

# **Commercial Tenancies (COVID-19 Response (Early Termination)) Bill 2020**

## **Contents**

1.	Short title	2
2.	Commencement	2
3.	Terms used	2
4.	Act binds Crown	3
5.	Application	3
6.	Leases, contracts and agreements taken to be modified	3
7.	No contracting out	3
8.	Term used: severe financial distress	3
9.	Termination of commercial leases if tenant in severe financial distress	4
10.	Applications to Tribunal	4
11.	Effect of termination of commercial leases under this Act	5
12.	Notices under this Act	6
13.	Time when notices taken to be given	7
14.	Regulations	7
15.	Repeal	8

## **Defined terms**



Western Australia

LEGISLATIVE ASSEMBLY

**Commercial Tenancies (COVID-19 Response  
(Early Termination)) Bill 2020**

**A Bill for**

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

The Parliament of Western Australia enacts as follows:

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1   **1.     Short title**

2           This is the *Commercial Tenancies (COVID-19 Response (Early*  
3           *Termination)) Act 2020*.

4   **2.     Commencement**

5           This Act comes into operation as follows —

- 6           (a)   sections 1 and 2 — on the day on which this Act  
7           receives the Royal Assent;  
8           (b)   the rest of the Act — on the day after that day.

9   **3.     Terms used**

10   (1)   In this Act —

11           *business day* means a day that is not a Saturday, Sunday or  
12           public holiday throughout the State;

13           *commercial lease* means —

- 14           (a)   a small commercial lease; or  
15           (b)   any other lease that is of a class prescribed by  
16           regulations;

17           *Commissioner* means the Commissioner designated under the  
18           *Fair Trading Act 2010* section 55;

19           *COVID-19 consequences* means any of the following —

- 20           (a)   a restriction imposed under a written law in response to  
21           the COVID-19 pandemic;  
22           (b)   changes in societal behaviour in response to the  
23           COVID-19 pandemic;  
24           (c)   any other consequences of the COVID-19 pandemic;

25           *severe financial distress* has the meaning given in section 8;

26           *Tribunal* means the State Administrative Tribunal.

27   (2)   Where terms defined in the *Commercial Tenancies (COVID-19*  
28           *Response) Act 2020* section 3 are used in this Act they have the  
29           same meaning in this Act as they have in that Act.

1   **4.       Act binds Crown**

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

5   **5.       Application**

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

8   **6.       Leases, contracts and agreements taken to be modified**

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

12  **7.       No contracting out**

13          (1) A lease or any other contract or agreement is of no effect to the  
14          extent that it purports to exclude or restrict the operation of this  
15          Act.

16          (2) A purported waiver of a right, remedy or benefit conferred on a  
17          person under this Act is of no effect.

18  **8.       Term used: severe financial distress**

19          For the purposes of this Act, a tenant under a commercial lease  
20          is in *severe financial distress* if —

- 21           (a) the tenant is suffering financial hardship as a result of  
22           COVID-19 consequences; and
- 23           (b) the tenant has made reasonable endeavours to negotiate  
24           waivers or deferrals of rent, or other concessions, from  
25           the landlord; and
- 26           (c) despite those reasonable endeavours and any waiver or  
27           deferral of rent, or other concessions, made by the  
28           landlord, it is reasonable to conclude that, because of the  
29           tenant's financial hardship, the tenant is not, or will not

**s. 9**

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- 1                   at some later time, be in a position to perform the  
2                   tenant's obligations under the commercial lease; and  
3           (d)   any other requirements that are prescribed by  
4                   regulations are met.

5   **9.    Termination of commercial leases if tenant in severe**  
6   **financial distress**

- 7    (1)   A tenant under a commercial lease who claims to be in severe  
8    financial distress may, at any time during the emergency period,  
9    give the landlord a notice in writing proposing the termination  
10   of the commercial lease under this Act.
- 11   (2)   Within 14 days after the day on which the tenant's notice is  
12   given, the landlord may give a notice in writing to the tenant —  
13       (a)   agreeing to the termination of the commercial lease; or  
14       (b)   stating that the landlord intends to make an application  
15           to the Tribunal to determine whether the commercial  
16           lease is to be terminated under this Act.
- 17   (3)   A notice under subsection (1) or (2) must be in a form approved  
18   by the Commissioner.
- 19   (4)   Subsection (5) applies if the landlord —  
20       (a)   agrees under subsection (2)(a) to the termination of the  
21           commercial lease; or  
22       (b)   does not give a notice under subsection (2) within the  
23           14 day period referred to in that subsection.
- 24   (5)   The commercial lease terminates at the end of the period of  
25   21 days after the day on which the tenant's notice was given  
26   under subsection (1).

27   **10.   Applications to Tribunal**

- 28   (1)   If the landlord gives a notice under section 9(2)(b), the landlord  
29   must, within 7 days after the day on which the notice was given,  
30   make an application to the Tribunal to determine whether the  
31   commercial lease is to be terminated under this Act.

