

# the Conduit

21  
SPRING



**COUTTS**  
LAWYERS & CONVEYANCERS



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**CALENDAR DATES**

**September**

Sunday 5th	Father's Day
Friday 24th	Turning Point BBQ

**October**

Sunday 3rd	Daylight savings commence
Monday 4th	Labour Day Public Holiday
Friday 22nd	Turning Point BBQ
Sunday 31st	Halloween

**November**

Thursday 11th	Turning Point BBQ
Friday 26th	FB Live 8pm



## A MESSAGE FROM

# Adriana

Welcome to the Spring edition of our newsletter where the days are starting to get longer, the trees start blossoming and it finally starts to warm up.

The days go on and the challenges get harder. For some, working and owning a business was never so hard, but even the basic needs of human connection, networking, socialising, all the things that allow us to grow as a person have really become a challenge to do. It has been a hard couple of months for everyone with the Delta strain wreaking havoc and forcing our state into a harsh lockdown.

Coutts have been adjusting to these crazy times; with the majority of our staff working from home. We have been carrying out most of our appointments by video and trying to accommodate to our clients the best we can. We appreciate everyone's co-operation in such trying times. I would also like to take this opportunity to acknowledge those that are doing their best with home schooling, particularly my staff. I personally know the challenge parents are faced with daily, trying to homeschool their children, as well as working from home however I am so impressed how well the team are doing, and yes we have our harder days but we have a great support network in our office to help us keep moving forward.

During lockdown Coutts have been hosting plenty of online events for our staff including MasterChef competitions, Olympic Games treasure hunt (highlighting everyone's competitive sides!) Yoga, Personal Fitness and we have some other activities up our sleeve if this lockdown continues. Now is more important than ever to stay active and ensure you're reaching out to your colleagues, family & friends. We hope you have been following our journey during lockdown and our light-hearted

social media posts have given you something to smile about or even better ideas that you could do.

During this lockdown Coutts have managed to keep it 'business as usual' (to a certain extent) and have also welcomed new staff members, who are all eager to meet our clients when things settle.

Coutts can provide Legal help in the following areas:

- ✓ Property Law & Conveyancing
- ✓ Wills & Estates
- ✓ Commercial Law
- ✓ Family Law
- ✓ Employment Law
- ✓ Injury Compensation
- ✓ Criminal Law
- ✓ Government Law

We would more than love the opportunity to support our clients, referrals partners and networks so please let us know what we could do to be supporting you right now. In return, the best way you can support us is by completing a survey and when prompted, proceed to also leave a Google Review: <https://jo.my/coutts>

A gentle reminder, that all our offices hold Escabags if you or anyone you know, are fleeing a Domestic Violence situation. The bags are filled with essential items and if or when asking for a bag – NO QUESTIONS ARE ASKED. There is no excuse for abuse and we encourage you to share this information around.

We are looking forward to the return to a somewhat normality in the near future, but for now – stay safe.

*thank you*

# Tenant and Landlord Relief Passed By NSW Government

## KEY TAKE OUTS

The NSW Government has reintroduced the National Mandatory Commercial Code of Conduct for Commercial Leasing. This is the much-awaited rent relief that small businesses have been waiting for due to the recent and extended COVID-19 lockdown laws.

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The mandatory Code of Conduct will be extended until 13 January 2022 providing for protection for small businesses. Whilst it is still encouraged that all landlords and tenants come to the table to negotiate, this is now mandating the minimum relief that landlords need to provide impacted tenants.

Noting impacted tenants are those whose income has decreased by more than 30% (as per the previous Job keeper requirements) and have a turnover of less than 50 million.

The Retail and Other Commercial Leases Regulation 2021 will require landlords to renegotiate rent and provide rent relief in proportion with their tenant's decline in turnover. If the rent relief is provided, at least 50% must be in the form of a waiver and the balance a deferral. A summary of what each parties rights are can be found [here](#).

The State Government have also established a \$40million Hardship Fund for Landlords that provides a monthly grant of up to \$3,000 for small commercial or retail landlords who do provide rental waivers of at least the value of the grant and any land tax relief that they are eligible for.

If you are a landlord or tenant in NSW and need assistance understanding your legal rights please contact Adriana Care and her team at Coutts to help you navigate your way through the negotiations.



**Adriana Care**  
Managing Partner

## Covid-19 Relief for Companies and AGMs Extended

In March 2020, in response to the rapid changes that the COVID-19 pandemic forced on Australian businesses, [The Corporations \(Coronavirus Economic Response\) Determination \(No. 1\) 2020](#) introduced temporary measures allowing companies to conduct virtual Annual General Meetings (AGMs). These were originally due to expire in November 2020, but were extended until March 2021, and again to September 2021. With NSW and other states again facing extended lockdowns, a further extension has been passed, which are now due to expire on 31 March 2022.

