any regulations made may have implications for how agencies manage their leases. For example, they may affect the timing of rent payments to lessor agencies or their ability to terminate leases for breach.

The "relevant Act(s)" for the purposes of the *Residential Tenancies Act 2010* regulation-making power include the *Boarding Houses Act 2012* the *Residential (Land Lease) Communities Act 2013* (s. 229(5)), and any other Act relating to leasing for residential purposes. The "relevant Act(s)" for the *Retail Leases Act 1994* regulation-making power include the *Agricultural Tenancies Act 1900*, and any other Act relating to leasing for commercial purposes.

The Crown Solicitor can advise agencies on the implications of the amendments and any new regulations.

CONTACT



Martin Hill, A/Principal Solicitor
martin.hill@csso.nsw.gov.au
02 9474 9074



Jodi Denehy, Director
Jodi.Denehy@csso.nsw.gov.au
02 9474 9454 | 0438 491 693