

COVID-19 NATIONAL LEGISLATIVE COMMERCIAL TENANCY GUIDE



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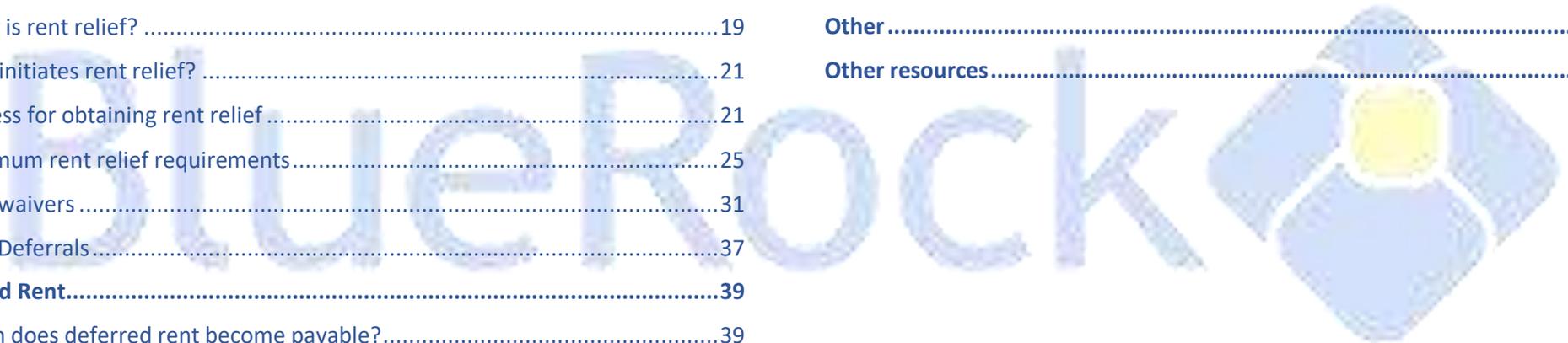


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Source

National Cabinet Mandatory Code of Conduct – SME Commercial Leasing Principles During COVID-19 (Code of Conduct)

The Code is given effect through relevant state and territory legislation or regulations, as appropriate. The Code does not supersede such legislation but aims to complement it during the COVID-19 crisis period.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>Act: COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Act 2020</p> <p>Regulations: COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020</p>	<p>Act: COVID-19 Legislation Amendment (Emergency Measures) Act 2020</p> <p>Regulations: Retail and Other Commercial Leases (COVID-19) Regulation 2020</p> <p>Retail and other Commercial Leases (COVID-19) Amendment Regulation 2020</p> <p>Conveyancing (General) Regulation 2018, Schedule 5.</p>	<p>Act: COVID-19 Emergency Response Act 2020</p> <p>Regulations: Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020</p>	<p>Act: Tenancies Legislation Amendment Act 2020</p> <p>Other: Business Tenancies COVID-19 Modification Notice 2020 (dated 28 April 2020)</p>	<p>Act: Commercial Tenancies (Covid-19 Response) Act 2020 (WA)</p> <p>Regulations: Commercial Tenancies (COVID-19 Response) Regulations 2020</p> <p>Other: Commercial tenancies (COVID-19 Response (Early Termination)) Bill 2020 (WA)</p>	<p>Act: COVID-19 Emergency Response Act 2020</p> <p>Regulations: COVID-19 Emergency Response (Commercial leases No 2) Regulations 2020</p>	<p>Act: Covid-19 Emergency Response Act 2020</p> <p>Declaration: Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020</p>	<p>Act: COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Misc. Act)</p> <p>COVID-19 Disease Emergency (Commercial Leases) Act 2020 (Act)</p> <p>Regulations: COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 – Notice under section 22 (Notice)</p>

Relevant/Prescribed Period

Code of Conduct

Came into effect in all states and territories from a date following 3 April 2020 to be defined by each jurisdiction, for the period during which the Commonwealth JobKeeper program remains operational.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
Commencing on 29 March 2020 and ending on 29 September 2020. (r 4, Regulations)	Commencing on 24 April 2020 and ending on 24 October 2020. (r 2, Regulations)	Commencing on 29 March 2020 and ending on 30 September 2020 (response period). (Sch. 1, Regulations)	Commencing on 18 March 2020 (while the COVID-19 public health emergency is declared under s 48 of the <i>Public and Environmental Health Act 2011</i>) while an EMA declaration is in force (emergency period) and ending on 23 September 2020*. <i>*See Extension of Operation of Declaration of Public Health Emergency dated 23 June 2020.</i>	Commencing on 30 March 2020 and ending on 29 September 2020 (emergency period). (s 3, Act)	Commencing on 30 March 2020 and ending on 30 September 2020 (prescribed period) (r 3, Regulations)	Commencing on 1 April 2020 and ending the first day no COVID-19 emergency* is in force, or any later day notified by the Minister. (prescribed period) (s 3(1), Declaration) *Covid-19 emergency means: 1. a state of emergency declared under s 156 of the <i>Emergencies Act 2004</i> because of COVID-19; or 2. an emergency declared under	Commencing on 1 April 2020 and ending on 31 March 2021, unless the Treasurer, by notice, declares an earlier day to be the financial hardship cessation day (financial hardship period) (s 4 and s 31, Act).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
						<p>s 119 of the <i>Public Health Act 1997</i> (including an extension or further extension) because of COVID-19.</p> <p>(s 3(2), Declaration)</p>	

Obligations

Code of Conduct

Overarching Principles

- To share, in a proportionate, measured manner, the financial risk and cashflow impact during the COVID-19 period, whilst seeking to appropriately balance the interests of tenants and landlords.
- Landlords and tenants working together to ensure business continuity, and to facilitate the resumption of normal trading activities at the end of the COVID-19 pandemic during a reasonable recovery period.
- Landlord and tenants will be required to discuss relevant issues, to negotiate appropriate temporary leasing arrangements, and to work towards achieving mutually satisfactory outcomes.
- Landlords and tenants will negotiate in good faith.
- Landlords and tenants will act in an open, honest and transparent manner, and will each provide sufficient and accurate information to achieve outcomes consistent with the Code.
- Agreed arrangements must take into account the impact of the COVID-19 pandemic on the tenant, with specific regard to its revenue, expenses and profitability and be proportionate and appropriate based on the impact of COVID-19 plus a reasonable recovery period.
- Parties will assist each other in their respective dealings with other stakeholders including governments, utility companies, and banks / other financial institutions in order to achieve outcomes consistent with the Code's objectives.
- Parties must recognise the intended application, legal constraints and spirit of the Competition and Consumer Act 2010.
- Parties will take into account that the risk of default on commercial leases is borne by the landlord and a landlord must not seek to permanently mitigate this risk in negotiating temporary arrangements envisaged under the Code.

All leases must be dealt with on a case-by-case basis, having regard for whether the SME tenant has suffered financial hardship due to the COVID-19 pandemic, whether the tenant's lease has or will soon expire, and whether the tenant is in administration or receivership.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>A landlord and tenant under an eligible lease must cooperate and act reasonably and in good faith in all discussions and actions associated with matters to which the Regulations apply. (r 8, Regulations)</p>	<p>A party to a commercial lease must, if requested, renegotiate in good faith the rent payable under, and other terms of, the commercial lease.</p> <p>Parties are to renegotiate the rent payable under, and other terms of, the commercial lease having regard to:</p> <ol style="list-style-type: none"> 1. the economic impacts of the COVID-19 pandemic; and 2. the leasing principles set out in the Code of Conduct. (r 7, Regulations). 	<p>The lessor and lessee under an affected lease must cooperate and must cooperate and act reasonably and in good faith in all discussions and actions associated with mitigating the effect of the COVID-19 emergency on the parties to the lease, and other matters to which the Regulations apply (r 11, Regulations)</p>	<p>Silent (in the Act and Modification Notice). No subsequent modification notices made.</p>	<p>In negotiations, the landlord and the tenant under a small commercial lease must cooperate, act reasonably and in good faith, must act in an open, honest and transparent manner, and must provide each other with sufficient and accurate information that is reasonable for them to provide in circumstances for the purposes of negotiations, and must not make onerous demands for information from each other (cl 4, Sch 1, Regulations)</p>	<p>The parties to a commercial and any guarantor or other person with an interest in the lease must make a genuine attempt to negotiate in good faith the rent payable under, and other terms of, the commercial lease during the prescribed period, having regards to:</p> <ol style="list-style-type: none"> 1. the economic impacts of the COVID-19 pandemic on the parties to the lease; and 2. the provisions of the Act and these Regulations; 3. the provisions of the Code of Conduct. (r 6, Regulations). 	<p>A lessor must not give a termination notice to an impacted tenant in relation to a prescribed breach unless the lessor has engaged in good faith negotiations* with the tenant (s6(1), Declaration).</p> <p>A termination notice given in contravention of s6(1) is void (s6(2), Declaration).</p> <p>*A lessor engages in good faith negotiations with an impacted tenant if the lessor, in acknowledging the financial hardship suffered by the tenant because of the economic impact of COVID-</p>	<p>A party to a protected lease must enter into and conduct, negotiations during the financial hardship period in relation to:</p> <ol style="list-style-type: none"> 1. the rent payable; or 2. if the lessee requests, the renewal of the lease; or 3. if the lessee requests, the exercise by the lessee of an option, during the financial hardship period (s 12(1), Act).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
						19, negotiates with the tenant having regard to the Code of Conduct (s4(1), Declaration).	

Application

Code of Conduct

The Leasing Principles apply to negotiating amendments in good faith to existing leasing arrangements – to aid the management of cashflow for SME tenants and landlords on a proportionate basis – as a result of the impact and commercial disruption caused by the economic impacts of industry and government responses to COVID-19.

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<p>The Act and Regulations apply to eligible leases (refer to eligibility below).</p> <p>An eligible lease is taken to provide as set out in the Regulations. The Regulations are taken to form part of the eligible lease and a landlord and tenant under the</p>	<p>The Regulations apply to the exercise or enforcement of rights under a commercial lease in circumstances occurring during the prescribed period. (r 5, Regulations)</p>	<p>The Regulations apply to affected leases (r 5, Regulations).</p>	<p>The <i>Tenancies Legislation Amendment Act 2020</i> has made temporary amendments to the <i>Business Tenancies (Fair Dealings) Act 2003</i> which allow the minister to issue a modification notices to make provisions in relation to aspect of business leases or occupation</p>	<p>The Act and Regulations apply to small commercial leases (see definition below) (s 3, Act).</p> <p>For the purposes of s13(2) of the Act, the code of conduct set out in Sch 1 of the Regulations is adopted and applies to a relevant commercial lease,</p>	<p>The Regulations apply during the prescribed period in relation to a commercial lease, other than a lease entered into after the prescribed period, unless that lease is a lease entered into by means of an option to extend or renew the lease or any other extension or renewal of an</p>	<p>The Declaration (instrument) applies if an impacted tenant* commits a prescribed breach* of a prescribed lease* during the prescribed period, including before the day the instrument commences (s 5(1), Declaration). (*see definitions below.)</p>	<p>The Act applies to protected leases* and protected lessees* (s 5, Act). (*see definitions below)</p> <p>The provisions of the Act apply in relation to a commercial lease*, despite any provision of the lease or of any Act or law (s 9(1), Act).</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>eligible lease must observe it. (r 8, Regulations)</p>			<p>arrangements to which the Act does not otherwise apply (Part 1A, <i>Business Tenancies (Fair Dealings) Act</i> 2003, as amended by s5, Act.</p>	<p>a person who is a landlord under a relevant commercial lease, and a person who is a tenant under a relevant small commercial lease (r 3, Regulations) (see definitions in 'eligibility' below).</p> <p>The provisions of any lease or any other contract or agreement are taken to be modified to the extent necessary to give effect to the operation of the Act (s 6, Act).</p> <p>A lease or any other contract or agreement is of no effect to the extent that it purports to exclude or restrict the operation of the Act. The purported waiver of a right, remedy</p>	<p>existing lease on the same or substantially similar terms as the existing lease.</p> <p>The provisions of a commercial lease will be taken to be modified to the extent necessary to give effect to the operation of the Regulations. (r 5, Regulations).</p>		<p>(*see definition below)</p> <p>The provisions of the Act apply in relation to a commercial lease, whether entered into before or during the financial hardship period and whether or not the lease is entered into pursuant to an option, contained in another commercial lease, for a further lease, or a renewal of a commercial lease (s 9(3), Act).</p> <p>The provisions of a protected lease are taken to be modified to the extent necessary to give effect to the operation of the Act (s 9(4), Act).</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
				or benefit conferred on a person under the Act is of no effect (s 7, Act).			In the event of an inconsistency between a provision of a protected lease and a provision of the Act that applies in relation to the protected lease during the financial hardship period, the provision of the Act applies and the provision of the protected lease does not apply, to the extent of the inconsistency (s 9(5), Act).

Eligibility

Code of Conduct

- The Code applies to all tenancies that are suffering financial distress or hardship as a result of the COVID-19 pandemic as defined by their eligibility for the Commonwealth Government's JobKeeper programme, with an annual turnover of up to \$50 million ("SME tenants")
- The \$50 million annual turnover threshold applies in respect of franchises at the franchisee level, and in respect of retail corporate groups at the group level (rather than at the individual retail outlet level).
- Financial distress or hardship is an individual, business or company's inability to generate sufficient revenue as a direct result of the COVID-19 pandemic (including government-mandated trading restrictions) that causes the tenant to be unable to meet its financial and/or contractual (including retail leasing)

commitments. SME tenants which are eligible for the federal government's Jobkeeper payment are automatically considered to be in financial distress under the Code (see definitions).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
LEASES							
<p>An eligible lease is a retail or a non-retail commercial lease, sub-lease or an agreement for a lease of sub-lease, (whether or not in writing or partly in writing, and whether express or implied) :</p> <ol style="list-style-type: none"> of premises which are leased for the sole or predominant purpose of carrying on a business; that is in effect on 29 March 2020; and under which the tenant is: <ol style="list-style-type: none"> an SME entity*; and an employer who qualifies 	<p>An eligible lease is:</p> <ol style="list-style-type: none"> a retail shop lease under the <i>Retail Leases Act 1994</i>, which means any agreement under which a person grants to another person a right of occupation of premises for the purpose of the use of the premises as a retail shop whether or not the right is a right of exclusive occupation, and whether the agreement is express or implied, and whether the 	<p>A lease of premises is an affected lease if it is:</p> <ol style="list-style-type: none"> a retail shop lease; or a prescribed lease <p>and:</p> <ol style="list-style-type: none"> on the commencement of the lease, or an agreement to enter into the lease, it is binding on the lessee, whether or not the lease has commenced; and the lessee under the lease is a SME entity*; and the lessee under the lease, or an entity that is connected 	<p>The Act applies to retail shop leases or any other agreement (including a sublease) under which business premises are let or hired to a person:</p> <ol style="list-style-type: none"> whether or not the right is a right of exclusive occupation, whether the agreement is express or implied, and whether the agreement is oral or in writing (wholly or in part) (s 5(1), Act). 	<p>A small commercial lease means:</p> <ol style="list-style-type: none"> a retail shop leases as defined in s3(1) of the <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i>; a lease where the tenant owns or operates a small business* and uses the leased premises for carrying on that business; a lease where the tenant is an incorporated association (see s3 <i>Associations Incorporation Act 2015</i>); 	<p>The Regulations apply to a commercial lease which means:</p> <ol style="list-style-type: none"> a retail shop lease within the meaning of the <i>Retail and Commercial Leases Act 1995</i>; or a lease under the <i>Landlord and Tenant Act 1936</i>, including a retail shop lease to which Part 4 of that Act applies; or any other agreement under which a person for value a right to occupy premises for carrying on a business – 	<p>A prescribed lease means a lease to which the Act applies* that was entered into before 7 April 2020 (s 3(1), Declaration).</p> <p>A *lease to which the Act applies includes a lease prescribed under s12(2)(a) and (b) of the <i>Lease (Commercial and Retail) Act 2001</i> (s 3(1), Declaration).</p> <p>In effect, a prescribed lease means any lease subject to the <i>Lease (Commercial and Retail) Act 2001</i>, including an agreement, whether in writing or not, that provides for the</p>	<p>A lease is a protected lease at a time if:</p> <ol style="list-style-type: none"> the lease is a commercial lease*; and the time is during the financial hardship period after which the lessee has become an eligible person* or a member of a class of persons prescribed, (regardless of whether the person ceases to be an eligible person during the financial hardship period). (s 5(1), Act).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>for, and is a participant in, the jobkeeper scheme; and</p> <p>4. that is not an excluded lease (see exclusions below). (ss.12-14 the Act)</p> <p>Note: *An entity is an SME entity if it carries on a business, or is a non-profit body, in the current financial year and the entity's annual turnover for the year is likely to be less than \$50 million, and/or the entity carried on a business, or was a non-profit body, in the previous financial year and its annual turnover was less than \$50 million. (s 13, the Act);</p>	<p>agreement is oral or in writing, or partly oral and partly in writing; (r 3, Regulations)</p> <p>2. any agreement to which the <i>Conveyancing Act 1919</i> applies relating to the leasing of premises or land for commercial purposes. (r 1, Conveyancing Regulations)</p> <p>Definition and scope of lessor and lessee under an eligible lease.</p> <p>1. Lessee means the person who has the right to occupy premises or land under a commercial</p>	<p>with*, or an affiliate* of, the lessee responsible for, or involved in, employing staff for the business carried on at the lease premises, is eligible for the jobkeeper scheme*.</p> <p>(r 5(1), Regulations)</p> <p>*SME entity – an entity is an SME entity if it carries on a business, or is a non-profit body, in the current financial year and the entity's annual turnover for the year is likely to be less than \$50 million, and/or the entity carried on a business, or was a non-profit body, in the previous financial year and its annual turnover</p>		<p>4. any other lease that may be prescribed by the regulations. (s 3, Act).</p> <p>Note: *small business has the meaning given in the <i>Small Business Development Corporation Act 1983 (s3(1))</i>.</p> <p>A tenant is an eligible tenant under a small commercial lease if:</p> <p>1. the following turnover in the financial year ending on 30 June 2019 was less than \$50,000,000 —</p> <p>(i) if the tenant is a franchisee — the turnover of the business conducted</p>	<p>(i) whether or not the right is a right of exclusive occupation; and</p> <p>(ii) whether the agreement is expressed or implied; and</p> <p>(iii) whether the agreement is oral or in writing, or partly oral and partly in writing (s 7(7), Act).</p> <p>Definition and scope of lessee and lessor under a commercial lease.</p> <p>1. Lessor means the person who grants the right to occupy</p>	<p>occupation of premises exclusively or otherwise, whether for a fixed term, periodically or at will, and a sublease or licence, and including any lease which is excluded from the operation of the Act (under s 12(2)(a) and (b)).</p> <p>Impacted tenant means a tenant under a prescribed lease who:</p> <p>1. at any time during the prescribed period qualifies for the jobkeeper scheme under ss 7 and 8 of the <i>Coronavirus Economic Response Package</i></p>	<p>*Commercial lease means a lease to which Sch 1, <i>Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998</i> applies, and a lease of premises occupied, or to be occupied, wholly or predominantly for business purposes* (s 4(1)).</p> <p>*A person is an eligible person if they:</p> <p>1. become entitled for a jobkeeper payment or become qualified for the jobkeeper scheme under the Jobkeeper Rules*; and</p> <p>2. become an SME entity for the</p>