This extension comes at an important time, as many companies will be conducting their AGMs whilst under the current lockdown. Company documents and deeds may also continue to be executed electronically under these measures, and materials for shareholders may also be provided electronically.

As before, companies must provide members with instructions about how to exercise their voting and questioning rights. Questions may still be taken in advance or live, and live votes must be conducted with a poll rather than a show of hands. If technical difficulties occur which affect members' ability to participate, the meeting is to be postponed for these to be addressed. Companies can contact their Share Registrar for assistance or advice regarding software solutions for virtual AGMs or voting processes if they have not already developed procedures or solutions.

During the announcement of these further extensions, Federal Treasurer Josh Frydenberg also confirmed that the government is looking to introduce these changes as more permanent reforms later this year. This will increase the flexibility for companies to conduct meetings and execute documents regardless of COVID-19, which should be an overall benefit for companies and shareholders.



**Amanda Olic**  
Senior Associate



## Do you have Council approval to operate your business?

A common oversight of small businesses is the failure to understand that planning approvals are required to run a business – whether the business is being run from your home office or a commercial premises.

You can operate a business from home without Council approval only if it meets all of the following criteria:

- ✓ it employs no more than 2 employees (other than those living in the residence)
- ✓ it has no adverse impact on the amenity of the neighbourhood by reason of the emission of noise, vibration, smell (including cooking smells), fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil, traffic generation or otherwise
- ✓ no more than one business identification sign is displayed
- ✓ any goods offered for sale are produced in the home business (goods sold on the internet cannot be collected from the premises)
- ✓ your business does not involve the manufacture of food products\*
- ✓ your business does not involve any skin penetration procedures (which include beauty treatments such as body waxing, nail treatment, cosmetic enhancements, chemical peel, tattooing, piercing, acupuncture, blood cholesterol and glucose management)

Home hairdressing businesses must also comply with the [Hairdressers Act 2003](#) and home food businesses must comply with the [Food Act 2003](#).

## Commercial Premises

If your business does not fall within the specific categories described on the development consent for the building you may be breaching the consent, even if you are only a tenant.

Existing commercial premises will be operating with development consent from Council. Development consents may be many years old and are often not well understood. A breach of development consent is an offence and it is important to understand what is permitted. Consent conditions related to any number of aspects such as hours of operation, types of industries, parking restrictions and environmental management plans.

Coutts has advised clients whose business operating from a commercial warehouse did not neatly fit into the terms of permissible development listed in the development consent. We were able to assist by advising on how the business operations could meet the conditions of development consent and permit the business to continue to operate.

## Unsure?

Our Local Government Lawyer would be happy to assist you in identifying what approvals you might need to ensure compliance or identifying your applicable development consent.



**Adele Veness**

Senior Associate



# Employer power: If you breach a health order during covid-19 and mandatory vaccination

It's another blow to businesses and families as the Premier [announced](#) another lockdown for 4 weeks due to the COVID-19 outbreak. But two areas of contention relate to outside gatherings in Sydney and in particular the Anti-Lockdown Rally/Protest and whether you can dismiss employees who refuse to vaccinate.

## Outside Gatherings

**The question is: if you know one of your employees has attended an outside gathering in breach of the health order do you allow them back into your workforce without requiring a quarantine period and a covid test?**

Employers need to consider the Work Health and Safety Obligations that they are required to adhere to under the [Work Health and Safety Act 2011](#) and applicable regulations. Health Orders and Directions are mandatory by the NSW Government and must be adhered to, but employers obligations are such that they must go above and beyond to keep employees safe.

You can check out the Public Health Orders and Restrictions [here](#).

In a time of uncertainty in employment law and what is fair and unfair, harsh or unreasonable we want to consider a recent matter that popped up regarding attending a Rally.

A teacher has been suspended after attending the Sydney Anti-Lockdown Rally. The teacher

was found out after posting it on social media.

The school has acted swiftly to report the teacher to the police and actioned a suspension on the basis that “people are free to hold their own views and beliefs, but this does not extend to their behaviour and conduct”.

It is the view of the school that such behaviour is in breach of the code of conduct not to mention an intentional breach of the government restrictions.

There is no specific detail if the suspension is paid or unpaid or whether the teacher will be terminated. But watch this space!

## Take-Outs

It is now more than ever important that you review your business Work Health and Safety Obligations and have a plan!

