

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

Leases (Commercial and Retail) COVID-19 Emergency Response Declaration Revocation 2021

D12021-283

EXPLANATORY STATEMENT

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Leases (Commercial and Retail) COVID-19 Emergency Response Declaration Revocation 2021

OVERVIEW OF THE REVOCATION

The *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration Revocation 2021* (the revocation instrument) is a disallowable instrument made under section 177 of the *Leases (Commercial and Retail) Act 2001* (the Leases Act).

The revocation instrument revokes the *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2021* (DI2021-218) (the 2021 Commercial Leases Declaration). As a result of the revocation instrument, the 2021 Commercial Leases Declaration will be revoked from 1 January 2022.

On 12 August 2021, the Chief Minister announced that the ACT would be entering into a lockdown as a result of a positive COVID-19 case, and positive wastewater detections.

The 2021 Commercial Leases Declaration commenced on 2 September 2021 and re-introduced the requirement for good faith negotiations between parties with regard to the overarching principles and leasing principles set out in National Cabinet's Code of Conduct, prior to a landlord terminating a commercial lease or taking adverse action against an impacted tenant for a prescribed breach.

It operates where a tenant has been impacted financially by the COVID-19 pandemic and, as a consequence, fails to meet certain obligations (including the payment of rent) under their lease agreement. Similar obligations had been put in place under previous Declarations made under section 177 of the Leases Act.

The 2021 Commercial Leases Declaration is being revoked as most of the measures that were put in place for the August lockdown which restricted business activity and trading capacity have now been eased under the ACT Government's Pathway Forward. Since the ending of the lockdown in November 2021, conditions for business viability have improved while consumer confidence is increasing. In light of this, it is appropriate that the 2021 Commercial Leases Declaration be revoked.

CONSULTATION ON THE PROPOSED APPROACH

Members of the ACT Commercial Tenancies Administration Committee were consulted regarding the future of the 2021 Commercial Leases Declaration. That Committee is made up of industry stakeholders. The Committee supports the revocation of the 2021 Commercial Leases Declaration on 1 January 2022.

CLAUSE NOTES

Clause 1 Name of Instrument

This clause is a formal provision setting out the name of the instrument as the *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration Revocation 2021* (the revocation instrument).

Clause 2 Commencement

This clause provides that the revocation instrument commences on 1 January 2022.

Clause 3 Revocation

This clause provides that the revocation instrument revokes the *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2021* (DI2021-218).

Clause 4 Previous declarations

The purpose of this clause is to remove any doubt about the effect of the repeal or expiry of a previous declaration. It clarifies that the repeal or expiry of a previous declaration does not affect—

- (a) any right, remedy, protection or requirement relating to a prescribed breach under a previous declaration; and
- (b) any negotiation or agreement started or completed under, or in accordance with, a previous declaration.

This clause defines a prescribed breach under a previous declaration by referring to the previous declaration.

This clause also provides that a previous declaration means:

- the *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020* (DI2020-92); or
- the *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (No 2)* (DI2020-283); or
- the *Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2021* (DI2021-218).