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<p>s 5(1) of the <i>Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020</i> (Cth)).</p>	<p>lease. (r 3, Regulations and r 1, Conveyancing Regulations)</p> <p>2. Lessor means the person who grants the right to occupy premises or land under a commercial lease. (r 3, Regulations and r 1, Conveyancing Regulations)</p> <p>3. Impacted lessee is a lessee that:</p> <p>(a) the lessee qualifies for the jobkeeper scheme under ss. 7 & 8 of the <i>Coronavirus Economic Response Package</i></p>	<p>was less than \$50 million. (s 13, the Act; s 5(1) of the <i>Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020</i> (Cth)).</p> <p>For working out whether the lessee is an SME entity, the lessee's annual turnover* is taken to be –</p> <p>1. if the lessee is an entity connected with, or an affiliate of, another entity – the aggregate annual turnover of the entities; or</p> <p>2. otherwise – the annual turnover of the business carried on by</p>		<p>by the tenant at the land or premises that are the subject of the small commercial lease;</p> <p>(ii) if the tenant is a corporation that is a member of a group* – the turnover of the group;</p> <p>(iii) in any other case – the turnover of the business conducted by the tenant at the land or premises that are the subject of the small commercial lease;</p>	<p>under a commercial lease.</p> <p>2. Lessee means the person who has the right to occupy premises under a commercial lease.</p>	<p>(<i>Payment and Benefits</i>) Rules 2020; and</p> <p>2. has a turnover* for the 2018-2019 financial year of less than \$50 million for –</p> <p>(i) if the tenant is a franchisee in a business* – the business conducted at the premises or land under the lease; or</p> <p>(ii) if the tenant is a member of a corporate group – the</p> <p>(iii) in any other case – the</p>	<p>purposes of the <i>Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020</i> (Cth)); or</p> <p>3. the satisfy any prescribed criteria. (s 6(1), Act)</p> <p>A lease ceases to be a protected lease when the lease ceases to be a protected lease or the lessee ceases to be a protected lessee* (s 5(3), Act).</p> <p>*Protected lessee means a person who is a lessee of premises under a protected lease</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS	
	<p>(<i>Payments and Benefits Rules 2020</i> (Cth); and</p> <p>(b) the following turnover in 2018-2019 financial year was less than \$50 million:</p> <p>(i) if the lessee is a franchisee—the turnover* of the business conducted at the premises or land concerned,</p> <p>(ii) if the lessee is a corporation that is a</p>	<p>the lease at the leased premises (r 5(3), Regulations).</p> <p>*turnover – of a business, includes income earned from internet sales, but does not include a grant or assistance given by the Cth, State or local government to mitigate the effects of the COVID-19 emergency (r 5, Regulations).</p> <p>*connected with, an entity, means connected with the entity under the Income Tax Assessment Act 1997 (Cth), s328-125 (r 5, Regulations).</p> <p>*affiliate, of an entity, means an affiliate of the</p>		<p>and</p> <p>2. the tenant —</p> <p>(i) qualifies for the jobkeeper scheme under the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth) s 7; or</p> <p>(ii) has, at any time during the emergency period, satisfied the decline in turnover test set out in s8 of those Rules.</p> <p>(r 2, Regulations)</p> <p>Note: *corporations constitute a group if they are related</p>			<p>business conducted by the tenant</p> <p>(s 3(1), Declaration).</p> <p>*Turnover of a tenant includes turnover from internet sales of goods or services (s3(2), Declaration).</p> <p>*Corporate group means a corporation and all its related bodies corporate (s 3(2), Declaration).</p> <p>*Business includes business conducted on a not-for-profit basis (s 3(2), Declaration).</p> <p>Definition and scope of lessor and tenant under a prescribed lease.</p>	<p>but does not include a person that is not prescribed as a protected lessee (s 4(1), Act).</p> <p>*For definitions of business purposes and Jobkeeper Rules, – see s4(1), Act.</p> <p>Definition and scope of lessee and lessor under a protected lease.</p> <p>1. Lessee, in relation to a commercial lease or protected lease, means a person who under the lease, is a granted a right to occupy premises.</p> <p>2. Lessor, in relation to premises to</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
	<p>member of a group** —the turnover of the group, (iii)in any other case—the turnover of the business conducted by the lessee. (r 4, Regulations and r 2, Conveyancing Regulations).</p> <p><i>Note:</i> *Turnover of a business includes any turnover derived from internet sales of goods or services. ** Corporations constitute a group if they are related bodies corporate within the meaning of</p>	<p>entity under the Income Tax Assessment Act 1997 (Cth), s328-125 (r 5, Regulations).</p> <p>*eligible for the jobkeeper scheme means eligible for the jobkeeper scheme under the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth), ss7-8. (r 5, Regulations).</p> <p>A relevant lease means a retail shop lease under the <i>Retail Shops Leases Act 1994</i>, or a lease prescribed by regulation for this definition (s 23(8), Act).</p> <p>A prescribed relevant lease is a lease, other than a retail shop lease, under which the</p>		<p>bodies corporate (as defined in s9, <i>Corporations Act 2001</i> (Cth)).</p> <p>A relevant small commercial lease means a small commercial lease where the tenant is an eligible tenant in relation to the small commercial lease (r 3, Regulations).</p> <p>Lease means any lease, sub-lease, licence or other agreement under which a person grants a right to another person to occupy land or premises whether or not a right of exclusive occupation and whether the lease, sub-lease licence or agreement is made orally or in writing (r 3, Regulations).</p>		<p>Terms not defined in the Act or Declaration. However, on the basis that a prescribed lease means a lease subject to the <i>Lease (Commercial and Retail) Act 2001</i>:</p> <p>1. tenant (as defined in the <i>Lease (Commercial and Retail) Act 2001</i> means (for the purpose of the Declaration) –</p> <ul style="list-style-type: none"> (i) a person who has the right to occupy the premises under a lease; and (ii) a subtenant; and (iii) a person who receive the right to 	<p>which a commercial lease relates, or in relation to a commercial lease, means a person who grants or agrees to grant a right to occupy the premises. (s4(1), Act).</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
	<p>the <i>Corporations Act 2001</i> (Cth). (r 4, Regulations and r 2, Conveyancing Regulations).</p>	<p>leased premises are to be wholly or predominantly used for carrying on a business (r 6, Regulations).</p> <p>Franchisees</p> <p>1. If the lessee under an affected lease is a franchisee, a lease under which the franchisor is a lessee of the premises occupied by the franchisee is also an affected lease (r 5(2), Regulations).</p> <p>2. An entity that is a franchisee is not connected with, or an affiliate or, the franchisor merely because the entity is a franchisee (r</p>		<p>Definition and scope of landlord and tenant under a small commercial lease.</p> <p>1. Landlord means the person who, under a lease, grants the tenant the right to occupy the land or premises that are the subject of the lease, and includes a personal representative, successor or assignor of a landlord.</p> <p>2. Tenant means the person who, under a lease, is entitled to occupy the land or premises that are the subject of the lease (r 3, Regulations).</p>		<p>occupy the premises by assignment from the tenant or by operation of law; and</p> <p>(iv) in relation to negotiations for a lease – a prospective tenant.</p> <p>2. lessor (as defined in the <i>Lease (Commercial and Retail) Act 2001</i> means (for the purpose of the Declaration) –</p> <p>(i) a person who grants a right to occupy the premises under a lease; and</p>	

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		5(3), Regulations). Definition and scope of lessor and lessee under an affected lease. 1. Lessee means the person who has the right to occupy premises under a lease. 2. Lessor means the person who grants the right to occupy premises under a lease (Sch 1. Regulations). Premises includes land and coastal waters of the State (Sch. 1 Regulations).				(ii) a sublessor; and (iii) a person who receives the right to lease the premises by assignment from the lessor or by operation of law; and (iv) in relation to negotiations for a lease – a prospective lessor.	
LICENCES							
Does an eligible lease include a licence? Yes. An eligible lease includes a	Does an eligible lease include a licence? Yes. A retail shop lease includes	Does an eligible lease include a licence? Yes. A lease includes a lease,	Does the Act and Modification Notice apply to licences?	Does an eligible lease include a licence? Yes. See eligibility – leases (above).	Does an eligible lease include a licence? Yes. See eligibility – leases (above).	Does a prescribed lease include a licence? Yes. See eligibility – leases (above).	Does a protected lease include a licence? Yes. A lease includes an

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>commercial licence, sub-licence or agreement for a licence or sub-licence (whether or not in writing or partly in writing, whether express or implied):</p> <ol style="list-style-type: none"> under which a person has a right to occupy, non-exclusively, a part of the premises for the sole or predominant purpose of carrying on a business at the occupied premises; that is in effect on 29 March 2020; and the occupant, licensee or sub-licensee of that licence is: <ol style="list-style-type: none"> an SME entity*; and an employer who 	<p>any agreement under which a person grants to another person a right of occupation of premises for the purpose of the use of the premises as a retail shop whether or not the right is a right of exclusive occupation, and whether the agreement is express or implied, and whether the agreement is oral or in writing, or partly oral and partly in writing. (r 3, Regulations)</p> <p>Definition and scope of landlord and tenant under an eligible lease that is a licence.</p> <ol style="list-style-type: none"> Lessee means the person who has the 	<p>sub-lease, licence or other agreement under which a person grants a right to another person to occupy premises, other than as a residence (s 23(8), Act).</p> <p>Also note comments regarding franchise arrangements (above).</p> <p>Definition and scope of landlord and tenant under an eligible lease that is a licence.</p> <p>See above.</p>	<p>Yes. See eligibility – leases (above).</p>	<p>Definition and scope of landlord and tenant under an eligible lease that is a licence.</p> <p>See above.</p>	<p>Definition and scope of lessor and lessee under a commercial lease that is a licence.</p> <p>See above.</p>	<p>Definition and scope of lessor and tenant under a prescribed lease that is a licence.</p> <p>See above.</p>	<p>agreement in relation to premises, under which a person grants to another person, a right to occupy premises whether or not the right is a right of exclusive possession, and whether the agreement is express or implied (s 4(1), Act).</p> <p>Definition and scope of lessor and lessee under a protected lease that is a licence.</p> <p>See above.</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>qualifies for, and is a participant in, the jobkeeper scheme; and</p> <p>4. is not excluded (see exclusions below). (ss.12-14, the Act) <i>Note: *SME entity has the same meaning as set out above.</i></p> <p>Definition and scope of landlord and tenant under an eligible lease that is a licence. In relation to an eligible lease that is a commercial licence:</p> <p>1. landlord includes the licensor (or sub-licensor) of the licence; tenant includes the licensee (or sub-licensee) of the licence. (s 12, Act).</p>	<p>right to occupy the premises or land.</p> <p>Lessor means the person who grants the right to occupy the premises or land. (r 3, Regulations and r 1, Conveyancing Regulations)</p>						

Exclusions

Code of Conduct

No exclusions stated but by virtue of the eligibility criteria (see above), the Code does not apply to tenants which are not eligible for the Commonwealth Government's Jobkeeper programme and which are not SME tenants.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>A retail lease or a non-retail commercial lease or licence is not an eligible lease if:</p> <ol style="list-style-type: none"> the tenant is a member of a prescribed group of entities, or is connected with another entity that is prescribed, and the aggregate turnover of the group of entities or the tenant and the other entity exceeds \$50 million; an entity has a prescribed method of control or influence 	<p>A commercial lease is not an eligible lease if it is:</p> <ol style="list-style-type: none"> a lease entered into after the commencement of the Regulation (24 April 2020)*; a lease under the <i>Agricultural Tenancies Act 1990</i> (NSW) (r 3, Regulations and r 1, Conveyancing Regulations) <p><i>*Note: if a lease is entered into after 24 April 2020 pursuant to an option to extend or renew</i></p>	<p>An affected lease does not include:</p> <ol style="list-style-type: none"> a lease under which the premises are to be used wholly or predominately for farming business, or a lease, permit, licence or sublease under the Land Act 1994 – unless it is a sublease of premises under a lease that has rental category 13 or 16 under the Land, and the sublessor under the sublease is 	<p>Silent (in the Act and Modification Notice). No subsequent modification notices made.</p>	<p>Excluded leases are:</p> <ol style="list-style-type: none"> long-stay agreements to which the <i>Residential Parks (Long Stay Tenants) Act 2006</i> applies; residential tenancy agreements to which the <i>Residential Tenancies Act 1987</i> applies; pastoral leases as defined in the <i>Land Administration Act 1997</i>; a mining tenement as defined in the <i>Mining Act 1978</i>; 	<p>A commercial lease does not include:</p> <ol style="list-style-type: none"> a lease under the <i>Pastoral Land Management and Conservation Act 1989</i>, or a lease under the <i>Crown Land Management Act 2009</i>. <p>(r 7(7), Regulations)</p>	<p>A prescribed lease does not include a lease (to which the <i>Lease (Commercial and Retail) Act 2001</i> applies) that is entered into after 7 April 2020 (s 3(1), Declaration).</p> <p>See Declaration s 3</p>	<p>Despite s 9(1), the Act does not apply in relation to a commercial lease in relation to premises being occupied wholly or predominantly for business purposes by a lessee on behalf of the lessor (s 9(2), Act).</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>through the holding of a prescribed interest, right or power in relation to acts or decisions relating to ownership, management or affairs of a tenant that is a body corporate; or</p> <p>3. the premises may be used wholly or predominantly for agricultural, pastoral, horticultural apicultural, poultry farming, dairy farming, aquaculture, grazing (including agistment), tree-farming, any business that consists of cultivation of soils, gathering of crops or</p>	<p><i>the lease or any other extension or renewal of an existing lease on the same terms as the existing lease, it is not excluded.</i></p>	<p>not a government leasing entity within the meaning of the Land Regulations 2009 s 30(3). (r 5(4), Regulations).</p>		<p>5. any other lease, sub-lease, licence, or other agreement that is of a class prescribed by the regulations (s 3, Act).</p>			

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
rearing livestock, or similar farming activities. (s 13, the Act; r 6, Regulations)							

Rent Relief

What is rent relief?

Code of Conduct

Not specified, but in negotiating and enacting appropriate temporary arrangements, landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, on a case-by-case basis, based on the reduction in the tenant's trade during the COVID-19 pandemic period and subsequent reasonable recovery period (leasing principle no. 3).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
Any form of relief provided to a tenant in respect of the obligation under an eligible lease to pay rent, including a waiver, reduction, remission or deferral of rent. (r 4, Regulations) <i>Note: rent in relation to an eligible lease that is a commercial</i>	Not defined.	Not defined.	Not defined (in the Act or Modification Notice). No subsequent modification notices made.	Rent relief: 1. means any form of relief provided to a tenant in respect of the tenant's obligation to pay rent under a small commercial lease; and 2. includes the following –	Rent relief means any form of relief in respect of the liability or obligation of a lessee under a commercial lease to pay rent (including waiver or deferral of rent) (r 3, Regulations).	Not defined.	Not defined.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p><i>licence, includes the licence fee payable under that licence.</i> (r 4, Regulations)</p>				<p>(i) a waiver by the landlord of all, or a portion of, rent that would otherwise be payable under the small commercial lease;</p> <p>(ii) the deferral of the payment of all, or a portion of, rent that would otherwise be payable under the small commercial lease on a particular date to a</p>			

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
				later date. (cl 1, Sch 1, Regulations)			

Who initiates rent relief?

Code of Conduct
Silent

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
A tenant under an eligible lease may request rent relief from the landlord under the eligible lease. (r 10, Regulations)	Any party to an impacted lease may request the other parties to renegotiate the rent payable under, and other terms of, the impacted lease. (r 7(2), Regulations as amended by the Amendment Regulations).	A party (the initiator) to an affected lease may, in writing, ask another party to the lease to negotiate the rent payable under, and other stated conditions of the lease (r 14(1), Regulations).	Silent (in the Act and Modification Notice). No subsequent modification notices made.	A tenant under a small commercial lease who is an eligible tenant in relation to the small commercial lease may, during the emergency period, request rent relief from the landlord under the small commercial lease (cl 5, Sch 1, Regulations)	Silent.	Silent. Either party may initiate rent relief.	Either party to a protected lease may request the other party to renegotiate the rent payable under the lease (s 18(1), Act).