The Plan may be to roll out policies that protect you from landing in the Fair Work Commission:-

1. Roll out a policy that can include:
  - ✓ any conduct in breach of the Health Orders and Directions may face disciplinary action;
  - ✓ that the health, safety and wellbeing of employees are paramount and set clear and concise requirements for testing and quarantine.



Coutts has the experience to guide you to the best option for your industry and business. We recommend that you speak to us to work out what is best for you and your team.

## What about vaccination, can your employer make it mandatory?

Two recent cases in the FWC Commission determined that the employer (in aged care and in child care) could dismiss an employee for failure to vaccinate at the direction of the employer.

Facts:

### In Barber v Goodstart Early Learning [2021]

Goodstart implemented a mandatory influenza vaccination policy for all staff. The policy contained an exemption basis for mandatory vaccination on medical grounds. Ms Barber sought an exemption on the grounds that she had a sensitive immune system, suffered from coeliac disease, and had suffered an adverse reaction in the past.

Good start required Ms Barber to be vaccinated on the basis that she could not meet the inherent requirements of her role.

FWC Deputy President found that Ms Barber had failed to produce any substantial documentation to support a medical exemption from the policy.

As a result, Ms Barber had failed to comply with the lawful and reasonable direction to be vaccinated in accordance with the Goodstart policy, which resulted in the termination of her employment.

Ms Barber failed on her claim to the Fair Work Commission.

### In Kimber v Sapphire Coast Community Aged Care Ltd (2021) (“SCCAC”)

Ms Kimber was an employee and in June 2020 a Public Health Order directed that anyone without an up-to-date vaccination for influenza could not enter a residential aged care facility. The employer directed that unless you have the vaccine or fitted into one of the exemptions you could not attend work.

Ms Kimber refused to have the vaccination and provided a note from her GP that she had previously suffered a reaction. The employer terminated the employment advising that she could not safely perform the inherent requirements of the role.

Ms Kimber took the matter to the Fair Work Commission (“FWC”).

The FWC found that she could not perform her role if she did not comply with the Public Health Order and she had not demonstrated any medical exemption. The dismissal was not harsh, unjust or unreasonable.

## Take-Outs


Vaccinations may be lawful and mandatory depending on each circumstance and industry. You need to seek advice before you refuse to vaccinate at the direction of the employer. Further, employers should seek advice before they terminate an employee for failure to follow a direction.

Coutts has the experience to guide you to the best option for your industry and business. We recommend that you speak to us to work out what is best for you and your team.

At this point in time, there are no reported case laws on COVID-19 vaccinations. But watch this space!



**Karena Nicholls**  
Partner



# Temporary Relief for Retail and Commercial Tenants Among the Recent Lockdowns

## KEY TAKE OUTS

Similar to the 2020 COVID-19 lockdown in Sydney, further COVID-19 relief to retail and commercial leasing laws now apply. Under these new laws, landlords are restrained from taking certain actions for certain breaches of leases, until 20 August 2021. The new legislation, being the Retail and Other Commercial Leases (COVID-19) Regulation 2021 can be found here: [Retail and Other Commercial Leases \(COVID-19\) Regulation 2021 \(nsw.gov.au\)](https://www.nsw.gov.au/retail-and-other-commercial-leases-covid-19-regulation-2021).

Interestingly, the new legislation does not mention the 2020 leasing Code of Conduct, nor does it require landlords to accept a reduction in rent during the prescribed period.

As with last year's lockdown, the NSW government has introduced temporary relief for retail and commercial leases, primarily aimed at providing further protection to tenants that are affected by the lockdown. Whilst the assistance is not identical to the relief provided last year, the temporary provisions are similarly aimed at reducing the stress of the COVID-19 mandatory lockdown on small businesses that are tenants. These changes will apply to all retail and commercial leases entered prior to 26 June 2021. At this stage, the protections will remain in place until 20 August 2021, unless extended at a later date.

A few important definitions relevant to these provisions are:

- ✓ **Prescribed action** – means the landlord taking an action to evict the tenant, exercising a right of re-entry, re-taking the premises or confiscating goods, enforcing forfeiture, seeking damages, requiring interest to be paid on unpaid rent, recovering the bond, enforcing against guarantors, terminating the lease, or any other remedy available at law.
- ✓ **Prescribed breach** – means a breach made by the impacted lessee regarding a failure to pay rent, pay outgoings, or if the business is not operating during the prescribed hours set out in the lease.
- ✓ **Prescribed period** -- means the period from 13 July 2021 to 20 August 2021.

