

**EMBARGOED UNTIL 5:00AM TUESDAY 5 OCTOBER 2021**

## **Property Law Act changes should be targeted to help those most in need says Property Council**

“A missed opportunity for those who need it most”, says Property Council chief executive Leonie Freeman, who today submitted in opposition to the Government’s quick-fire changes to the Property Law Act as part of the COVID-19 Response (Management Measures) Legislation Bill.

Property Council has recommended key changes to the Bill that will target support to vulnerable tenants and ensure landlords and tenants get equitable outcomes. These changes include:

- Legislating a simple two stage eligibility test to target support for vulnerable tenants:
  - 'Who can get it' - including meeting criteria such as being a New Zealand owned business; an SME (e.g. of fewer than 20 employees or having annual turnover less than say \$25m); and eligibility for the wage subsidy showing economic loss over a period;
  - 'What is a 'fair proportion of rent' - a set of considerations including an economic loss test, impact of online sales and ‘click and collect’, the ability for a business to operate remotely and consideration of the potential bounce back in sales once the physical premises reopens over a defined period of time.
- Limiting the clause to only Alert Levels Four and Three
- Providing more financial assistance to vulnerable businesses who aren't eligible for other Government support to boost cashflow.

"Right now, the draft legislation is ambiguous and vague. Due to the lack of industry consultation the Government has failed to address some of the key issues that arose out of a similarly worded clause in the ADLS Lease, with the requirement for property owners to provide a ‘fair proportion of rent relief’ open to interpretation. Without clarification of what ‘fair’ means, this legislation merely puts the entire sector back at square one.

"We know specific sectors such as retail and hospitality need more support than others, but this legislation could see vulnerable tenants who were previously given 100% rent relief receive less as the landlord will have to provide ‘fairly’ across all tenancies.

“We believe that if the Government had taken its time and followed a fuller process which included consulting with the parties such as Retail NZ, Business NZ, Hospitality NZ and the Property Council, we could have achieved a workable solution that ensures those in the greatest need receive the most support.

“There are some very serious unintended consequences that will result from the decision to deploy a blanket approach to what is a very nuanced and individualised contractual environment,” says Freeman.

“In many cases the businesses which will benefit have much greater financial strength than the landlords who will be impacted. The proposal as currently drafted, with its wide application to commercial leases, has much broader implications.

“Since the Government announced the proposed changes last Tuesday, we have been inundated with stories from both tenants and landlords, many of whom will see their livelihoods at stake should the legislation come to pass.

“The message we’re getting is that there has been poor behaviour on both sides; with some large international tenants using the Government’s intervention as an excuse to halt all rent payments and some well-to-do landlords refusing to compromise – both positions we vehemently oppose.

“I received an email this week from a couple in their 80’s, whose only income is their pension and the rent from their small commercial property. Their professional tenants have requested a 50% reduction in rent, despite their business suffering no financial stress due to lockdown. This couple simply cannot afford a rent reduction, nor can they afford to drag the issue through arbitration in the tens of thousands. What does the Government propose they do? How will this legislation support people like them?,” says Freeman.

**ENDS.**

For further comment please contact:

**Leonie Freeman** | Chief Executive | 027 436 6526 | [leonie@propertynz.co.nz](mailto:leonie@propertynz.co.nz)

For further information please contact:

**Kelly Taylor** | Head of Communications | 021 5757 02 | [kelly@propertynz.co.nz](mailto:kelly@propertynz.co.nz)

## **Notes to the Editor**

Please find attached Property Council’s submission to the Finance and Expenditure Committee on the COVID-19 Response (Management Measures) Legislation Bill.

In summary, the Property Council has made the following recommendations in its formal submission to the Finance and Expenditure Committee:

1. The rent relief clause, as currently drafted, does not progress.
2. If the rent relief clause is progressed, that it be amended to clear up drafting ambiguities with a simple two-step process:
  - a. Eligibility for Rent Relief
    - i. A limit to its application to only include Alert Levels 4 and 3 to provide consistency with current Government support initiatives;
    - ii. Eligibility criteria to ensure tenants are assessed against need and vulnerability. This would include being a New Zealand owned business; an SME – (e.g. of fewer than 20 employees or a turnover of less than say \$25m); and eligibility for the wage subsidy showing economic loss;
  - b. Considerations for a “fair proportion of rent”
    - i. A set of considerations that should be taken into account when assessing rent relief – including economic loss, consideration of online and click and collect sales, ability for a business to operate remotely and consideration of the potential bounce back in sales once the physical premises reopens over a defined period of time.

3. That in addition, the Government should consider targeted business payment support for vulnerable businesses to deal immediately with cashflow issues; and
4. That the Government reconsider other direct interventions and policy options, including:
  - a. Mandatory communication timeframes;
  - b. Rent deferral for tenants through the tax;
  - c. Rent subsidy for tenants;
  - d. Landlord Hardship Fund.
5. That the Finance and Expenditure Committee request an extension of time to adequately assess the implications of the draft clause until 14 November 2021.

### **About Property Council New Zealand**

Property Council is the leading advocate for New Zealand's largest industry - property.

Property Council New Zealand is the one organisation that collectively champions property, bringing together members from all corners of the property eco system to advocate for reduced red tape that enables development.

Property is New Zealand's largest industry, making up 15% of economic activity. As a sector, we employ 9% of New Zealand's workforce and contribute over \$41.2 billion to GDP.

A not-for-profit organisation, the Property Council connects over 10,000 property professionals, championing the interests of 550 member companies.

Our membership is broad and includes some of the largest commercial and residential property owners and developers in New Zealand. The property industry comes together at our local, national and online events, which offer professional development, exceptional networking and access to industry-leading research.

Our members shape the cities and spaces where New Zealanders live, work, play and shop.

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