Process for obtaining rent relief

Code of Conduct

Not specified but in negotiating and enacting appropriate temporary arrangements under the Code, the leasing principles should be applied as soon as practicable on a case-by-case basis.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>A tenant's request for rent relief must be in writing and accompanied by:</p> <ol style="list-style-type: none"> 1. a statement by the tenant that the lease is an eligible lease and not excluded from the operation of the Regulations; and information that evidences that the tenant is an SME entity and qualifies for, and is a participant in, the JobKeeper scheme. <p>On receipt of a tenant's request, a landlord must offer rent relief to the tenant under an eligible lease within 14 days after receiving the request (or a different time frame as agreed</p>	<p>A party to an impacted lease must, if requested, renegotiate in good faith the rent payable under, and other terms of, the impacted lease. (r 7(3), Regulations as amended by the Amendment Regulations).</p> <p>*An impacted lessee must give the lessor the following in respect of the impacted lease –</p> <ol style="list-style-type: none"> 1. a statement to the effect that the lessee is an impacted lessee; and 2. evidence that the lessee is an impacted lessee. <p>If the impacted lessee does not comply with these obligations, the lessor is taken to</p>	<p>After the initiator's request is made, the parties must soon as practicable, give each other *information relating to the request that is:</p> <ol style="list-style-type: none"> 1. true, accurate, correct and not misleading; and 2. sufficient to enable the parties to negotiate in a fair and transparent way. <p><i>*Examples of sufficient information</i></p> <ul style="list-style-type: none"> • a clear statement about the terms the initiator is seeking to negotiate; • a statement by the lessee 	<p>Silent (in the Act and Modification Notice). No subsequent modification notices made.</p>	<p>A tenant's request for rent relief must be in writing and accompanied by:</p> <ol style="list-style-type: none"> 1. a statement by the tenant that the tenant's lease is a small commercial lease, and the tenant is an eligible tenant in relation to the small commercial lease; 2. sufficient and accurate information that evidences that the tenant is an eligible tenant in relation to the small commercial lease; 3. sufficient and accurate information that evidences the reduction in the tenant's turnover that – 	<p>The parties to a commercial and any guarantor or other person with an interest in the lease must make a genuine attempt to negotiate in good faith the rent payable under, and other terms of, the commercial lease during the prescribed period, having regard to:</p> <ol style="list-style-type: none"> 1. the economic impacts of the COVID-19 pandemic on the parties to the lease; and 2. the provisions of the Act and the Regulations; 3. the provisions of the Code of Conduct. <p>(r 6, Regulations).</p>	<p>Silent. However, a lessor must not give a termination notice to, or take any prescribed action against, an impacted tenant in relation to a prescribed breach unless the lessor has engaged in good faith negotiations with an impacted tenant having regard to the overarching principles and leasing principles set out in the Code of Conduct (s 4(1) and s 6(1) and s 8(1), Declaration).</p>	<p>If a request is made by a party to renegotiate the rent payable under a protected lease, the other party must renegotiate in good faith the rent payable under the lease (s 18(2), Act).</p> <p>Each party to a protected lease is to negotiate the rent payable under the lease having regard to the matters in s 12(2), the leasing principles in the Code of Conduct and any prescribed matters. A lessee may waive the application of this section, in writing (ss 18(3) and (4), Act).</p> <p>A party to a protected must,</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>between the parties in writing). (r 10, Regulations)</p>	<p>have complied with its requirements. (r 7(3A) and (3B), Regulations as amended by the Amendment Regulations).</p> <p><i>*Note: this requirement came into effect on 3 July 2020, on the date the Amendment Regulations amended the Regulations to insert these evidentiary requirements. For negotiations completed before 3 July 2020, an impacted lessee is not required to comply with these obligations. For negotiations which have commenced but which are not yet completed, an impacted lessee must comply with these obligations.</i></p>	<p>that demonstrates why the lease is an affected lease, accompanied by evidence including accurate financial information about turnover; information demonstrating that the lessee is an SME entity (having regard to any entities the lessee is connected with); evidence of jobkeeper eligibility and participation; information about any steps the lessee has taken to mitigate the effects of</p>		<p>(i) is associated with the business conducted at the premises; and</p> <p>(ii) the tenant has experience during the emergency period.</p> <p>(cl 5(2), Sch 1, Regulations)</p> <p>On receipt of a request for rent relief from an eligible tenant that meets the requirements under clause 5(2), a landlord must offer rent relief to the tenant within 14 days after receiving the request, or any other period that is agreed between the parties.</p>	<p>If a Court makes an order under regulation 9(5)(a) (the granting of rent relief to an affected lessee in relation to payment of rent under the commercial lease), in making that order the Court must have regard to the following:</p> <ol style="list-style-type: none"> obligations of the lessor under the Act, a relevant Act* and the regulations; the reduction in turnover the business of the lessee during the prescribed period; whether the lessor has, during the prescribed period, agreed to waive recovery of 		<p>during the financial hardship period, at the other party's request, provide information that is accurate and sufficient to enable negotiations, on the basis of reliable information, to occur for reach agreements on the rent payable under the lease which may assist both parties to be able to continue to conduct business operations at the premises under the protected lease (s 12(1)(c), Act).</p> <p>All negotiations are to be conducted with regard to the individual circumstances of</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
	<p>(r 13, Amendment Regulations)</p> <p>The parties are to renegotiate the rent payable under, and other terms of, the commercial lease having regard to:</p> <ol style="list-style-type: none"> 1. the economic impacts of the COVID-19 pandemic; 2. the leasing principles set out in the Code of Conduct. <p>(r 4, Regulations and r 5, Conveyancing Regulations).</p>	<p>COVID-19, incl, details of govt assistance./ and information demonstrating lessee is a SME/ eligible for jobkeeper etc);</p> <ul style="list-style-type: none"> • in relation to a franchisor – information about concessions provided to/by the franchisor and undertakings to pass those on to the franchisee. <p>(r 14(2), Regulations).</p> <p>Within 30 days after a party receives sufficient information about a request, the lessor must offer the lessee a reduction in the</p>		<p>A Landlord’s offer must be in writing and must comply with the requirements in clause 7 (see below). Following receipt of the landlord’s offer of rent relief by the tenant, the parties must, in accordance with the principles in clause 7, negotiate with a view to agreeing on rent relief to apply during the emergency period</p> <p>On receipt of a request for rent relief, the landlord must offer rent relief within 14 days or any other period that is agreed between the parties.</p> <p>(cl 6, Sch 1, Regulations)</p>	<p>any outgoings or other expense payable by the lessee under the lease;</p> <ol style="list-style-type: none"> 4. whether a failure to provide rent relief would compromise the lessee’s ability to fulfil the lessee’s ongoing obligations under the lease, including the payment of rent; 5. the ability of the lessor to provide rent relief, including any relief provided to the lessor by a third party in response to the COVID-19 pandemic; 		<p>the protected lessee and the lessor, taking into account:</p> <ol style="list-style-type: none"> 1. the degree of financial hardship of both parties; 2. whether the lease has expired, is about to expire or is in holdover; and 3. whether either party is in administration or receivership or about to become insolvent. <p>(s 12(2), Act).</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>amount of rent payable under the lease and any proposed changes to other stated conditions (r 15(1), Regulations).</p> <p>On receiving the lessor's offer, the lessee and lessor must cooperate and act reasonably and in good faith in negotiating a reduction in the amount of rent payable under the lease for the response period, including any conditions relating to the reduction in rent (r 15(3), Regulations).</p>			<p>6. any reduction by a third party to outgoings in relation to the premises;</p> <p>7. any other matter the Court thinks fit.</p> <p>(r 9(8), Regulations)</p> <p>*Relevant Act means the <i>Real Property Act 1886</i>, the <i>Retail Commercial Leases Act 1995</i>, and the <i>Landlord and Tenant Act 1936</i>.</p>		

Minimum rent relief requirements

Code of Conduct

- Landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, on a base-by-case basis, based on the reduction in the tenant’s trade during the COVID-19 pandemic period and subsequent reasonable recovery period (leasing principle no. 3).
- Proportionate means the amount of rent relief proportionate to the reduction in trade as a result of the COVID-19 pandemic plus a subsequent reasonable recovery period, consistent with assessments undertaken for eligibility for the Commonwealth’s Jobkeeper programme (see definitions).

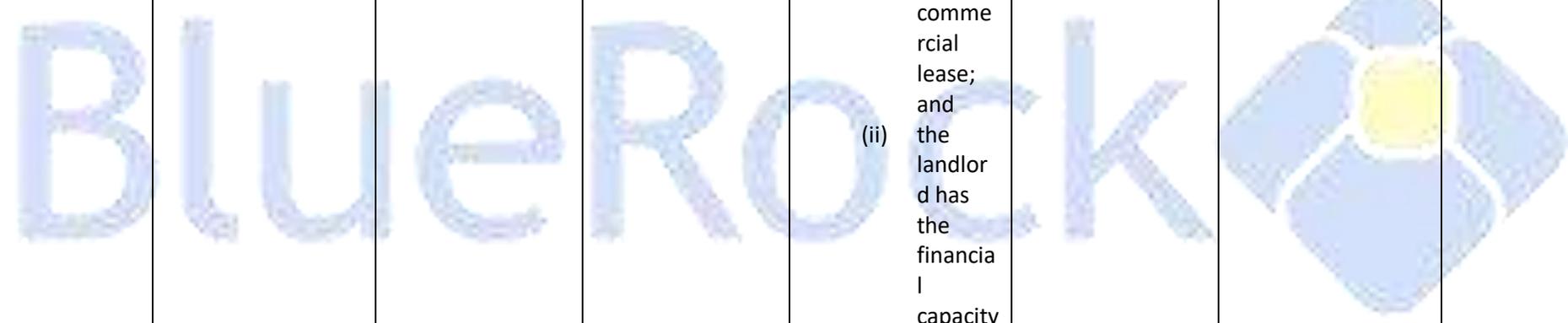
VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>A Landlord’s offer of rent relief must be based on all the circumstances of the eligible lease and:</p> <ol style="list-style-type: none"> 1. relate to up to 100% of the rent payable during the relevant period; and 2. provide that no less than 50% of the rent relief must be in the form of a waiver (unless a landlord and a tenant otherwise agree in writing); and 3. apply to the relevant period; and 4. take into account: 	<p>The parties are to renegotiate the rent payable under, and other terms of, the impacted lease having regard to the economic impacts of the COVID-19 pandemic and the Code of Conduct leasing principles (in particular, leasing principle no. 3). (r 7(4), Regulations and r 5(4), Conveyancing Regulations).</p>	<p>For the purpose of r 15(1), the lessor’s offer must:</p> <ol style="list-style-type: none"> 1. relate to any or all of the rent payable under the affected lease during the response period; and 2. provide for no less than 50% of rent reduction offered to be in form of a waiver of rent; and 3. have regard to the circumstances of the lessee and the affected lease, 	<p>Silent (in the Act and Modification Notice). No subsequent modification notices made.</p>	<p>Clause 7 principles which apply to offering and negotiating rent relief:</p> <ol style="list-style-type: none"> 1. An offer of rent relief must apply to the emergency period. 2. Rent relief offered by the landlord must be at least proportionate to the reduction in the tenant’s turnover that <ul style="list-style-type: none"> (i) is associated with the business conducted at the 	<p>The parties are to renegotiate the rent payable under, and other terms of, the commercial lease having regard to the economic impacts of the COVID-19 pandemic and the Code of Conduct leasing principles which includes, in particular, leasing principle no. 3 – that landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily</p>	<p>Having regard to the Code of Conduct leasing principles, in particular, leasing principle no. 3, landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, on a case-by-case basis, based on the reduction in the tenant’s trade during the COVID-19 pandemic period and a subsequent reasonable</p>	<p>Each party to a protected lease is to negotiate the rent payable under the lease having regard to the leasing principles in the Code of Conduct, in particular, leasing principle no. 3, which provides that landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, on a case-by-case basis, based on</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>(i) the reduction in a tenant's turnover associated with the premises during the relevant period; and</p> <p>(ii) any waiver of outgoings or other expenses payable under the eligible lease; and</p> <p>(iii) whether a failure to offer sufficient rent relief would compromise the tenant's capacity</p>		<p>including the reduction in turnover of the business carried on at the lease premises during the response period; and</p> <p>4. have regard to the extent to which the failure to reduce the rent payable under the lease would compromise the lessee's ability to comply with the lessee's obligations under the lease, including the payment of the rent;</p> <p>5. have regard to the lessor's financial position,</p>		<p>land or premises that are the subject of the small commercial lease; and</p> <p>(ii) the tenant has experienced during the emergency period.</p> <p>3. Unless otherwise agreed by the landlord and the tenant, the reduction in the tenant's turnover is to be calculated using the principles of the decline in turnover test</p>	<p>payable, on a case-by-case basis, based on the reduction in the tenant's trade during the COVID-19 pandemic period and a subsequent reasonable recovery period (r 6, Regulations).</p>	<p>recovery period (s 4(1), Declaration).</p>	<p>the reduction in the tenant's trade during the COVID-19 pandemic period and a subsequent reasonable recovery period (s 18(3), Act).</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>to fulfil its ongoing obligations under the eligible lease (including paying rent); and</p> <p>(iv) a landlord's financial ability to offer rent relief (including any relief provided to it by its lenders as a response to Covid-19; and</p> <p>(v) any reduction to any outgoings in relation to the premises.</p>		<p>including any financial relief provided to the lessor as a COVID-19 response measure; and</p> <p>6. have regard to if a portion of rent or another amount payable under the lease represents an amount for land tax, local government rates, statutory charges, insurance premiums or other outgoings – any reduction in, or waiver of, the amount payable.</p> <p>(r 15(2), Regulations).</p>		<p>set out in s8 of the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth) (including any relevant alternative decline in turnover test determined under that section) with such modifications as are appropriate.</p> <p>4. An offer of rent relief may relate to up to 100% of the rent payable under the small commercial lease.</p> <p>5. An offer of rent relief</p>			

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>Following receipt of a landlord's offer, the tenant and the landlord must negotiate in good faith with a view to agreeing on the rent relief to apply during the relevant period. (r 10, Regulations)</p>				<p>must provide that no less than 50% of the rent relief is to be in the form of a waiver of rent, unless the landlord and tenant otherwise agree in writing.</p> <p>6. An offer of rent relief must provide that more than 50% of the rent relief is to be in the form of a waiver of rent if –</p> <p>(i) a failure to provide more than 50% as a waiver would compromise</p>			

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
				<p>the tenant's capacity to fulfil the tenant's ongoing obligations under the small commercial lease; and</p> <p>(ii) the landlord has the financial capacity to provide more than 50% of the rent relief as a waiver.</p> <p>7. If the landlord is a</p>			



VIC	NSW	QLD	NT	WA	SA	ACT	TAS
				<p>tenant under a lease (head lease) of the land or premises that are subject of the small commercial lease and the landlord, as the tenant, is provided rent relief under the head lease, the landlord must pass on the benefit of the rent relief to the tenant under the small commercial lease.</p> <p>(cl 7, Sch 1, Regulations)</p>			

Rent waivers

Code of Conduct

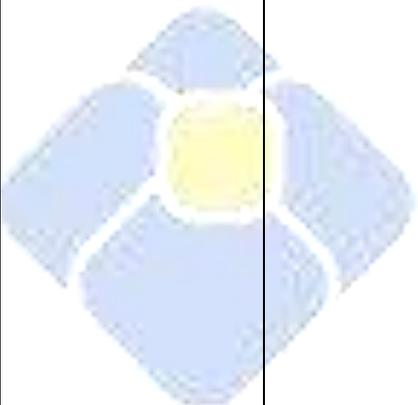
- Landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, on a base-by-case basis, based on the reduction in the tenant’s trade during the COVID-19 pandemic period and subsequent reasonable recovery period (leasing principle no. 3).
- Rental waivers must constitute no less than 50% of the total reduction in rent payable during the COVID-19 pandemic period and should constitute a greater proportion of the total reduction in rent payable in cases where failure to do so would compromise the tenant’s capacity to fulfil their ongoing obligations under the lease agreement. Regard must also be had to the Landlord’s financial ability to provide such additional waivers. Tenants may waive the requirement for a 50% minimum waiver by agreement (leasing principle no. 4).
- Waiver may also be interpreted to include other forms of agreed variations to existing leases (such as deferral, pausing and/or hibernating the lease), or other such commercial outcome of agreement reached between the parties. Any amount of reduction provided by a waiver may not be recouped by the landlord over the term of the lease (see definitions).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
No less than 50% of the rent relief offered by the landlord must be in the form of a waiver of rent, unless a landlord and a tenant otherwise agree in writing. (r 10, Regulations)	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.4, rental waivers must constitute no less than 50% of the total reduction in rent payable during the COVID-19 pandemic period and should constitute a greater proportion of the total reduction in rent payable in cases where failure to do so would compromise the tenant’s capacity to fulfil their ongoing	The lessor’s offer must provide for no less than 50% of rent reduction offered to be in form of a waiver of rent (r 15(2)(b), Regulations).	Silent (in the Act and Modification Notice). No subsequent modification notices made.	An offer of rent relief must provide that no less than 50% of the rent relief is to be in the form of a waiver of rent, unless the landlord and tenant otherwise agree in writing (cl 7(6), Sch 1, Regulations). An offer of rent relief must provide that more than 50% of the rent relief is to be in the form of a waiver of rent if – 1. a failure to provide more than 50% as a	Having regard to the Code of Conduct leasing principles, specifically, leasing principle no. 4 – rental waivers* must constitute no less than 50% of the total reduction in rent payable during the COVID-19 pandemic period and should constitute a greater proportion of the total reduction in rent payable in cases where failure to do so would	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.4, rental waivers must constitute no less than 50% of the total reduction in rent payable during the COVID-19 pandemic period and should constitute a greater proportion of the total reduction in rent payable in cases where failure to do so would compromise the tenant’s capacity to fulfil their ongoing	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.4, rental waivers must constitute no less than 50% of the total reduction in rent payable during the COVID-19 pandemic period and should constitute a greater proportion of the total reduction in rent payable in cases where failure to do so would

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
	<p>obligations under the lease agreement. Regard must also be had to the Landlord's financial ability to provide such additional waivers. Tenants may waive the requirement for a 50% minimum waiver by agreement. (r 7(4), Regulations and r 5(4), Conveyancing Regulations).</p>			<p>waiver would compromise the tenant's capacity to fulfil the tenant's ongoing obligations under the small commercial lease; and the landlord has the financial capacity to provide more than 50% of the rent relief as a waiver (cl 7(7), Sch 1, Regulations).</p>	<p>compromise the tenant's capacity to fulfil their ongoing obligations under the lease agreement. Regard must also be had to the Landlord's financial ability to provide such additional waivers. Tenants may waive the requirement for a 50% minimum waiver by agreement (r 6, Regulations).</p> <p>*Waiver means, in relation to rent payable under a commercial lease, the extinguishment of a liability or obligation of a lessee to pay rent (r 3, Regulations).</p>	<p>obligations under the lease agreement. Regard must also be had to the Landlord's financial ability to provide such additional waivers. Tenants may waive the requirement for a 50% minimum waiver by agreement (s 4(1), Declaration).</p>	<p>compromise the tenant's capacity to fulfil their ongoing obligations under the lease agreement. Regard must also be had to the Landlord's financial ability to provide such additional waivers. Tenants may waive the requirement for a 50% minimum waiver by agreement (s 18(3), Act).</p>