## “Impacted lessee”

To be protected under the new legislation, the tenant must meet the definition of an ‘impacted lessee’. The criteria for a tenant to be an “impacted lessee” are that they must qualify for one of the following three grants in place to assist businesses affected by the recent lockdown:

- ✓ COVID-19 NSW Business Grant;
- ✓ Job Saver Grant; or
- ✓ Micro-business COVID-19 Support Grant.

The satisfaction of any of these grants requires that the tenant has suffered a reduction of over 30% in turnover. Additionally, the business must have an annual turnover below \$50 million.

## Restrictions on landlord’s actions

The changes brought by the Retail and Other Commercial Leases (COVID-19) Regulation 2021 (NSW) significantly restricts the actions that a landlord may take against a tenant for breach of a lease term, within the prescribed period. Regardless of lease provisions relating to dispute resolution mechanisms agreed to by the parties, landlords are not permitted to take a prescribed action against an impacted tenant on the basis of a prescribed breach, prior to undertaking mediation under the Retail Leases Act 1994 (NSW). Only after a mediation taking place, and the Registrar certifying that the mediation failed to resolve the dispute, then the lessor may take a prescribed action.

In response to a prescribed breach of the lease, the tenant must provide the lessor with a statement outlining that they are an impacted lessee and further, must provide evidence of the same. Although, what kind of evidence is not made clear in the regulation. Given that evidence of grant approval would be the strongest evidence that they are an impacted lessee, this may be difficult for tenants to provide, as at this stage not all of the proposed grants to assist businesses are in place and available for tenants to make applications to obtain support or recognition as an impacted lessee.

Additionally, as an incentive for landlords to decrease rent, they may, depending on the circumstances, apply for a grant of up to \$1,500.00 or land tax reductions.

## Actions landlords can still take

Prescribed actions remain available to lessors in circumstances where the breach of a lease is not a prescribed breach, that is, a failure to pay rent, outgoings or keep their business open. For example, if a tenant’s lease term has expired, and they have no option to renew but refuse to leave the premises, the landlord may still take prescribed action to evict the tenant. Similarly, if the tenant is damaging or making alterations to the premises not authorised by the lease provisions, the lessor may still recover the bond to repair or restore the premises, and take any other prescribed action.

## What should I do if I have a tenant in breach of a lease?

Now more so than ever, we recommend that you seek legal advice prior to taking any action against a tenant, including commencing legal proceedings prior to mediation, terminating a lease or recovering bond money. Even if an action cannot be taken at this stage, you can still develop a plan for how to proceed after the moratorium expires, or you can come to an arrangement with the tenant through mediation.

## What should I do if I am a tenant in breach of a lease?

We recommend that you or your legal representative speak to your landlord as soon as possible to make it clear which of your lease terms you have or are at risk of breaching. If you cannot come to an understanding, mediation should be an effective way to come to an agreement with your landlord. You should also ensure that you are not breaching the lease in any way that does not come under a prescribed breach, as this could provide an opportunity for your landlord to take action against you regardless of these new protections.



**Allyce Silm**  
Senior Lawyer

# How to find out your unimproved land value

Did you know you can conduct a free online search to find out your unimproved land value?

What is your unimproved land value? Your unimproved land value is the value of the land excluding any structural improvements as determined by the Valuer General for rating and tax purposes.

It is simple and easy to find.

Just visit [NSW's Valuer General](#) and enter your Property Number in the search box. A land value report will then generate.

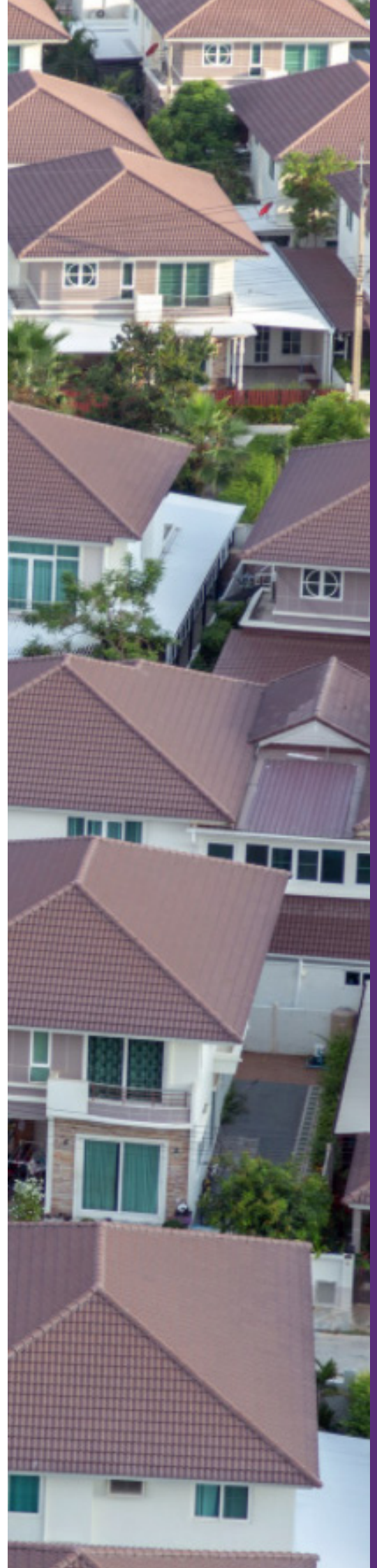
As well as disclosing the net land value for the property (or in the case of an apartment or townhouse the strata unit land value), the report also discloses other information about the property including the area, dimensions and zoning.