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- 1       (2) In determining the application, the Tribunal must consider  
2       whether the tenant is in severe financial distress.
- 3       (3) If the Tribunal is satisfied that the tenant is in severe financial  
4       distress at the time it determines the application —
- 5           (a) the Tribunal must make an order declaring that the  
6           commercial lease is to be terminated, including when  
7           the termination is to take effect; and
- 8           (b) the commercial lease terminates in accordance with the  
9           order.
- 10       (4) If the Tribunal is not satisfied that the tenant is in severe  
11       financial distress at the time it determines the application —
- 12           (a) the Tribunal must make an order stating that it is not  
13           satisfied; and
- 14           (b) if, despite not being satisfied, the Tribunal considers it  
15           appropriate to do so, the Tribunal may make —
- 16               (i) an order for the waiver or deferral of rent, or  
17               some other concession by the landlord to the  
18               tenant, in relation to the commercial lease; and
- 19               (ii) any ancillary order that it considers necessary for  
20               the purpose of enabling an order under  
21               subparagraph (i) to have full effect.
- 22       (5) If the landlord does not make an application to the Tribunal  
23       within the 7 day period referred to in subsection (1), the  
24       commercial lease terminates at the end of the period of 7 days  
25       after the 7 day period referred to in subsection (1).

26       **11. Effect of termination of commercial leases under this Act**

- 27       (1) This section applies if a commercial lease terminates under  
28       section 9(5) or 10(5) or terminates in accordance with an order  
29       made by the Tribunal under section 10(3).
- 30       (2) Except as set out in this section, the landlord and tenant are  
31       released from any liability, and have no further liability, to each  
32       other under, or arising out of, the commercial lease.

**s. 12**

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- 1       (3) The tenant is liable to pay the landlord any rent, or other monies  
2       owing by the tenant, under the commercial lease that were  
3       required to be paid before the commencement of the emergency  
4       period, or that are in respect of a period before the  
5       commencement of the emergency period.
- 6       (4) Subsection (5) applies if the tenant does not leave the land or  
7       premises that are the subject of the commercial lease —  
8       (a) in the state in which the tenant would have been  
9       required to leave them had the commercial lease  
10      continued for the rest of its term; or  
11      (b) otherwise in a state of reasonable cleanliness and repair.
- 12      (5) The tenant is liable to pay the landlord the landlord’s reasonable  
13      costs of putting the land or premises into the state referred to in  
14      subsection (4)(a) or (b), except, in the case of subsection (4)(b),  
15      to the extent that those costs relate to something that the  
16      landlord was required to do, or that the tenant was not otherwise  
17      responsible for, under the commercial lease.
- 18      (6) The landlord may recover monies the tenant is liable to pay  
19      under subsection (3) or (5) from any security (including money,  
20      a bank guarantee or other bond) that was provided for the  
21      performance of the tenant’s obligations under the commercial  
22      lease, but otherwise the landlord must return or release any such  
23      security.

24      **12. Notices under this Act**

- 25      A notice under this Act is given to a landlord or tenant by —  
26      (a) delivering it personally to the person; or  
27      (b) sending it by prepaid post addressed to the person to —  
28          (i) the person’s usual or last known place of  
29          residence or business; or  
30          (ii) an address that the person has given for service,  
31          or for the giving of notices, under the  
32          commercial lease; or



- 1 (c) leaving it at an address referred to in paragraph (b)(i) or  
2 (ii); or
- 3 (d) emailing it to an email address that the person has given  
4 for service, or for the giving of notices, under the  
5 commercial lease; or
- 6 (e) in the case of a corporation or of an association of  
7 persons (whether incorporated or not) — delivering or  
8 leaving the notice or posting it as a letter, addressed in  
9 each case to the corporation or association, at its  
10 principal place of business or principal office in the  
11 State.

12 **13. Time when notices taken to be given**

- 13 (1) In the absence of proof to the contrary, a notice that is emailed  
14 to a person in accordance with section 12(d) or delivered to, or  
15 left for, a person in accordance with section 12(e) is taken to be  
16 given —
- 17 (a) on the business day on which the notice was emailed,  
18 delivered or left; or
- 19 (b) if the notice was emailed, delivered or left on a day that  
20 was not a business day, the next business day after that  
21 day.
- 22 (2) In the absence of proof to the contrary, a notice that is sent by  
23 prepaid post —
- 24 (a) to an address within Australia — is taken to be given on  
25 the 3<sup>rd</sup> business day after the day on which the notice  
26 was posted; or
- 27 (b) to an address outside Australia — is taken to be given  
28 on the 11<sup>th</sup> business day after the day on which the  
29 notice was posted.

30 **14. Regulations**

- 31 The Governor may make regulations prescribing matters —  
32 (a) required or permitted by this Act to be prescribed; or

**s. 15**

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1                   (b) necessary or convenient to be prescribed for giving  
2                   effect to this Act.

3   **15.    Repeal**

4                   This Act is repealed at the end of the period of 12 months that  
5                   begins on the day after the day on which the emergency period  
6                   ends.

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## **Defined terms**

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
business day .....	3(1)
commercial lease.....	3(1)
Commissioner .....	3(1)
COVID-19 consequences.....	3(1)
severe financial distress .....	3(1), 8
Tribunal.....	3(1)