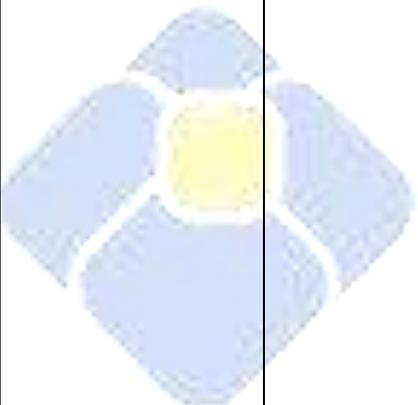
VIC	NSW	QLD	NT	WA	SA	ACT	TAS
					<p>If a lessor receives a waiver of land tax or a relief payment under a scheme administered by the Treasurer for the purposes of providing land tax relief to persons suffering financial hardship* as a result of the COVID-19 pandemic, the lessor must pass on the benefit of the waiver or relief payment in the form of a waiver of rent payable by an affected lessee* under the commercial lease in accordance with the provisions of that scheme (r 7(7), Regulations).</p> <p>A lessee is an affected lessee if the lessee is</p>		

BlueRock



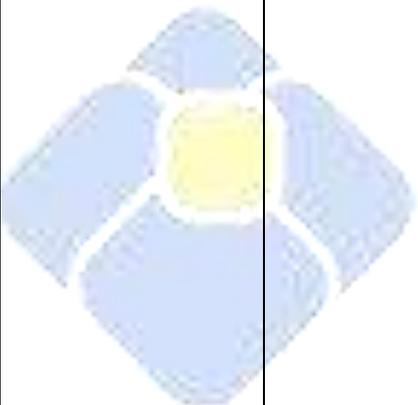
VIC	NSW	QLD	NT	WA	SA	ACT	TAS
					<p>suffering financial hardship as a result of the COVID-19 pandemic and the following turnover* in a relevant year was less than \$50 million:</p> <ol style="list-style-type: none"> 1. the lessee is a franchisee – the turnover of the business conducted at the premises subject to the commercial lease; 2. if the lessee is a corporation that is a member of a group* – the turnover of the group; 3. in any other case – the turnover of the business conducted by the lessee at the premises 		

BlueRoc



VIC	NSW	QLD	NT	WA	SA	ACT	TAS
					<p>the subject of the commercial lease (r 3(2), Regulations).</p> <p>*Corporations constitute a group if they are related bodies corporate within the meaning of the <i>Corporations Act 2001</i> (r 3(3), Regulations).</p> <p>*A refer to turnover of a business includes any turnover derived from internet sales of good or services (r 3(4), Regulations).</p> <p>*A lessee will be taken to be suffering financial hardship as a result of the COVID-19 pandemic if the lessee is eligible</p>		

BlueRock



VIC	NSW	QLD	NT	WA	SA	ACT	TAS
					<p>for, or receiving, a Jobkeeper payment in respect of the business of the lessee (whether in their capacity as an employer or on their own behalf) (r 3(5), Regulations).</p> <p>If the Court makes an order under regulation 9(5)(a) then at least 50% of the rent relief determined by the Court must be in the form of a waiver of rent (r 9(7), Regulations).</p>		

Rent Deferrals

Code of Conduct

- Landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, on a base-by-case basis, based on the reduction in the tenant's trade during the COVID-19 pandemic period and subsequent reasonable recovery period (leasing principle no. 3).

- Deferral may also be interpreted to include other forms of agreed variations to existing leases (such as deferral, pausing and/or hibernating the lease), or other such commercial outcome of agreement reached between the parties. Any amount of reduction provided by a waiver may not be recouped by the landlord over the term of the lease (see definitions).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
A landlord's offer of rent relief must relate to up to 100% of the rent payable under the eligible lease during the relevant period (noting that at least 50% of that relief must be in the form of a waiver). (r 10(4)(a), Regulations).	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.3, landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, on a base-by-case basis, based on the reduction in the tenant's trade during the COVID-19 pandemic period and subsequent reasonable recovery period. (r 7(4), Regulations and r 5(4), Conveyancing Regulations).	Parties to an affected lease can agree to defer payment of an amount of rent (r 17(1), Regulations).	Silent (in the Act and Modification Notice). No subsequent modification notices made.	Rent relief includes the deferral of the payment of all, or a portion of, rent that would otherwise be payable under the small commercial lease on a particular date to a later date cl 1, Sch 1, Regulations).	Having regard to the Code of Conduct leasing principles, specifically, leasing principle no. 3, landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, on a base-by-case basis, based on the reduction in the tenant's trade during the COVID-19 pandemic period and subsequent reasonable recovery period (r 6, Regulations).	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.3, landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, on a base-by-case basis, based on the reduction in the tenant's trade during the COVID-19 pandemic period and subsequent reasonable recovery period (s 4(1), Declaration).	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.3, landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, on a base-by-case basis, based on the reduction in the tenant's trade during the COVID-19 pandemic period and subsequent reasonable recovery period (s 18(3), Act).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
					Defer, in relation to rent payable under a commercial lease, means to put off a liability or obligation of a lessee to pay rent to a later day or time than it would otherwise arise (r 3, Regulations).		

Deferred Rent

When does deferred rent become payable?

Code of Conduct

If negotiated arrangements necessitate repayment, this should occur over an extended period in order to avoid placing an undue financial burden on the tenant. No repayment should commence until the earlier of the COVID-19 pandemic ending (as defined by the Australian Government) or the existing lease expiring, and taking into account a reasonable subsequent recovery period (leasing principle no. 9).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
If any rent is deferred by variation to an eligible lease or by an agreement a landlord must not request payment	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.9,	The variation of the lease or agreement between the parties must not require payment of the deferred	Silent (in the Act and Modification Notice). No subsequent modification notices made.	If rent payable under a small commercial lease is deferred, the landlord must not request payment of any part of the	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.9,	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.9,	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.9,

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>of any part of the deferred rent until the earlier of:</p> <ol style="list-style-type: none"> expiry of the relevant period; and expiry of the term of the eligible lease (before any extension as provided under regulation 13 or otherwise); and <p>(r 16(2), Regulations)</p>	<p>repayment should occur over an extended period in order to avoid placing an undue financial burden on the tenant. No repayment should commence until the earlier of the COVID-19 pandemic ending (as defined by the Australian Government) or the existing lease expiring and taking into account a reasonable subsequent recovery period (r 7(4), Regulations and r 5(4), Conveyancing Regulations).</p>	<p>rent to commence until the date after the end of the response period (r 17(2(a), Regulations).</p>		<p>deferred rent until the earlier of:</p> <ol style="list-style-type: none"> the day on which the emergency period ends; expiry of the term of the small commercial lease (before any extension to the term or otherwise). <p>(cl 9(2), Sch 1, Regulations).</p>	<p>repayment should occur over an extended period in order to avoid placing an undue financial burden on the tenant. No repayment should commence until the earlier of the COVID-19 pandemic ending (as defined by the Australian Government) or the existing lease expiring, and taking into account a reasonable subsequent recovery period (r 6, Regulations).</p>	<p>repayment should occur over an extended period in order to avoid placing an undue financial burden on the tenant. No repayment should commence until the earlier of the COVID-19 pandemic ending (as defined by the Australian Government) or the existing lease expiring, and taking into account a reasonable subsequent recovery period (s 4(1), Declaration).</p>	<p>repayment should occur over an extended period in order to avoid placing an undue financial burden on the tenant. No repayment should commence until the earlier of the COVID-19 pandemic ending (as defined by the Australian Government) or the existing lease expiring, and taking into account a reasonable subsequent recovery period (s 18(3), Act).</p>

How is deferred rent paid?

Code of Conduct

- Payment of rental deferrals by the tenant must be amortised over the balance of the lease term and for a period of no less than 24 months, whichever is the greater, unless otherwise agreed by the parties (leasing principle no. 5).
- No fees, interest or other charges nor punitive interest may be charged on deferrals in leasing principles no. 3, no.4 and no. 5 (leasing principle no. 10).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>A landlord and tenant must vary the eligible lease or otherwise agree so that tenant must pay the deferred rent to the landlord amortised over the greater of:</p> <ol style="list-style-type: none"> the balance of the term of the lease, including any extension to that term, as provided under regulation 13 or otherwise; and a period of no less than 24 months, <p>but the parties can agree to a different arrangement in writing.</p> <p>The method by which the deferred rent is amortised is to be agreed to by</p>	<p>Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.5, payment of rental deferrals by the tenant must be amortised over the balance of the lease term and for a period of no less than 24 months, whichever is the greater, unless otherwise agreed by the parties (r 7(4), Regulations and r 5(4), Conveyancing Regulations).</p>	<p>The variation of the lease or agreement between the parties must require payment of the deferred rent to be amortised, using a method agreed between the parties, over a period of at least 2 years but not more than 3 years (r 17(2)(b), Regulations).</p>	<p>Silent (in the Act and Modification Notice). No subsequent modification notices made.</p>	<p>The landlord and the tenant must vary the lease, or otherwise agree, so that the tenant must pay the deferred rent to the landlord amortised over the greater of:</p> <ol style="list-style-type: none"> the balance of the term of the small commercial lease; a period of not less than 24 months. <p>The method by which the deferred rent is amortised for the purposes of subclause (3) is to be agreed by the landlord and the tenant.</p> <p>The landlord and tenant may agree otherwise.</p>	<p>Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.5, payment of rental deferrals by the tenant must be amortised over the balance of the lease term and for a period of no less than 24 months, whichever is the greater, unless otherwise agreed by the parties (r 6, Regulations).</p>	<p>Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.5, payment of rental deferrals by the tenant must be amortised over the balance of the lease term and for a period of no less than 24 months, whichever is the greater, unless otherwise agreed by the parties (s 4(1), Declaration).</p>	<p>Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.5, payment of rental deferrals by the tenant must be amortised over the balance of the lease term and for a period of no less than 24 months, whichever is the greater, unless otherwise agreed by the parties (s 18(3), Act).</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
the landlord and tenant. (r 16(2), Regulations)				(cl 9(3)-(5), Sch 1, Regulations).			

Subsequent Rent Relief

Code of Conduct
Silent.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
If the financial circumstances of a tenant under an eligible lease materially change after a variation to the eligible lease has been made or an agreement has been reached the tenant may make a further request to the landlord for rent relief under regulation 10 and, the landlord and the tenant must follow the process set out in	Silent.	Regulation 16 applies if, after a reduction in the amount of rent is agreed between the parties to an affected lease (whether the agreement is entered into before or after the commencement), a ground on which the agreement is based changes in a material way – for example –	Silent (in the Act and Modification Notice). No subsequent modification notices made.	If (prior to the Regulations), the landlord and the tenant under a small commercial lease entered into an agreement to vary the small commercial lease, or entered into any other agreement, so as to provide rent relief during the emergency period or any part of the emergency period (existing agreement) and the tenant is an eligible tenant in	Silent. However, if during the designated period*, the parties to a commercial lease have agreed to vary the terms or modify the operation of the lease (including agreeing to rent relief for the lessee), then an order of the Court may not operate to modify or affect the operation of that agreement	Silent.	Silent.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>regulation 10 in relation to that request. However, the landlord's offer of rent relief does not need to comprise a minimum 50% waiver of rent. (r 11, Regulations)</p>		<ul style="list-style-type: none"> • the lessee's turnover has not increased as significantly as anticipated • the lessee's income decreases substantially. (r 16(1), Regulations). <p>A party may ask another party to the lease to negotiate a further reduction in rent during the response period.</p> <p><i>Note: nothing prevents the parties from negotiating an increase in rent.</i></p> <p>The party seeking a further reduction in rent must follow the rent negotiation procedure under</p>		<p>relation to the small commercial lease,</p> <p>and</p> <p>the tenant believes that the rent relief provided under the existing agreement is less favourable than rent relief that might be provided to the tenant in accordance with the Regulations:</p> <ol style="list-style-type: none"> 1. the tenant may make a request for rent relief to the landlord under cl 5; and 2. if the tenant makes a request, the landlord and the tenant must follow the process set out in cl 6 in relation to that request. <p>(cl 10(1)-(2), Sch 1, Regulations).</p>	<p>insofar as that agreement operated during the designated period (and an order of the Court may, if the Court determines, operate to modify or affect the operation of that agreement as it purports to operate after the designated period).</p> <p>*Designated period means the period starting on 30 March 2020 and ending on 14 May 2020.</p> <p>(rr 9(6) and 9(12), Regulations).</p>		

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>r 14 & r 15 (above); i.e. request in writing and the provision of sufficient information (r 16(3), Regulations). However, the lessor's offer does not need to comprise a minimum 50% waiver of rent (r 16(4), Regulations).</p>		<p>If the financial circumstances of an eligible tenant in relation to a small commercial lease materially change after a variation to the small commercial lease or an agreement has been reached:</p> <ol style="list-style-type: none"> the tenant may make a further request for rent relief to the landlord under cl 5; and the tenant makes a further request — the landlord and the tenant must follow the process set out in cl 6 in relation to that request (cl 10(3), Sch 1, Regulations). 			

Documenting a rent relief agreement

Silent.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
Rent relief may be given effect by the landlord and tenant by a variation to the eligible lease or any other agreement between them that gives effect to the rent relief, either directly or indirectly. (r 10, Regulations)	Silent.	The reduction in rent and any conditions relating to the reduction in rent may be given effect by a variation to the lease, or another agreement between the parties that gives effect to matters agreed to (r 15(4), Regulations).	Silent (in the Act and Modification Notice). No subsequent modification notices made.	Rent relief may be given effect by the landlord and the tenant under a small commercial lease by a written variation to the small commercial lease, or any other written agreement between the landlord and the tenant that gives effect to the rent relief, either directly or indirectly (cl 8, Sch 1, Regulations).	Silent.	Silent.	Silent, except that the Act provides that a party to a protected lease must bear the party's own costs incurred in the preparation of a lease, or a variation of a lease, for the purposes of the Act (s 19, Act).

Outgoings

Code of Conduct
<ul style="list-style-type: none"> Any reduction in statutory charges (e.g. land tax, council rates) or insurance will be passed on to the tenant in the appropriate proportion applicable under the terms of the lease (leasing principle no. 6). Landlords should where appropriate seek to waive recovery of any other expense (or outgoing payable) by a tenant, under lease terms, during the period the tenant is not able to trade. Landlords reserve the right to reduce services as required in such circumstances (leasing principle no. 8).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
Definition of outgoings:	Having regard to the Code of	A lessor's offer of a reduction in	Silent (in the Act and Modification	Definition of outgoings:	Definition of outgoings: has	Having regard to the Code of	Having regard to the Code of

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>The landlord's outgoings on account of:</p> <ol style="list-style-type: none"> the expenses attributable to the operation, maintenance or repair of the building or area in which the premises are located, or (in the case of retail shopping centre premises), any building in the centre or areas used in association with the centre; rates, taxes, levies, premiums or charges payable by a landlord because the landlord is the owner or occupier of a building/area or land on which the building/area is 	<p>Conduct leasing principles, in particular, leasing principle no.8, landlords should seek to waive recovery of any other expense (or outgoing payable) by a tenant, under lease terms, during the period the tenant is not able to trade (r 7(4), Regulations and r 5(4), Conveyancing Regulations).</p> <p>Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.6, any reduction in statutory charges (e.g. land tax, council rates) or insurance will be passed on to the tenant in the appropriate proportion</p>	<p>rent must have regard to any reduction in, or waiver of, an amount payable under the lease for land tax, local government rates, statutory charges, insurance premiums or other outgoings (r 15(2)(c)(iv), Regulations).</p> <p>If a lessee under an affected lease is unable to operate a business at the premises for any part of the response period because of COVID-19 emergency, the lessor may cease or reduce any service at the premises to the extent it is reasonable in the circumstances,</p>	<p>Notice). No subsequent modification notices made.</p>	<p>In relation to the land or premises that are the subject of a small commercial lease –</p> <ol style="list-style-type: none"> means expenses of the landlord in operating, repairing or maintaining the building or area in which the land or premises are located, or the area owned by the landlord and used in association with the building or area in which the land or premises are located, and includes rates, taxes, levies, premiums or charges payable by the landlord, and in the case of a retail shop lease, the landlord's operating expenses (as 	<p>the same meaning as in the Retail and Commercial Leases Act 1995 (r 3, Regulations).</p> <p>Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.8, landlords should where appropriate seek to waive recovery of any other expense (or outgoing payable) by a tenant, under lease terms, during the period the tenant is not able to trade (r 6, Regulations).</p> <p>Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.6,</p>	<p>Conduct leasing principles, in particular, leasing principle no.8, landlords should seek to waive recovery of any other expense (or outgoing payable) by a tenant, under lease terms, during the period the tenant is not able to trade (s 4(1), Declaration).</p> <p>Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.6, any reduction in statutory charges (e.g. land tax, council rates) or insurance will be passed on to the tenant in the appropriate proportion applicable under the terms of the</p>	<p>Conduct leasing principles, in particular, leasing principle no.8, landlords should where appropriate seek to waive recovery of any other expense (or outgoing payable) by a tenant, under lease terms, during the period the tenant is not able to trade (s 18(3), Act).</p> <p>Having regard to the Code of Conduct leasing principles, in particular, leasing principle no.6, any reduction in statutory charges (e.g. land tax, council rates) or insurance will be passed on to the tenant in the appropriate proportion</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>located, or the supplier of a taxable supply within the meaning of the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) in respect of the building, area or land. (r 4, Regulations)</p> <p>Can a landlord recover outgoings relating to the premises? Yes. However, a landlord under an eligible lease must consider waiving recovery of any outgoing or other expense payable by a tenant under the lease for any part of the relevant period that the tenant is not able to operate their business at the premises.</p>	<p>applicable under the terms of the lease (r 7(4), Regulations and r 5(4), Conveyancing Regulations).</p> <p>If an impacted lessee is required by a provision of a commercial lease to pay a fixed amount that represents an amount of land tax or any other statutory charge (such a local council rates) or insurance payable by a lessor and the amount of the land tax or other statutory charge or insurance payable is reduced, the impacted lessee is exempted from the provision to the extent of the reduction (r 6(4), Regulations and r</p>	<p>and subject to any reasonable request by the lessee (r 19, Regulations).</p>		<p>defined in the <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i> (s12(3)). (cl 1, Sch 1, Regulations).</p> <p>Can a landlord recover outgoings relating to the premises? Yes. However, if the tenant under a small commercial lease is an eligible tenant in relation to the small commercial lease and for any part of the emergency period, the tenant is not able to conduct their business at the land or premises that are the subject of the small commercial lease, the landlord must consider waiving recovery of any outgoing or other expense payable by the tenant to the</p>	<p>any reduction in statutory charges (e.g. land tax, council rates) or insurance will be passed on to the tenant in the appropriate proportion applicable under the terms of the lease (r 6, Regulations).</p>	<p>lease (s 4(1), Declaration).</p>	<p>applicable under the terms of the lease (s 18(3), Act).</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>If a tenant is not able to operate their business at the premises for any part of the relevant period, the landlord may cease to provide, or reduce provision of, any service at the premises as is reasonable in the circumstances, and in accordance with any reasonable request of the tenant. (r 14, Regulations)</p> <p>Must a landlord pass on a reduction in outgoings? Yes. If any outgoings charged, imposed or levied in relation to the premises are reduced:</p> <ol style="list-style-type: none"> 1. a landlord must not require a tenant to pay 	<p>4(4), Conveyancing Regulations).</p>			<p>landlord for the part of the emergency period that the tenant is not able to conduct their business at the land or premises (cl 11(1)-(2), Sch 1, Regulations).</p> <p>The landlord may cease to provide, or reduce provision of, any service at the land or premises as is reasonable in the circumstances, or in accordance with any reasonable request of the tenant (cl 11(3) Sch 1, Regulations).</p> <p>If any outgoings charged, imposed or levied in relation to the land or premises that are the subject of a small commercial lease are reduced for the emergency period, or any part of it, and the tenant under</p>			

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>any amount in respect of that outgoing that is greater than a tenant's proportional share of the reduced outgoing payable under the lease; and</p> <p>2. if a tenant has already paid to a landlord under the lease an amount greater than a tenant's proportional share of the reduced outgoing, the landlord must reimburse the excess amount to a tenant as soon as possible.</p> <p>(r 15, Regulations)</p>				<p>the small commercial lease is an eligible tenant in relation to the small commercial lease:</p> <ol style="list-style-type: none"> 1. the landlord must not require the tenant to pay any amount of money in respect of the outgoing that is great than the tenant's proportional share of the reduced outgoing payable under the lease; and 2. if the tenant under the small commercial lease has already paid to the landlord under the lease an amount of money greater than the tenant's proportional share of the 			

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
				reduced outgoing, the landlord must reimburse the excess amount to the tenant as soon as possible (cl 12, Sch 1, Regulations).			