Don't know your Property Number? You can conduct a property address enquiry via [this link](#), all you need to know is the address of the property. Click on the link, enter the address of the property and perform the search. This search will provide you with the Property Number.



**Melina Costantino**

Licensed Conveyancer & JP





Locked Down with  
**COUTTS**





*A Wine with...*

# Vivian

## PROFILE

**Position:** Lawyer

**Location:** Campbelltown

**Area of Practice:** Wills and Estates

**Q: How would you describe yourself in two words?**

A: Organised and Determined

**Q: What would your best friend say is your best quality?**

A: Caring and Hardworking

**Q: My favourite motto / mantra is:**

A: If at first you don't succeed, try and try again.

**Q: My pet peeve is:**

A: Messiness

**Q: On the weekends you can find me:**

A: Spending time with my family

**Q: The last book I read was:**

A: Midnight Sun

**Q: The top 3 most used emoji's on my phone are:**

A: Smiling face, face with tears of joy, hamburger

**Q: My favourite movie of all time is:**

A: Les Miserables

# Your Questions Answered



**WE SEPARATED 15 MONTHS AGO, BUT THERE WERE A FEW WEEKS WHEN WE GOT BACK TOGETHER TO TRY AND SORT THINGS OUT. CAN WE STILL GET DIVORCED?**



It is very common for people to get back together for short periods of time after a separation. If this has happened to you, the separation is 'paused', but continues again if you separate once more.

For example, Sarah and John have been separated for two months. They decide to try and work things out. They get back together for six weeks. At the end of the six weeks, they decide to separate once more. At the end of that six weeks, John and Sarah have only been separated for two months. The period of separation continues from there.



**WHAT IS THE DIFFERENCE BETWEEN A POWER OF ATTORNEY AND ENDURING GUARDIANSHIP?**



A power of attorney is a legal document which allows an individual (known as the principal) to appoint another person (known as the attorney) to make decisions about your financial property and manage your financial affairs. An enduring guardianship is a legal document that allows you to appoint another person to make decisions on your behalf regarding your medical, health and lifestyle decisions when you lose mental capacity.



**THERE IS A DEVELOPMENT POPPING UP NEXT TO ME WHAT CAN I DO?"**



We have prepared submissions to Council on behalf of a client in relation to a proposed development on the neighbouring property which was an overdevelopment of the site and also not a lawful use of the site. The development proposed to turn a small block of units into a multi-dwelling site that was not in keeping with the heritage and landscaping and tourist attractions for the picturesque location.

We await an outcome but hope that the development will be rejected by Council.



**WHAT SHOULD I DO WHEN SIGNING A CONTRACT?**



Be sure you have read and understood the entire contract. If you do not understand it, don't sign it until you do understand it.

Be sure everyone signs & dates the final page.

Be sure everyone initials & dates each page of contract.

Contract pages should have numbering "1 of xx pages".

Be sure all warranties etc that are incorporated by reference are attached to basic contract.

If the contract is a form contract, \*all\* entries must be filled out (if the space does not apply use "NA" etc).



**WHAT CAN I DO IF SOMEONE BREACHES A CONTRACT?**



Most contracts are enforced in court. If the other party breaches the contract, you can go to court to try to collect damages or obtain 'specific performance'. However, some contracts have an arbitration clause which requires any disputes to be arbitrated by a neutral party.



**WHAT INSURANCE WILL I NEED IF I AM BUYING A HOUSE?**



If you are buying a home unit, a certificate of currency should be obtained from the body corporate's insurer to make sure the property is adequately insured. Your lender requires details and proof of this on or before settlement. If you are moving into the property before settlement, the seller would probably want to make a special arrangement whereby you are responsible for insurance from the time you take possession.



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**“Coutts is a powerful female founded law firm with a core value system that puts people first. Our reputation as the legal business of choice is recognised by our achievements and awards.”**

**Adriana Care  
Managing Partner**



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