

Rent Relief for Businesses Impacted by Coronavirus

The National Cabinet, on 7 April 2020, announced new rental waivers and deferrals for commercial tenants hit by the impact of the coronavirus.

This means that landlords will have to reduce leases in proportion to the reduction in the tenant's business.

The waivers will have to account for at least 50 per cent of the reduction in business. So if for example your business has declined by 60%, the landlord is required to reduce or waive rent by at least 30%. This rent would not be payable at all.

Deferrals — rental payments that will need to be made, but can be put off — must be spread over the remaining time on a lease and for no less than 24 months. For example, if a tenant had three months remaining on a lease, they would still have at least a year to make any deferred rent payment.

The mandatory code of conduct, referred to as the Commercial Tenancies Code is to be legislated and regulated by each of the State and Territory Governments with further details expected in coming days.

The code will apply to any tenancies where the landlord or tenant applies for JobKeeper and where they have a turnover of \$50 million or less.

[National Cabinet Mandatory Code of Conduct - SME Commercial Leasing Principles during COVID-19](#)

The objective of the Commercial Tenancies Code is for a landlord and tenant to share the risk and financial impact during the COVID-19 crisis whilst seeking to balance the interests of both parties. It is expected that a landlord and each eligible tenant will negotiate in good faith, on a case by case basis.

According to the Tenant Representative Services (TRS), the following leasing principles should be applied in negotiating and enacting appropriate temporary arrangements during the COVID-19 crisis and for a reasonable recovery period:

A landlord must not terminate a lease for non-payment of rent;

A landlord must not claim on upon a tenant's security (bank guarantee, security deposit or personal guarantee) for non-payment of rent;

A landlord must freeze rent increases. This includes fixed and market reviews;

A landlord must not impose any penalties or prohibition against the tenant reducing its opening hours or ceasing to trade;

A landlord must offer the tenant a rent reduction proportionate to the trading reduction in the tenant's business over the course of the COVID-19 crisis, through a combination of waivers of rent and deferrals of rent (Rent Relief);

Waivers of rent must account for at least 50% of the Rent Relief;

Deferrals of rent must be covered over the balance of the lease term and in a period not less than 24 months following the COVID-29 crisis;



A landlord must not charge any fees, interest or other charges to the tenant with respect to waivers and deferrals of rent;

A landlord must pass on to the tenant (with appropriate proportionality as applicable under the terms of the lease) any reductions in statutory charges, such as land tax, council rates and insurance. This will be seen through a reduction in outgoings costs;

A tenant must honour the terms of the lease, as amended in accordance with negotiations under the Commercial Tenancies Code. If the tenant breaches the substantive terms of the lease in a material way, the tenant will forfeit any protection provided to the tenant under the Commercial Tenancies Code;

A tenant should be provided with an opportunity to extend its lease for the equivalent period of the waiver or deferral period. This is intended to provide the tenant with additional time to trade on the existing lease terms during the period after the COVID-19 crisis;

If negotiated arrangements under the Commercial Tenancies Code involve repayment by the tenant, this should occur over an extended period to avoid placing an undue burden on the tenant;

This Code is effective April 3rd, 2020 until such time as the Job Keeper Program is concluded.

If a landlord and tenant cannot reach an agreed position on alternative leasing arrangements as a direct result of COVID-19, the matter should be referred to a binding mediation process overseen by the State or Territory Government.

IMPORTANT: This unfortunately does not apply to residential leases yet?