Termination of lease by a tenant

Code of conduct
Silent.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
Silent.	Silent.	Silent.	Silent (in the Act and Modification Notice). No subsequent modification notices made.	<p><i>IMPORTANT: The Commercial Tenancies (COVID-19 Response (Early Termination)) Bill 2020 has not received royal assent, and the following provisions have not yet been enacted.</i></p> <p>A tenant under a commercial lease</p>	Silent.	Silent.	Silent.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
				<p>who claims to be in severe financial distress* may, at any time during the emergency period, give the landlord a notice in writing proposing the termination of the lease.</p> <p>Within 14 days after the day on which the tenant's notice is given, the landlord may give a notice in writing to the tenant:</p> <ol style="list-style-type: none"> 1. agreeing to the termination of the commercial lease; or 2. stating that the landlord intends to make an application to the Tribunal to determine whether the lease is to be terminated under the Termination Act. 			

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
				<p>If the landlord agrees to the termination of the commercial lease or does not give a notice within 14 days, the commercial lease terminates at the end of the period of 21 days after the day on which the tenant's notice was given.</p> <p>If the landlord gives a notice stating that the landlord intends to make an application to the Tribunal, the landlord must, within 7 days after the day on which the notice was given, make an application to the Tribunal to determine whether the commercial lease is to be terminated.</p>			

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
				<p>Note: *severe financial distress means the tenant is suffering financial hardship as a result of COVID-19 consequences, and has made reasonable endeavours to negotiate waivers or deferrals of rent from the landlord, and despite those endeavours and any waiver or deferral or other concessions made by the landlord, it is reasonable to conclude that because of the tenant's financial hardship, the tenant is not, or will not, be in a position to perform its obligations under the commercial lease.</p> <p>A lease or any other contract or</p>			

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
				agreement is of no effect to the extent that its purports to exclude or restrict the operation of the Act.			

Enforcement Actions by landlords

Eviction and recovery of possession of premises for non-payment of rent or outgoings

Code of Conduct

Landlords must not terminate leases due to non-payment of rent during the COVID-19 pandemic period (or a reasonable subsequent recovery period) (leasing principle no. 1).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>A landlord under an eligible lease must not:</p> <ol style="list-style-type: none"> evict or attempt to evict a tenant under the eligible lease for a breach for non-payment of rent provided that the tenant has complied with its obligations for obtaining rent 	<p>If a lessee is an impacted lessee, a lessor must not take any prescribed action* against the lessee on the grounds of a breach of the commercial lease during the prescribed period consisting of a failure to pay rent or outgoings (r 6(1), Regulations and r 4(1),</p>	<p>A lessor under an affected lease must not take a prescribed action* for a failure to pay rent or outgoings or a period occurring wholly or partly during the response period (r 12(1), Regulations). However, a lessor is not prevented</p>	<p>During the emergency period, a landlord must not give a tenant a notice to quit unless the landlord has, for a period of at least 30 business days, made good faith efforts to negotiate with the tenant to allow the tenant to remain in the premises (s 3,</p>	<p>A landlord cannot take prohibited action* during the <i>emergency period</i> on the grounds of a breach by the tenant of a small commercial lease that occurs during the emergency period if the breach consists of a failure to pay rent or any other amount of money payable by the tenant to the</p>	<p>If a lessee is an affected lessee, a lessor cannot take any prescribed action* against the lessee on grounds of a breach of the lease during the prescribed period consisting of:</p> <ol style="list-style-type: none"> a failure to pay rent; or a failure to pay outgoings. 	<p>A lessor must not give a termination notice to an impacted tenant in relation to a prescribed breach* unless the lessor has engaged in good faith negotiations with the tenant. A termination notice given in contravention of this section is void (s 6, Declaration).</p>	<p>Pursuant to the Notice made under s 22 if:</p> <ol style="list-style-type: none"> the premises (or part of it) are being used by the tenant, wholly or predominantly for the carrying on of any business, trade or profession, whether or

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>relief under regulation 10; (r 9, Regulations).</p> <p><i>Note: a landlord may be subject to a penalty of 20 penalty units for failure to comply with this provision.</i></p> <p>2. re-enter or recover, or attempt to re-enter or recover, the premises under an eligible lease for a breach by the tenant for non-payment of rent provided that the tenant has complied with its obligations for obtaining rent relief under regulation 10; (r 9, Regulations)</p> <p><i>Note: a landlord may be subject to a penalty of 20 penalty units for</i></p>	<p>Conveyancing Regulations).</p> <p>A lessor under an impacted lease must not take or continue any prescribed action* against an impacted lessee on grounds of a breach of an impacted lease consisting of a failure to pay rent during the prescribed period unless the lessor has complied with its obligations under:</p> <p>1. Regulation 7 (r 7, Regulations as amended by the Amendment Regulations),</p> <p>2. Regulation 5 (r 5, Conveyancing Regulations),</p> <p>which relate to the parties' obligation to renegotiate rent payable under an</p>	<p>from taking a prescribed action:</p> <p>1. in accordance with a variation of the lease (made as a result of the renegotiation or rent), or a settlement agreement or other agreement between the lessor and the lessee about the payment or rent or outgoings, or an order of a court or tribunal;</p> <p>2. if, despite a genuine attempt by the lessor to negotiate rent payable and other conditions of the lease, the lessee has</p>	<p>Modification Notice).</p> <p>A notice to quit given to a tenant by a landlord contrary to the above does not terminate the tenancy (s 3, Modification Notice).</p> <p>The landlord's obligation to negotiate before giving a notice to quit does not apply to:</p> <p>1. a notice to quit given by a landlord requiring a tenant to give up vacant possession of business premises that are drug premises;</p> <p>a notice to quit given in the reasonable belief</p>	<p>landlord under the small commercial lease (including the landlord's operating expenses) (s 9, Act).</p> <p>*Prohibited action means action under, or in respect of, a small commercial lease (including seeking orders, or commencing proceedings, in a court or tribunal) for any of the following:</p> <p>1. eviction of the tenant from the land or premises that are the subject of the small commercial lease;</p> <p>2. exercising a right of re-entry to the land or premises that are the subject of the small</p>	<p>(r 7(1), Regulations).</p> <p>Regulation 7(1) does not apply to or in respect of a failure to pay rent if the amount of rent payable under the lease is, during the prescribed period agreed by the parties under a mediation (under regulation 8), or determined by a court (under regulation 9) (r 7(2), Regulations).</p> <p>A lessor must not, during the prescribed period, require an affected lessee to pay land tax or reimburse the lessor for the payment of land tax in respect of a commercial lease (r 7(5), Regulations).</p>	<p>*Prescribed breach by an impacted tenant means a failure by the tenant during the prescribed period to pay rent or outgoings or other amounts due under the lease, or to operate the business on the premises under the lease during the hours required under the lease (s 3(1), Declaration).</p> <p>A lessor must not take any prescribed action* against an impacted tenant in relation to a prescribed breach unless the lessor has engaged in good faith negotiations with the tenant (s 8(1), Declaration).</p> <p>*Prescribed action by a lessor against</p>	<p>not by a person for profit, by a charitable or not-for-profit organisation; and</p> <p>2. the turnover in a continuous month since 1 Feb 2020 (in relation to the business) has reduced by more than 30% in at least one continuous month since 1 Feb 2020; and</p> <p>3. the turnover in relation to the business from 1 Feb 2019 to 31 Jan 2020 is less than \$50 million,</p> <p>then –</p> <p>4. the lease must not be terminated</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p><i>failure to comply with this provision.</i></p>	<p>impacted lease of which an impacted lessee is a party.</p> <p>*Prescribed action means taking action under the provisions of a commercial lease or seeking orders or issuing proceedings in a court or tribunal for any of the following:</p> <ol style="list-style-type: none"> 1. eviction of a lessee from premises or land the subject of a commercial lease; 2. exercising a right of re-entry to premises or land the subject of the commercial lease, 3. recovery of the premises or land, 	<p>substantially failed to comply with the lessee's obligations in relation to the negotiations; or</p> <ol style="list-style-type: none"> 3. on a ground that is not related to the effects of the COVID-19 emergency (r 12(2), Regulations). <p>* Prescribed action is an action under a lease or another agreement relating to leased premises, or the starting of a proceeding in a court or tribunal, for any of the following in relation to the lease or other agreement:</p> <ol style="list-style-type: none"> 1. recovery of possession; 	<p>that the tenant engaged in or intends to engage in illegal conduct or conduct that caused or will cause substantial damage to the premises contrary to the business lease (s 3, Modification Notice).</p>	<p>commercial lease;</p> <ol style="list-style-type: none"> 3. possession; 4. recovery of land; 5. distraint of goods; 6. forfeiture; 7. termination of the small commercial lease; 8. damages; 9. require a payment of interest on unpaid rent or any other unpaid amount of money payable by the tenant to the landlord (including operating expenses); 10. recovery of the whole or any part of any security for the performance of the tenant's obligations under the small 	<p>Regulation 7(5) does not limit the operation of a term of a commercial lease, or a provision of an Act, that otherwise prohibits the payment of land tax or reimbursement of land tax to a lessor by a lessee (r 7(6), Regulations).</p> <p>Note: *prescribed action means taking action under the provisions of a commercial lease or seeking order or issuing proceedings in a court for any of the following:</p> <ol style="list-style-type: none"> 1. eviction of the lessee from premises the subject of the commercial lease; 	<p>an impacted tenant means taking action under the lease or starting a proceeding for any of the following:</p> <ol style="list-style-type: none"> 1. eviction of the tenant from premises or land under the lease; 2. exercise of a right of re-entry to the premises or land; 3. recovery of the premises or land; 4. distraint of goods on the premises or land; 5. forfeiture; 6. damages 7. requiring payment of penalty interest on, or a fee or charge related to, unpaid rent otherwise payable by the tenant; 	<p>on the grounds of unpaid rent or other money due and payable in relation to the premises, during the emergency period.</p> <p>(see <i>Notice</i>)</p> <p>A lessor under a protected lease must not, during or after the financial hardship period, take or continue any prohibited lessor action* in relation to the lease on the grounds of a breach of the lease during the financial hardship period consisting of a failure to pay rent, fees, levies, charges, or outgoings that are payable by</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
	<p>4. distraint of goods,</p> <p>5. forfeiture,</p> <p>6. damages,</p> <p>7. requiring a payment of interest on, or a fee or charge related to, unpaid rent otherwise payable by a lessee,</p> <p>8. recovery of the whole or part of a security bond under the commercial lease,</p> <p>9. performance of obligations by the lessee or any other person pursuant to a guarantee under the commercial lease,</p> <p>10. possession,</p> <p>11. termination of the</p>	<p>2. termination of the lease;</p> <p>3. eviction of the lessee;</p> <p>4. exercising a right of re-entry to premises;</p> <p>5. seizure of any property, including for the purpose of securing payment of rent;</p> <p>6. forfeiture;</p> <p>7. damages;</p> <p>8. the payment of interest on, or a fee or charge relating to, unpaid rent or outgoings;</p> <p>9. a claim on a bank guarantee, indemnity or security deposit for unpaid rent or outgoings;</p> <p>10. the performance</p>		<p>commercial lease (including security bonds);</p> <p>11. performance of obligations by the tenant or any other person under guarantee (including making a demand on a bank guarantee);</p> <p>12. any other remedy otherwise available to the landlord against the tenant at common law or under written law. (s 8, Act).</p>	<p>2. exercising a right of re-entry to premises the subject of the commercial lease;</p> <p>3. recovery of land;</p> <p>4. distraint of goods;</p> <p>5. forfeiture;</p> <p>6. damages;</p> <p>7. requiring a payment of interest on unpaid rent otherwise payable by a lessee;</p> <p>8. recovery of the whole or part of a security bond under the commercial lease;</p> <p>9. performance of obligations by the lessee or any other person pursuant to a guarantee</p>	<p>8. recovery of the whole or party of a security bond under the lease;</p> <p>9. performance of obligation by the tenant or any other person guaranteeing the tenant's obligations under the lease;</p> <p>10. possession of the premises or land;</p> <p>11. any other remedy otherwise available against the tenant under a territory law. (s 8(2), Declaration).</p> <p>If a lessor has given an impacted tenant a termination notice in the pre-commencement period* in relation</p>	<p>the lessee to the lessor or another person (s 13, Act).</p> <p>*Prohibited lessor action means a lessor:</p> <p>1. exercising or attempting to exercise, in relation to a protected lease, any right, power or remedy, whether under an Act, a law or a term or condition of a protected lease;</p> <p>2. seeking orders or issuing proceedings in a court in relation to a protected lease;</p> <p>3. evicting the lessee from the premises;</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
	<p>commercial lease,</p> <p>12. any other remedy otherwise available to a lessor against a lessee at common law or under the law of NSW. (r 3(1), Regulations and r 1), Conveyancing Regulations).</p>	<p>of an obligation by the lessee or another person under a guarantee under the lease;</p> <p>11. exercising or enforcing another right by the lessor under the lease or other agreement relating to the lease premises (r 9, Regulations)</p>			<p>under the commercial lease;</p> <p>10. possession;</p> <p>11. termination of the commercial lease;</p> <p>12. any other remedy otherwise available to the lessee against the lessee at common law or in statute (r 3, Regulations).</p> <p>If a lessee is suffering financial hardship as a result of the COVID-19 pandemic and during the relevant period*:</p> <p>1. a lessor has taken or commenced, but not yet completed or finalised, a</p>	<p>to a prescribed breach, and either:</p> <p>1. the tenant contests the termination under s122(2) of the <i>Lease (Commercial and Retail) Act 2001</i>; or</p> <p>2. the lessor applies to the Magistrates Court for confirmation of the termination under s 124(2) of the <i>Lease (Commercial and Retail) Act 2001</i>, the Magistrates Court must not confirm the termination unless satisfied that the lessor has engaged in good faith negotiations with the impacted tenant (s 7, Declaration).</p>	<p>4. exercising a right of re-entry;</p> <p>5. recovering land;</p> <p>6. distraining good;</p> <p>7. seeking forfeiture;</p> <p>8. seeking or recovering damages;</p> <p>9. requiring a payment of interest, or any other fee or charge on unpaid rent;</p> <p>10. recovering the whole or party of a security bond or bank guarantee;</p> <p>11. requiring the performance of obligations by the lessee or other person pursuant to a guarantee or indemnity;</p>

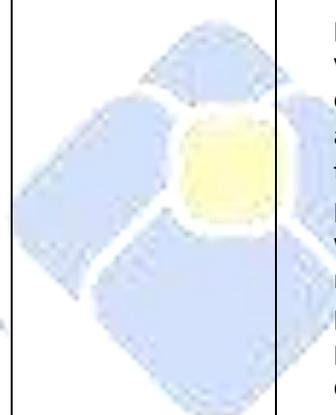
VIC	NSW	QLD	NT	WA	SA	ACT	TAS
					<p>prescribed action (including a prescribed action that has a periodic or ongoing effect); or</p> <p>2. a lessor has taken or commenced, but not yet completed or finalised, the performance of any other measure that the lessor would not have been able to undertake or commence during the prescribed period by virtue of the operation of the Act as in force immediately before the Regulations</p>	<p>*Pre-commencement period means the period beginning on the day of the prescribed period and end the day before the Declaration commences.</p> <p>A lessor is not prevented from terminating or taking prescribed action against an impacted tenant if the tenant agrees to the termination or action, or the lessor has engaged in good faith negotiations with the tenant and the tenant surrenders the lease (s 5(3), Declaration).</p>	<p>12. taking possession;</p> <p>13. terminating the lease; or</p> <p>14. seeking or applying any other remedy available to a lessor under an Act or the law,</p> <p>during the financial hardship period, in connection with any breach of the protected lease by the protected lessee (s 7, Act).</p> <p>If, during the period before the commencement day* (1 April 2020):</p> <p>1. a lessor has taken or commenced, but not yet completed or finalised, a prohibited lessor action (including a</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
					<p>came into operation; or</p> <p>3. the operation of the terms of the commercial lease has had effect, or has a periodic or ongoing effect, contrary to the operation of the Act as in force immediately before the Regulations came into operation, the action, operation or effect will, insofar as it remains incomplete or ongoing or has a periodic or ongoing effect, will be taken to be stayed or suspended until the end of the prescribed period</p>		<p>prohibited lessor action that has a periodic or ongoing effect), or any other measure, in relation to a protected lessee, that the lessor would not have been able to undertake or commence during the final hardship period by virtue of the Act; or</p> <p>2. the operation of the terms and conditions of a protected lease has had effect, or has a periodic or ongoing effect, contrary to</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
					<p>(r 10, Regulations).</p> <p>*Relevant period means the period starting on 30 March 2020 and ending on 9 April 2020.</p>		<p>the provisions of the Act, the action, operation or effect, insofar as it remains incomplete or ongoing, or has a periodic or ongoing effect, is taken to be stayed or suspended until the end of the financial hardship period (s 10, Act).</p> <p>*Commencement date, in relation to a provision of the Act, means the day on which the provision commences.</p> <p>“Within a class of leases” specified by the Minister:</p> <ol style="list-style-type: none"> 1. the premises, or the part of premises, to which the lease relates

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
							<p>are being used (or were, at any time during the period from 1 February 2020 to the date of this notice, being used) by the tenant, wholly or predominantly for the carrying on of any business, trade or profession, whether or not by a person for profit, by a charitable organisation or by a body of persons that is not predominantly established for the purpose of profit; and</p> <p>2. the turnover, in a continuous</p>

BlueRock



VIC	NSW	QLD	NT	WA	SA	ACT	TAS
							<p>one-month period since 1 February 2020 has reduced by more than 30% in at least one continuous one-month period since 1 February 2020; and</p> <p>3. the turnover in relation to any such business, trade or profession carried on by the tenant for the period from 1 February 2019 to 31 January 2020 is not more than \$50 000 000</p> <p><i>See notice by Gazette dated 9 April 2020</i></p>

Claim on security or guarantee

Code of Conduct

Landlord's must not draw on a tenant's security for the non-payment of rent (be this a cash bond, bank guarantee or personal guarantee) during the period of the COVID-19 pandemic and/or a reasonable subsequent recovery period.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>1. A landlord under an eligible lease must not have recourse, or attempt to have recourse, to any security under an eligible lease for a breach by the tenant for non-payment of rent provided that the tenant has complied with its obligations for obtaining rent relief under regulation 10; (r 9, Regulations)</p>	<p>If a lessee is an impacted lessee, a lessor must not take any prescribed action (which includes recovery of the whole or part of a security bond under the commercial lease) against the lessee on the grounds of a breach of the commercial lease during the prescribed period consisting of a failure to pay rent or outgoings, or the business operating under the lease not being open for business during the hours specified in the lease (r 6(1), Regulations and r</p>	<p>A lessor under an affected lease must not take a prescribed action, including a claim on a bank guarantee, indemnity or security deposit, or the performance of an obligations by the lessee or another person under a guarantee under the lease on the grounds of non-payment of rent or outgoings, or for the closure of the business carried on at the leased premises during the response period</p>	<p>Silent (in the Act and Modification Notice). No subsequent modification notices made.</p>	<p>A landlord cannot take prohibited action during the <i>emergency period</i> on the grounds of a breach by the tenant of a small commercial lease that occurs during the <i>emergency period</i>, including making a demand on a bank guarantee, if the breach consists of:</p> <ol style="list-style-type: none"> 1. a failure to pay rent or any other amount of money payable by the tenant to the landlord under the small commercial lease (including the landlord's 	<p>If a lessee is an affected lessee, a lessor cannot take a prescribed action (which includes the recovery of the whole or part of a security bond under the commercial lease) against the lessee on the grounds of a breach of the lease during prescribed period consisting of a failure to pay rent or outgoings, or the business operating under the lease not being open for business during the hours specified in the</p>	<p>A lessor must not take any prescribed action (which includes the recovery of the whole or part of a security bond under the lease) against an impacted tenant in relation to a prescribed breach unless the lessor has engaged in good faith negotiations with the tenant (s 8, Declaration).</p>	<p>A lessor under a protected lease must not, during or after the financial hardship period, take or continue any prohibited lessor action (which includes recovering the whole or party of a security bond, or bank guarantee, in relation to the lease) on the grounds of a breach of the lease during the financial hardship period consisting of:</p> <ol style="list-style-type: none"> 1. a failure to pay rent, fees, levies,

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p><i>Note: a landlord may be subject to a penalty of 20 penalty units for failure to comply with this provision.</i></p> <p>2. A landlord under an eligible lease must not have recourse, or attempt to have recourse, to any security relating to the non-payment of rent under an eligible lease if the tenant reduces the opening hours of the business at the premises or closes the premises and ceases the business at the premises (r 18, Regulations).</p>	<p>4(1), Conveyancing Regulations).</p>	<p>(r 12(3), Regulations).</p> <p>The lessor may continue to hold any security deposit given to the lessor until the deferred rent (if any) has been paid (r 17(3), Regulations). If the lessor continues to hold a security deposit under r17(3) after the lease ends, the lessor holds, and may claim in relation to, the security deposit under the conditions of the lease in effect immediately before it ended (r 17(4), Regulations).</p>		<p>operating expenses);</p> <p>2. the land or premises that are the subject of the small commercial lease, or the business carried on there, not being open for business at hours or times specified in the small commercial lease. (ss 8 & 9, Act).</p>	<p>lease (r 7(1), Regulations).</p> <p>Regulation 7(1) does not apply to or in respect of a failure to pay rent if the amount of rent payable under the lease is, during the prescribed period agreed by the parties under a mediation (under regulation 8), or determined by a court (under regulation 9) (r 7(2), Regulations).</p>		<p>charges, or outgoing;</p> <p>2. a failure to meet criterial based on sales performance or another prescribed factor; or</p> <p>3. the business operating under the lease not being open for business as specified in the lease. (s 7 and s 13, Act).</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<i>Note: a landlord may be subject to a penalty of 20 penalty units for failure to comply with this provision.</i>							

Rent Increases

Code of Conduct

Landlords agree to a freeze on rent increases (except for retail leases based on turnover rent) for the duration of the COVID-19 pandemic and a reasonable subsequent recovery period, notwithstanding any arrangements between the landlord and the tenant (leasing principle no. 13).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
A landlord under an eligible lease must not increase the rent payable under the lease at any time during the relevant period, unless the landlord and the tenant otherwise agree in writing (r 12, Regulations).	If during the prescribed period, a lessee under a commercial lease is an impacted lessee, the rent payable under the commercial lease (other than rent or a component of rent determined by reference to turnover) must not be increased (r 6(2), Regulations and r 4(2), Conveyancing Regulations).	A lessor under an affected lease must not increase the rent payable by the lessee during the response period (r 13(1), Regulations). If the lease provides for a review of rent during the response period, the lessor may review the rent under the lease	Silent (in the Act and Modification Notice). No subsequent modification notices made.	Rent payable under a small commercial lease (other than rent or a component of rent determined by reference to turnover) cannot be increased during the emergency period (s 11, Act).	If, during the prescribed period, a lessee under a commercial lease is an affected lessee, the rent payable under a commercial lease (other than rent or a component of rent determined by reference to turnover) must not, unless otherwise agreed between the	A lessor must engage in good faith negotiations with an impacted tenant having regard to the overarching principles and leasing principles set out in the Code of Conduct which requires, in particular, that landlords agree to a freeze on rent increases (except for retail leases based on turnover	Pursuant to the Notice made under s 22 if: 1. the premises (or part of it) are being used by the tenant, wholly or predominantly for the carrying on of any business, trade or profession, whether or not by a

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
	<p>If, during the prescribed period, a lessee under a commercial lease was an impacted lessee, a lessor must not, after the prescribed period, take any prescribed action against the lessee on the grounds of a breach of the commercial lease consisting of a failure to pay an amount equivalent to or representing the increased rent amount (r 6(3), Regulations and r 4(3), Conveyancing Regulations).</p>	<p>but must not give effect to an increase in rent until the response period ends (r 13(2), Regulations).</p> <p>However, rent may be increased if the rent increase is worked out under the lease by reference to the turnover of the business carried on at the leased premises (r 13(3), Regulations).</p> <p>A lessor must not, after the response period ends, take a prescribed action against the lessee on the ground of a failure to pay an amount equal to or representing the increased rent (that would have applied but</p>			<p>lessor and the lessee, be increased (r 7(4), Regulations).</p>	<p>rent) for the duration of the COVID-19 pandemic and a reasonable subsequent recovery period, notwithstanding any arrangements between the landlord and the tenant (leasing principle no. 13) (s 4(1) and s 6(1), Declaration)</p>	<p>person for profit, by a charitable or not-for-profit organisation ; and</p> <ol style="list-style-type: none"> 2. the turnover in a continuous month since 1 Feb 2020 (in relation to the business) has reduced by more than 30% in at least one continuous month since 1 Feb 2020; and 3. the turnover in relation to the business from 1 Feb 2019 to 31 Jan 2020 is less than \$50 million, then – 4. the rent may not be

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		for the response period) (r 13(4), Regulations).					<p>increased (other than by virtue of the rent increasing under the lease), because the turnover increases. (see <i>Notice</i>)</p> <p>Rent that (but for this section) is or would be increased during the financial hardship period (including under the terms of the lease that applied before the financial hardship period) is not payable during or after the financial hardship period if the increase occurs while the lease is a protected lease (s 17(1), Act). The parties to a protected lease</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
							can agree in writing that s17(1 does not apply (s 17(2)).

Subsequent claim on waived rent

Code of Conduct
No fees, interest or other charges should be applied with respect to rent waived in leasing principles no.3 and no. 4 (leasing principle no. 10).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
If any part of the rent payable under an eligible lease has been waived under a variation to the eligible lease or under another agreement between the landlord and tenant that gives effect to rent relief, direct or indirectly, a landlord will be bound by that variation or agreement and will not be able to subsequently make a claim for payment of the	Silent.	Silent.	Silent (in the Act and Modification Notice). No subsequent modification notices made.	Silent.	Silent.	Silent.	Silent.

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
waived part of the rent. (r 10, Regulations).							

Fees, interest or charges

Code of Conduct

No fees, interest or other charges should be applied with respect to rent waived and no fees, charges nor punitive interest may be charged on deferrals nor punitive interest may be charged on deferrals (leasing principle no. 10).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
A landlord under an eligible lease must not require a tenant under the lease to pay interest or any other fee or charge in relation to any payment of rent deferred by variation to the eligible lease or any other rent relief agreement between the landlord and the tenant. (r 17, Regulations).	If a lessee is an impacted lessee, a lessor must not take any prescribed action including requiring a payment of interest on, or a fee or charge related to, unpaid rent or outgoings otherwise payable by a lessee, during the prescribed period. (r 3 and r 6(1), Regulations and r 1 and r 4(1), Conveyancing Regulations).	A lessor under an affected lease must not take a prescribed action, including requesting the payment of interest on, or a fee or charge relating to, unpaid rent or outgoings (r 9(h), Regulations). The variation of the lease or agreement between the parties must provide that the lessor must not, under the lease,	Silent (in the Act and Modification Notice). No subsequent modification notices made.	A landlord cannot take prohibited action during the <i>emergency period</i> on the grounds of a breach by the tenant of a small commercial lease that occurs during the <i>emergency period</i> , including requiring a payment of interest on unpaid rent or other unpaid amount of money payable by the tenant to the landlord, if the breach consists of:	If a lessee is an affected lessee, a lessor cannot take a prescribed action (which includes requiring a payment of interest on unpaid rent otherwise payable by the lessee) against the lessee on the grounds of a breach of the lease during prescribed period consisting of a failure to pay rent or outgoings (r	A lessor must not take any prescribed action (which includes requiring payment of penalty interest on, or a fee or charge related to unpaid rent otherwise payable by the tenant) under the lease against an impacted tenant in relation to a prescribed breach unless the lessor has engaged in good faith negotiations with the tenant (s 8, Declaration).	A lessor under a protected lease must not, during or after the financial hardship period, take or continue any prohibited lessor action (which includes requiring a payment of interest, or any other fee or charge, on unpaid rent otherwise payable by the lessee) on the grounds of a breach of the lease during the financial hardship

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>require the lessee to pay interest or any other fee or charge in relation to an amount of deferred rent, unless the lessee fails to comply with the conditions on which the rent is deferred rent (r 17(2)(c), Regulations).</p>		<ol style="list-style-type: none"> 1. a failure to pay rent or any other amount of money payable by the tenant to the landlord under the small commercial lease (including the landlord's operating expenses); 2. the land or premises that are the subject of the small commercial lease, or the business carried on there, not being open for business at hours or times specified in the small commercial lease. <p>(ss 8 & 9, Act).</p>	<p>7(1), Regulations).</p> <p>Regulation 7(1) does not apply to or in respect of a failure to pay rent if the amount of rent payable under the lease is, during the prescribed period agreed by the parties under a mediation (under regulation 8), or determined by a court (under regulation 9) (r 7(2), Regulations).</p>		<p>period consisting of:</p> <ol style="list-style-type: none"> 1. a failure to pay rent, fees, levies, charges, or outgoings; 2. a failure to meet criteria based on sales performance or another prescribed factor; or 3. the business operating under the lease not being open for business as specified in the lease. <p>(s 7 and s 13, Act).</p>

Actions against tenants for changes to trading

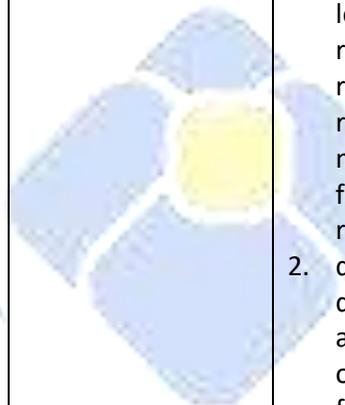
Code of Conduct

Landlords may not apply any prohibition or levy any penalties if tenants reduce opening hours or cease to trade due to the COVID-19 pandemic (leasing principle no. 14).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>If a tenant under an eligible lease reduces the opening hours of the business at the premises or closes the premises and ceases to carry out the business at the premises, a landlord must not:</p> <ol style="list-style-type: none"> 1. evict or attempt to evict a tenant; 2. re-enter or recover, or attempt to re-enter or recover the premises under an eligible lease; 3. have recourse or attempt to have recourse (<p>If a lessee is an impacted lessee, a lessor must not take any prescribed action* (see definition above) against the lessee on the grounds of a breach of the commercial lease during the prescribed period consisting of the business operating under the lease not being open for business during the hours specified in the lease (r 6(1), Regulations and r 4(1), Conveyancing Regulations).</p>	<p>A lessor under an affected lease must not take a prescribed action if the business carried on at the leased premises is not opened for business during the hours required under the lease during the response period (r 12(1)(c), Regulations).</p>	<p>Silent (in the Act and Modification Notice). No subsequent modification notices made.</p>	<p>A landlord cannot take prohibited action during the <i>emergency period</i> on the grounds of a breach by the tenant of a small commercial lease that occurs during the <i>emergency period</i> if the breach consists of the land or premises that are the subject of the small commercial lease, or the business carried on there, not being open for business at hours or times specified in the small commercial lease. (s 9(b), Act).</p>	<p>If a lessee is an affected lessee, a lessor cannot take a prescribed action against the lessee on the grounds of a breach of the lease during prescribed period consisting of the business operating under the lease not being open for business during the hours specified in the lease (r 7(1), Regulations).</p>	<p>A lessor must not take any prescribed action against, or give a termination notice to, an impacted tenant in relation to a prescribed breach, which includes a failure by the tenant during the prescribed period to operate the business on the premises under the lease during the hours required under the lease, unless the lessor has engaged in good faith negotiations (ss 6 and 8, Declaration).</p>	<p>A lessor under a protected lease must not, during or after the financial hardship period, take or continue any prohibited lessor action on the grounds of a breach of the lease during the financial hardship period consisting of the business operating under the lease not being open for business as specified in the lease. (s 13, Act).</p> <p>A lessor in relation to a protected lease:</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
r 18, Regulations).							<ol style="list-style-type: none"> 1. must not, at any time during or after the end of the financial hardship period exercise, in relation to the protected lessee, any right for a relevant reason, or make a claim for a relevant reason; and 2. does not, during or after the end of the financial hardship period, have a cause or action, or any remedy in relation to a relevant reason; and 3. must not, during or after the end

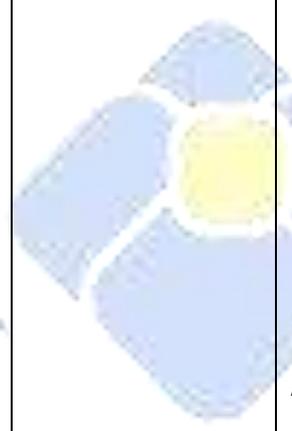
BlueRock



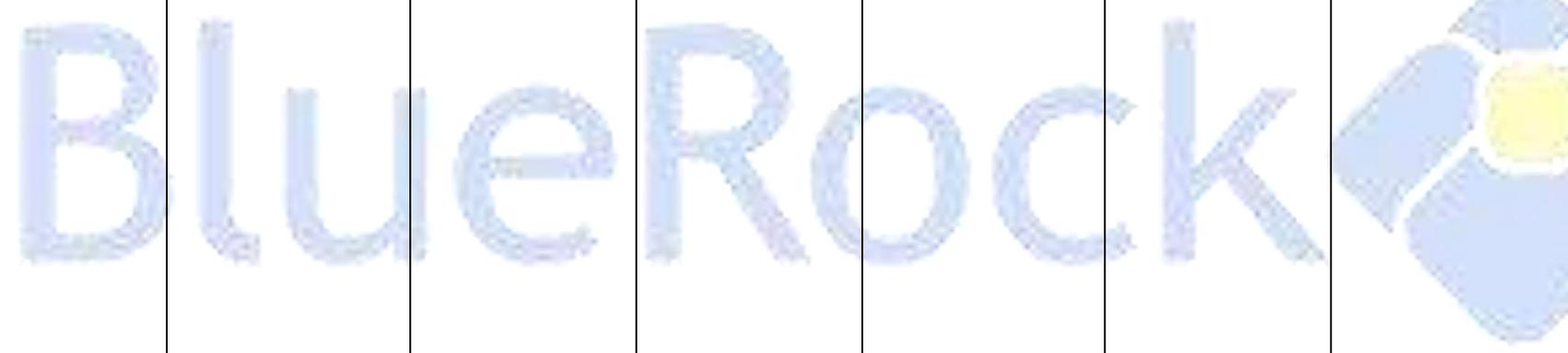
VIC	NSW	QLD	NT	WA	SA	ACT	TAS
							<p>of the financial hardship period, levy any penalty that (but for this section) would be payable by the lessee because of a relevant reason. (s 14(1), Act).</p> <p>A relevant reason is that the lessee has during all or any part of the financial hardship period:</p> <ol style="list-style-type: none"> 1. ceased to trade or indicated that the lessee may cease to trade; or 2. ceased to carry on a business, trade or profession or indicated that the lessee

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
							<p>may cease to carry on a business, trade or profession; or</p> <p>3. ceased to remain open, or indicated that the lessee may cease to remain open, to the public or customers for the purposes of carrying on a trade or profession.</p> <p>(s 14(2), Act).</p> <p>A lessor in relation to a protected lease must not, during or after the financial hardship period apply, to a protected lessee, any prohibition or levy any penalty that (but for this section) would apply or be</p>

BlueRock

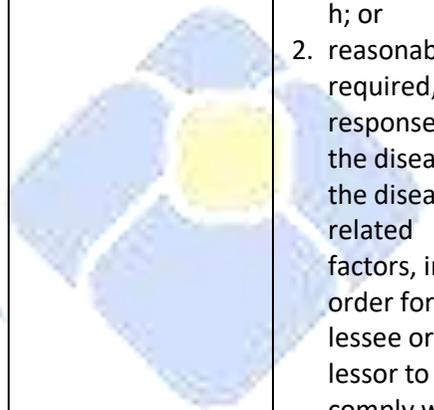


VIC	NSW	QLD	NT	WA	SA	ACT	TAS
							<p>payable by the lessee because the lessee has ceased, or indicated that the lessee may cease, during all or any part of the financial hardship period, to remain open for trading or to carry on a business, trade or profession during the hours or days the lessee would be required to remain open under the lease (s 14(3), Act).</p> <p>An act or omission, of a lessee, or a lessor, in relation to a commercial lease (whether or not it is a protected lease) that is an act, or omission, that during or before the financial</p>



VIC	NSW	QLD	NT	WA	SA	ACT	TAS
							<p>hardship period, is:</p> <ol style="list-style-type: none"> 1. required in response to the disease or the disease-related factors, under the laws of the State or Commonwealth; or 2. reasonably required, in response to the disease or the disease-related factors, in order for the lessee or the lessor to comply with the laws of the State or the Commonwealth, <p>does not, either during or after the financial hardship period, amount to a breach of the</p>

BlueRock



VIC	NSW	QLD	NT	WA	SA	ACT	TAS
							lease and does not constitute grounds for the taking of any prohibited lessor action by the lessor or the taking of any action by the lessee against the lessor (s 11, Act).

Extension of the term

Code of Conduct

The tenant should be provided with an opportunity to extend its lease for an equivalent period of the rent waiver and/or deferral period outlined in leasing principle no. 2. This is intended to provide the tenant additional time to trade, on existing lease terms, during the recovery period after the COVID-19 pandemic concludes (leasing principle no. 12).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
If the payment of any rent is deferred the landlord under the eligible lease must offer the tenant under the eligible lease an extension to the term of their eligible lease on	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no. 12, the tenant should be provided with an opportunity to extend its lease for an equivalent	If the rent under an affected lease is waived or deferred for a period, the lessor must offer the lessee an extension of the term on the same conditions as those contained	Silent (in the Act and Modification Notice). No subsequent modification notices made.	The landlord must offer the tenant an extension of the term of the small commercial lease on the same terms and conditions that applied under the small commercial lease immediately before the	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no. 12, the tenant should be provided with an opportunity to extend its lease for an equivalent	Having regard to the Code of Conduct leasing principles, in particular, leasing principle no. 12, the tenant should be provided with an opportunity to extend its lease for an equivalent	During the financial hardship period a lessor in relation to a protected lease must, at the protected lessee's request, extend the period of the lease on terms and conditions

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>the same terms and conditions that applied under the eligible lease before the commencement of the Regulations. (r, 13, Regulations)</p> <p>The extension must be equivalent to the period for which rent is deferred, unless a landlord and a tenant agree in writing that the regulation does not apply to their eligible lease. (r, 13, Regulations)</p>	<p>period of the rent waiver and/or deferral period. This is intended to provide the tenant additional time to trade, on existing lease terms, during the recovery period after the COVID-19 pandemic concludes (r 7(4), Regulations and r 5(4), Conveyancing Regulations).</p>	<p>in the lease except that the rent payable during the extension must be adjusted for the waiver or deferral (r 18(2), Regulations).</p> <p>The extension offered to the lessee must be equivalent to the period for which rent is waived or deferred (r 18(3), Regulations).</p> <p>The obligation to extend the lease under Regulation 18:</p> <ol style="list-style-type: none"> 1. applies to lessor only to the extent the lessor is not subject to an existing legal obligations that is inconsistent with the 		<p>emergency period (r 9(6), Regulations).</p> <p>The extension offered under r 9(6) must be equivalent to the period for which the rent is deferred, unless the landlord and the tenant agree otherwise in writing (r 9(7), Regulations).</p> <p>Regulation 9(6) does not apply if:</p> <ol style="list-style-type: none"> 1. the landlord is the tenant under a lease (head lease) of the land or premises that are the subject of a small commercial lease and the extension would be inconsistent with the head lease; or 	<p>period of the rent waiver and/or deferral period. This is intended to provide the tenant additional time to trade, on existing lease terms, during the recovery period after the COVID-19 pandemic concludes (r 6, Regulations).</p> <p>If the Court makes an order under regulation 9(5)(e) (an order to defer the payment of rent under an affected lease for a specified period not exceeding 24 months from the day on which the order is made), the Court may also make an order extending the term of the lease for a period for which the rent</p>	<p>period of the rent waiver and/or deferral period. This is intended to provide the tenant additional time to trade, on existing lease terms, during the recovery period after the COVID-19 pandemic concludes (s 4(1), Declaration).</p>	<p>that are to apply until the end of the financial hardship period (or longer period if agreed between the parties). The terms and conditions:</p> <ol style="list-style-type: none"> 1. must be in accordance with the Act; 2. be not less favourable to the lessee than the terms of the protected lease; and 3. that may be modified as required in order to comply with changes to the law that occurred after the protected lease was entered into. (s 15(1), Act).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>obligation to extend the lease under this section and</p> <p>2. does not apply if the lessor demonstrates that the lease cannot be extended because the lessor intends to use the leased premises for a commercial purpose of the lessor.</p> <p>(r 18(4), Regulations)</p>		<p>2. the extension would be inconsistent with any contract or other agreement already entered into by the landlord with another person (other than the tenant) that relates to the land or premises that are the subject of the lease (including an agreement to lease the land or premises to the other person).</p> <p>(r 9(8), Regulations).</p>	<p>is deferred under the order (r 9(9), Regulations).</p>		<p>Note: s 15(1) is subject to exceptions, including if the protected lease is a sublease and the lease will end before the end of the financial hardship period – see s 15(2), Act.</p>

Trading Hours

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>A tenant under an eligible lease is not in breach of the eligible lease if, during the relevant period, they:</p> <ol style="list-style-type: none"> 1. reduce the opening hours of the business carried out at the premises; or 2. close the premises and cease to carry out any business at the premises. (r 18, Regulations) 	<p>Silent, except that a lessor must not take a prescribed action against the lessee for not opening the business during trading hours (see actions against tenants for changes to trading – above).</p> <p>An act or omission of a lessee required under a law of the Commonwealth or the State in response to the COVID-19 pandemic is not taken to amount to a breach of a commercial lease, and does not constitute grounds for termination of the lease or the taking of a prescribed action* (see definition above) by the</p>	<p>Silent, except that a lessor under an affected lease must not take a prescribed action if the business carried on at the leased premises is not open for business during the hours required under the lease during the response period (r 12(1)(c), Regulations).</p>	<p>Silent (in the Act and Modification Notice). No subsequent modification notices made.</p>	<p>An act or omission of a tenant during the emergency period that is required under a written law in response to the COVID-19 pandemic is not to be regarded as:</p> <ol style="list-style-type: none"> 1. breach of a commercial lease, 2. ground for termination of a small commercial lease, 3. ground for the taking of a prohibited action* (see definition above) under, or in respect of, a small commercial lease <p>(s 10, Act).</p>	<p>Silent, except that a lessor must not take a prescribed action against the lessee for not opening the business during trading hours (see actions against tenants for changes to trading – above).</p> <p>An act or omission of a lessee required under the laws of the State in response to the COVID-19 pandemic will not be taken to be a breach of a commercial lease, and will not constitute grounds for termination of the commercial lease or the taking of any</p>	<p>Silent, except that a lessor must not take any prescribed action against, or give a termination notice to, an impacted tenant for a failure by the tenant during the prescribed period to operate the business on the premises under the lease during the hours required under the lease (see actions against tenant for changes to trading – above).</p>	<p>See actions against tenants for changes to trading – above.</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
	lessor against the lessee (r 6(5), Regulations and r 4(5), Conveyancing Regulations).				prescribed action by the lessor against the lessee (r 7(3), Regulations).		

Confidentiality

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
A landlord or tenant under an eligible lease must not divulge or communicate protected information obtained under or in connection with the operation of the Regulations except: <ol style="list-style-type: none"> with the consent of the person to whom the information relates; or to a professional adviser who agrees to keep 	Silent.	A party to an eligible lease dispute must not disclose protected information obtained under or as a result of the operation of the regulations other than – <ol style="list-style-type: none"> with the consent of the person to whom the information relates; or to a professional advisor or financier who agrees to 	Silent (in the Act and Modification Notice). No subsequent modification notices made.	A landlord or tenant under a small commercial lease must not, directly or indirectly, disclose protected information* obtained under or in connection with the operation of the Regulations unless the disclosure is authorised. The disclosure of protected information is authorised if it is disclosed in good faith in any of the	A person must not divulge or communicate personal information, information relating to business processes or financial information (including information about the turnover of a business) obtained in connection with a mediation under the Regulations except:	Silent.	A person must not divulge or communicate confidential personal information, confidential information relating to business processes or confidential financial information (including information about a prescribed factor in relation to a business) obtained in

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>it confidential; or</p> <p>3. to an actual or prospective financier who agrees to keep it confidential; or</p> <p>4. as authorised by the Small Business Commission; or</p> <p>5. as authorised under law; or</p> <p>6. for the purposes of any proceeding in a court or tribunal.</p> <p>Personal information means the name, address and contact details of any persons (other than the landlord or tenant).</p> <p>Protected information means personal information, or information relating to business</p>		<p>keep the information confidential; or</p> <p>3. to the extent the information is available to the public; or</p> <p>4. as authorised by the small business commissioner; or</p> <p>5. as authorised under the Act or law.</p> <p>Maximum penalty – 20 penalty units. (r 20(1), Regulations).</p> <p>A party to an eligible lease dispute must not use protected information for any purpose other than for negotiating or resolving the eligible lease</p>		<p>following circumstances:</p> <p>1. with the consent of the person to whom the information relates;</p> <p>2. to a professional adviser who agrees to keep it confidential;</p> <p>3. to an actual or prospective financier who agrees to keep it confidential;</p> <p>4. under a written law;</p> <p>5. for the purpose of making a request under s18 of the Act;</p> <p>6. for the purpose of resolving a dispute with the assistance of the Commissioner;</p> <p>7. for the purposes of an</p>	<p>1. with the consent of the person to whom the information relates; or</p> <p>2. in connection with the administration of the regulations; or</p> <p>3. as authorised by the Commissioner; or</p> <p>4. for the purposes of legal proceedings; or</p> <p>5. to a police officer or a law enforcement officer of another State, Territory or the Commonwealth; or</p>		<p>connection with the Act, except:</p> <p>1. with the consent of the person to whom the information relates; or</p> <p>2. in connection with the administration of the Act; or</p> <p>3. as authorised by the Act</p> <p>4. to a person acting in a professional capacity as an adviser to the person;</p> <p>5. as authorised by the Mediation Provider under the <i>Commercial Arbitration Act 2011</i>;</p> <p>6. for the purposes of legal</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>processes or financial information (including information about the trade of a business).</p> <p>(r 19, Regulations).</p>		<p>dispute under this regulation. Maximum penalty – 20 penalty units. (r 20(2), Regulations).</p> <p>Protected information means personal information, or information relating to business processes or financial information (including information about the trade of a business).</p> <p>Personal information means the name, address and contact details of any persons other than the lessor or lessee of the lease the subject of an eligible lease dispute.</p>		<p>alternative dispute resolution proceeds under the <i>Small Business Development Corporation Act 1983</i>;</p> <p>8. for the purpose of making an application under s 16(1) of the Act;</p> <p>9. for the purposes of proceedings under the Act in a Tribunal or a court. (cl 13, Sch 1, Regulations)</p> <p>Protected information means the name, address and contact details of any persons other than the landlord or the tenant under the small commercial lease, or</p>	<p>6. as authorised or required by law. (r 8(6), Regulations).</p>		<p>proceedings; or</p> <p>7. to a police officer or a law enforcement officer of this or another State, Territory or the Commonwealth</p> <p>A party to a protected lease must not provide to another party to the protected lease, or to the Mediation Provider, information that is false or misleading, or likely to mislead the other party or the Mediation Provider.</p> <p>Penalties apply – up to 300 penalty units for a body corporate; and up</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
				information relating to business processes or financial information (including information about the trade of a business). (cl 2, Sch 1, Regulations)			to 50 penalty units for an individual. (s 16, Act).

Dispute Resolution

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>Mediation procedure</p> <p>A landlord or tenant under an eligible lease may refer (in writing) a dispute about the terms of the eligible lease arising in relation to a matter to which the Regulations (an eligible lease dispute) to the Small Business Commission for</p>	<p>Impacted commercial lease dispute means any dispute concerning the liabilities or obligations (including any obligation to pay money) under a commercial lease to which an impacted lessee is a party, being liabilities or obligations which arose under the commercial lease</p>	<p>Eligible lease dispute means affected lease disputes and small business tenancy disputes (r 21, Regulations).</p> <p>If a provision of an affected lease or a business lease requires or permits a dispute under or about the lease to be dealt with using a</p>	<p>If a business lease requires negotiations or an alternative dispute resolution process between the parties before a notice to quite can be given, those requirements continue to have effect to the extent that they are not contrary to the landlord's obligation to</p>	<p>Dispute means a dispute between the parties to a lease, or 1 or more parties to a lease and a person who has given a guarantee in respect of the lease, that arises out of, or in relation to, the operation of the Act and includes a code of conduct dispute, and a</p>	<p>Relevant dispute, means</p> <p>1. a dispute in relation to whether or not, for the purpose of the Act and the Regulations, a lessee is suffering financial hardship as a result of the</p>	<p>Silent. However, a lessor must not give a termination notice to, or take any prescribed action against, an impacted tenant in relation to a prescribed breach unless the lessor has engaged in good faith negotiations with an impacted tenant having regard to the overarching principles and</p>	<p>The parties to a protected lease must attempt to resolve by direct negotiation a dispute between the parties that arises during the financial hardship period, or that, in the financial hardship period, relates to a right or obligation under the Act (s22(1), Act).</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>mediation. (r 20, Regulations)</p> <p>The Small Business Commission may, in relation to an eligible lease dispute, perform or exercise any of the functions or powers that the Commission has under the dispute resolution provisions (Part 10) of the <i>Retail Leases Act 2003</i> (Vic). (r 20, Regulations)</p> <p>Mediation is not limited to formal mediation procedures and extends to preliminary assistance in dispute resolution, including giving advice designed to ensure that the landlord and the tenant are fully aware of their rights and</p>	<p>concerning circumstances occurring during the prescribed period and includes a dispute regarding a renegotiations (or a failure to take part in a renegotiation) or rent payable under the commercial lease (r 8(2), Regulations).</p> <p>Part 8 (Dispute resolution) of <i>Retail Leases Act 1994</i> (NSW) extends to an impacted commercial lease dispute as if it were a retail tenancy dispute (r 8(1), Regulations).</p> <p>This dispute resolution process requires a retail tenancy dispute to be submitted to mediation before proceedings can be</p>	<p>particular procedure, the provision does not prevent a party from starting mediation under this part, even if the procedure under the lease has not been complied with (r 22, Regulations).</p> <p>To the extent the parties agree, or are required under a law or industry code, to undertake a dispute resolution process, the small business commissioner may, but is not required to, provide assistance or information to the parties in relation to resolving the dispute (r 23, Regulations).</p>	<p>negotiate before giving a notice to quit, and the negotiation period must run concurrently with any period for the negotiation period or alternative dispute resolution process.</p>	<p>financial hardship dispute (s 14, Act).</p> <p>Code of conduct dispute means a dispute arising out of or in relation to the application of the code of conduct in relation to a lease (including, without limitation, a dispute about the waiver or deferral of rent payable under a lease) (s 14, Act).</p> <p>Financial hardship in relation to a tenant, means financial hardship suffered by the tenant as a result of 1 or more of the following:</p> <ol style="list-style-type: none"> 1. a restriction imposed under a written law in response to COVID-19 pandemic; 	<ol style="list-style-type: none"> 2. COVID-19 pandemic; or a dispute in relation to the provision of rent relief during the prescribed period (including a failure of a party to a lease to take part in a negotiation in respect of the provision of rent relief); or 3. a dispute in relation to issues that have occurred in relation to the COVID-19 pandemic arising from or related to the operation of the regulations or the commercial 	<p>leasing principles set out in the Code of Conduct, which provides that, where landlords and tenant cannot reach agreement on leasing arrangements (as a direct result of the COVID-19 pandemic), the matter should be referred and subjected (by either party) to applicable territory retail/commercial leasing dispute resolution processes for binding mediation, including Small Business Commissioners where applicable. Landlords and tenants must not use mediation processes to prolong or frustrate the facilitation of amicable resolution</p>	<p>A party to a protected lease may apply to the mediation provider for mediation of a dispute, in relation to issues that arise from, or are related to, the operation of the Act, and the mediator provider may mediate between the parties to assist them to determine the dispute (s 23, Act).</p> <p>The mediation provider may, by notice to a party to the protected lease, require the party to provide to the mediation provider, information that may be relevant to the mediation (s 24, Act).</p>

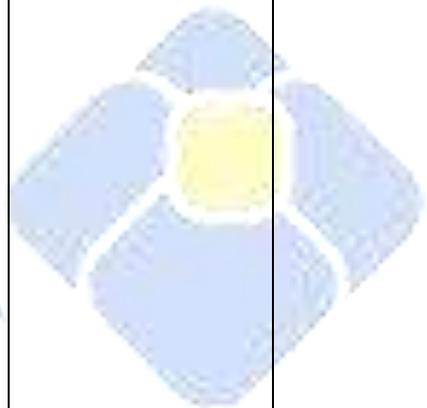
VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>obligations, and there is full and open communication between the landlord and the tenant concerning the matter. (r 20, Regulations)</p> <p>The parties must not use mediation to prolong or frustrate reaching an agreement. (r 20, Regulations)</p> <p>Either party may be represented by a legal practitioner in a mediation of an eligible dispute, but the mediator may (if appropriate) meet with the landlord or the tenant without their legal practitioners being present. (r 21, Regulations)</p>	<p>taken. The Registrar must certify that mediation has failed to resolve a retail tenancy dispute.</p> <p>For non-retail shop lease, a lessor must not seek to recovery possession of premises or land under the commercial lease, terminate the commercial lease or exercise or enforce any other right of the lessor under the lease until the Small Business Commissioner has certified in writing that mediation has failed to resolve the dispute and give reasons for the failure (r 6, Conveyancing Regulations).</p>	<p>If an eligible lease dispute arises in relation to a retail shop lease, these Regulations apply to the dispute (not Part 8 of the <i>Retail Shop Leases Act 1994</i>) (r 24, Regulations).</p> <p>Before starting mediation for an eligible lease dispute, parties to the lease must attempt to resolve the dispute and must cooperate and act reasonably and in good faith in all discussions and actions associated with the dispute (r 25, Regulations).</p> <p>A party to an eligible lease may give notice of the dispute to the small business</p>		<p>2. changes in societal behaviour in response to the COVID-19 pandemic;</p> <p>3. any other consequences of the COVID-19 pandemic (s 14, Act).</p> <p>A financial hardship dispute is a dispute between the parties to a small commercial lease in the following situation:</p> <p>1. during the emergency period, the tenant has breached the small commercial lease by failing to pay rent or other amount payable by the tenant to the landlord (including</p>	<p>lease, or related to any other matter relevant to the occupation of the premises or to a business conducted at the premises the subject of the commercial lease (r 3, Regulations).</p> <p>A party to a commercial lease may apply to the Commissioner for mediation of a relevant dispute in relation to a commercial lease. However, a lessee may not apply to the Commissioner for mediation of a relevant dispute in relation to a commercial lease unless the lessee</p>	<p>outcomes (s 4(1) and s 6(1) and s 8(1), Declaration).</p> <p>A party to a protected lease may, whether or not either party has applied under s 23 for mediation, seek to have a dispute arbitrated under the <i>Commercial Arbitration Act 2011</i> (s 26, Act).</p>	<p>Unless otherwise agreed in writing between the parties, each party is to bear the party's own costs (s 25, Act).</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>commissioner. The dispute notice must be in the form approved by the commissioner. As soon as practicable after receiving the dispute notice, in the commissioner must accept or dismiss the dispute notice. The small business commissioner may dismiss the dispute notice if the commissioner considers the dispute notice:</p> <ol style="list-style-type: none"> 1. does not relate to an eligible lease dispute; or 2. is frivolous or vexatious; or 3. has not been given in good faith. <p>(r 26, Regulations).</p>		<p>operating expenses); and</p> <ol style="list-style-type: none"> 2. the landlord claims that the breach was not a result of the tenant suffering financial hardship; and 3. the landlord has not granted the tenant a waiver, deferral or reduction in respect of the unpaid rent or other unpaid amount of money (s 14(2), Act). <p>If the lease to which a dispute relates is a small commercial lease, or the landlord under the lease to which the dispute relates owns or operates a small business and the lease is granted in</p>	<p>is, or is claiming to be, an affected lessee (r8(1)-(2), Regulations).</p> <p>The Commissioner may, in exercising any functions or powers under the Regulations in relation to a matter, exercise any of the powers or functions the Commissioner is able to exercise under Part 7 of the <i>Fair Trading Act 1987</i> in relation to that matter (r 8(3), Regulations).</p> <p>The Commissioner must issue the parties to a commercial lease (which is subject to an application under regulation 8(1), with a certificate in a</p>		

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>As soon as practicable after the small business commissioner accepts a dispute notice, the commissioner must:</p> <ol style="list-style-type: none"> 1. nominate a mediator to mediate the eligible lease dispute; and 2. give written notice to each party stating the details of the mediator and the time and date of the mediation conference (which must be at least 7 days after the notice is given). <p>A party may, within 2 days after the notice is received, ask the</p>		<p>the court of that business, a party may request the Commissioner to:</p> <ol style="list-style-type: none"> 1. provide assistance to attempt to resolve the dispute; or 2. undertake alternative dispute resolution in respect of the dispute. <p>The request must be made during the emergency period (s 18, Act).</p>	<p>form determined by the Commissioner stating the names of the parties and:</p> <ol style="list-style-type: none"> 1. if the mediation has failed or is unlikely to resolve the dispute – that the mediation has been terminated without resolution; or 2. if mediation would not be reasonable in the circumstances – that fact; or 3. if a party to the commercial lease refused to participate, or did not participate in good faith, in 		

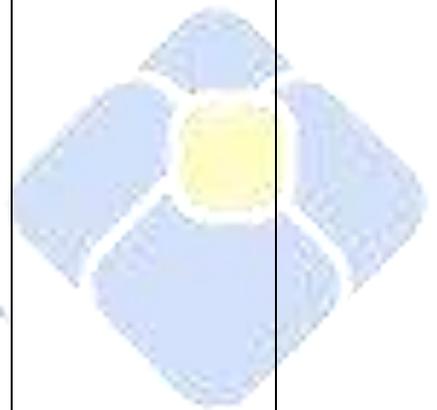
VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>mediator to mediate related disputes together at the mediation conference.</p> <p>If the mediator receives such request and the parties agree, the mediator must provide a further notice of the mediation conference details.</p> <p>If the parties and mediator agree, the mediation may be held by teleconferencing or videoconferencing.</p> <p>(r 27, Regulations).</p> <p>A party to an eligible lease dispute may be represented at mediation by an agent or an officer or employee of the</p>			<p>mediation – that fact.</p> <p>(r 8(4), Regulations).</p>		

BlueRock



VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>corporation (if the party is a corporation). A party may be represented by a lawyer only with the approval of the mediator, if the mediator considers that legal representation would assist the parties in mediating an outcome to the dispute, or is otherwise justified having regard to particular / complex matters. (r 28, Regulations).</p> <p>The mediator may allow a person to attend and participate in mediation if the mediator is satisfied the person has an interest in the</p>					

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>resolution. However, before the conference, notice of the person's attendance must be given to each party. A person who participates or attends does not become a party to the dispute (r 31, Regulations).</p> <p>The mediation conference is not open to the public (r 29, Regulations).</p> <p>A party who is given notice of the mediation conference must attend unless the party has a reasonable excuse. If a party fails to attend, a court or tribunal may award costs against the party in a proceeding</p>					



VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>relating to the eligible lease dispute (r 30, Regulations).</p> <p>If the parties reach an agreement about the dispute at the mediation conference, the settlement agreement must be recorded in writing and signed by the parties (r 32, Regulations).</p> <p>As soon as practicable after the mediation ends, the mediator must give each party a copy of the signed settlement agreement, or a notice about the outcome of the mediation. If a notice is given, it must not state anything about</p>					

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>the extent to which a party acted in good faith but may state that a party did not attend the mediation conference (r 33, Regulations).</p> <p>Evidence of anything said in mediation is not admissible in a proceeding before a court or tribunal (r 34, Regulations).</p> <p>A dispute notice may be withdrawn by written notice to the small business commissioner, unless the person has made an application about the dispute to QCAT or a court. The notice may be given before or after a</p>					

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>mediator has started mediating the dispute (r 35, Regulations). <i>(Refer to r 36 for exclusion of other proceedings if mediation has started).</i></p> <p>Each party to an eligible lease dispute must pay the party's own costs for the mediation conference, unless otherwise ordered by QCAT or a court. The small business commissioner pays the mediator's fees and costs (r 37, Regulations).</p> <p><i>See also Division 4, rr 38 – 40, Regulations – functions and requirements of mediators).</i></p>					

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		A mediator or court may have regard to whether or not a lessor or lessee under an affected lease has complied with regulation 11 (obligation to cooperate, act reasonably and in good faith) in a proceeding relating to the affected lease.					

Determination of Disputes

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
An eligible lease dispute may only be the subject of a proceeding in VCAT or a court (other than the Supreme Court) if the Small Business commission has certified in writing that mediation has failed or is unlikely	The Tribunal and any court, when considering whether to make a decision or order relating to any of the following, is to have regard to the leasing principles set out in the Code of Conduct—	If the parties to a dispute cannot reach a settlement agreement, a party does not attend the mediation conference (without a reasonable excuse), the	The parties to an application for a warrant of possession made during the emergency period must bear their own costs. The Local Court may make the following order in	A party to a dispute may apply to the Tribunal to have the dispute determined by the Tribunal (s 16(1), Act). The application must be made during the emergency period	A party to a commercial lease may apply to the Court for resolution of a relevant dispute in relation to a commercial lease if the Commissioner has issued a certificate under	Silent (but see to dispute resolution – above).	Silent (but see to dispute resolution – above).

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>to resolve the dispute, or the landlord or tenant has sought, and the Supreme Court has granted, leave to commence a proceeding in relation to the dispute. (r 23, Regulations)</p> <p><i>Note: this does not apply to a proceeding for an injunction or affect the validity of any decision made by VCAT or a court.</i></p>	<ol style="list-style-type: none"> the recovery of possession of premises or land from a lessee, the termination of a commercial lease by a lessor, the exercise or enforcement of another right of a lessor of premises or land. <p>(r 9, Regulations and r 7, Conveyancing Regulations).</p> <p>Nothing in the Regulations excludes the rules of equity and of common law from applying to the determination of a dispute concerning –</p> <ol style="list-style-type: none"> the recovery of possession of premises or 	<p>dispute is not settled within 30 days after the dispute notice is given, or a party to a settlement agreement claims the other party has not complied with the agreement, and no more than 6 months has lapsed since the affected lease ended or the lessee was required to pay the deferred rent, then a party may apply to QCAT for an order to resolve the dispute.</p> <p><i>See also rr 42 – 44, Regulations – QCAT jurisdiction and orders.</i></p> <p>If the lessee is a franchisor who is the lessee of the premises</p>	<p>relation to an application for a warrant of possession made during the emergency period:</p> <ol style="list-style-type: none"> a costs order on a standard basis in favour of the applicant if satisfied that the tenant’s financial situation was not substantially affected by COVID-19, or the tenant significantly breached the business lease other than, or in addition to, failing to pay rent during the emergency period; a costs order on a standard basis in favour 	<p>unless the Commissioner has issued a certificate under s 19 in respect of the dispute (s16(2), Act).</p> <p>If the dispute relates to a small commercial lease, or the landlord under the lease owns or operates a small business and the lease in granted in the course of that business, an application in respect of the dispute cannot be made to the Tribunal unless:</p> <ol style="list-style-type: none"> none of the parties to the dispute has made a request to the Commissioner under s18 and the parties agree that the 	<p>regulation 8(4) (r 9(1)-(2), Regulations).</p> <p>The Court may determine whether or not a lessee is an affected lessee. In making that determination, the Court may have regard to:</p> <ol style="list-style-type: none"> whether or not the lessee is eligible for, or receiving, a Jobkeeper payment in respect of the business of the lessee (whether in their capacity as an employer or on their own behalf); any reduction in turnover of the business of the lessee 		

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
	<p>land from a lessee, or</p> <p>2. the termination of a commercial lease by a lessor, or</p> <p>3. the exercise or enforcement of another right of a lessor of premises or land (r 11, Regulations and r 9, Conveyancing Regulations).</p>	<p>occupied by the franchisee, an application may be made jointly with the franchisee (r 12(4)(a), Regulations).</p> <p>If the lessee is a franchisee and the franchisor is the lessee of the premises occupied by the franchisee, the franchisor may apply to have the lessor of the premises joined in the matter (r 12(4)(b), Regulations).</p> <p>The lessee under the affected lease may apply to QCAT or a court with jurisdiction to hear the matter for an order preventing the lessor from taking a</p>	<p>of the tenant if satisfied that the application was without merit,</p> <p>3. a costs order against a party if the party failed to genuinely attempt to enable and assist the Court to make a decision, or the party acted unreasonably in a way that resulted in unnecessary costs being incurred,</p> <p>4. an order under s32 of the <i>Local Court (Civil Procedure) Act 1989</i>. (s 4, Modification Notice).</p>	<p>application can be made; or</p> <p>2. the Commissioner has issued a certificate under s 19 in respect of the dispute (s 16(4), Act).</p> <p>(see also s 17, Act – Tribunal’s powers to make orders) A dispute can be heard by Tribunal if a request is made to the Commissioner under s 18 and the Commissioner is satisfied that –</p> <p>1. the dispute is unlikely to be resolved with the assistance of alternative dispute resolution; or</p> <p>2. it would not be reasonable in the circumstances</p>	<p>(as verified by financial records or statement provided by the lessee) during a specified period as compared with another specified period determined by the Court as being relevant in the circumstance s of whether or not the lessee is suffering financial hardship as a result of the COVID-19 pandemic (r 9(3)-(4), Regulations).</p> <p><i>See also r 8(5), Regulations –</i></p>		

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>prescribed action on the grounds of non-payment of rent or outgoings, or for the closure of the business carried on at the leased premises during the response period (r 12(3), Regulations).</p> <p>In the proceeding, QCAT or a court may make any order it considers appropriate, and award costs against the lessor or the lessee in the proceeding (r 12(5), Regulations).</p>		<p>to commence an alternative dispute resolution process; or</p> <p>3. alternative dispute resolution has failed to resolve the dispute (s 19, Act).</p>	<p><i>orders the Court may make.</i></p> <p>The Court may, at any time, on application by a party to a commercial lease, vary or revoke an order imposed by the Court under the regulations and make such other orders as the Court thinks necessary in the circumstances (r 9(10), Regulations).</p>		

Other

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>Tax relief</p> <p>A landlord under an eligible lease may give the</p>	<p>Non-COVID-19 related matters</p> <p>Nothing in the Regulations</p>	<p>Exemptions for lessee complying with COVID-19</p>	<p>No other provisions (in the Act or Modification</p>	<p>No other provisions.</p>	<p>Validity not affected by expiry of Act</p>	<p>No other provisions.</p>	<p>No other provisions.</p>

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
<p>statement and information given to the landlord by a tenant under Regulation 10(2) (in relation to the tenant's rent relief request) to the Commissioner of State Revenue for the purpose of applying to be eligible for a tax relief measure in relation to any tax paid or required to be paid by the landlord in relation to the premises. (r 24, Regulations)</p>	<p>prevents a lessor taking prescribed action on grounds not related to the economic impacts of COVID-19 (r 10, Regulations, r 9, Conveyancing Regulations).</p> <p>A lessor and impacted lessee are not prevented from agreeing to the parties taking any action in relation to the commercial lease (including the lessor taking any prescribed action or the parties agreeing to terminate the commercial lease) (r 6(6), Regulations as amended by the Amending Regulations and r 4(6), Conveyancing Regulations).</p>	<p>response measures</p> <p>An act or omission of a lessee under a retail shop lease, prescribed lease or other small business lease is not taken to amount to a breach of the lease and does not constitute grounds for termination of the lease or the taking of prescribed action by the lessor if the act or omission occurs on or after the commencement of the Act and is required under a COVID-19 response measure or any other national or state laws (r 47, Regulations).</p>	<p>Notice). No subsequent modification notices made.</p>		<p>Without derogating from s16 of the <i>Acts Interpretation Act 1915</i>, the expiry of a provision of this Act under this section does not affect the validity or operation of anything done in accordance with the provision before that expiry (s 6(3), Act).</p>		

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>Suspension or prescribed action by lessor started during pre-commencement period</p> <p>If during the pre-commencement period:</p> <ol style="list-style-type: none"> 1. a proceeding for a lease dispute was started in relation to the lease; or 2. the lessor under the lease had started or taken an action that, if it had been started or taken after the commencement, would constitute taking a prescribed action, <p>and on the commencement</p>					

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>the dispute has not resolved or the action has not been completed or finalised, the proceeding or action is taken to be stayed or suspended until the response period ends (r 48, Regulations).</p> <p>Retail tenancy disputes started before commencement If a dispute notice was lodged under the <i>Retail Shop Leases Act 1994</i> before the commencement, and on the commencement the retail tenancy dispute is also an eligible lease dispute and the dispute has not been resolved, the Retail Shop Leases Act part 8, continues to</p>					

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
		<p>apply for the retail tenancy dispute. However, it is still subject to any suspensions of the dispute (under r 48), and does not prevent a person starting mediation (r 49, Regulations).</p> <p>Retrospective application A regulation made under s23 of the Act may have retrospective operation to a day not earlier than the commencement of the Act (s 23(2)(b), Act).</p>					

Other resources

VIC	NSW	QLD	NT	WA	SA	ACT	TAS
Victorian Small Business Commission – Commercial tenancy relief scheme -support for tenants and landlords in response to COVID-19 FAQs	New South Wales Business Commissioner – commercial leases and COVID-19 FAQs	Queensland Small Business Commissioner – Small business leasing advice and dispute resolution	Northern Territory Consumer Affairs – commercial leases affected by COVID-19	Small Business Development Corporation – FAQs – COVID-19 commercial tenancy changes	Small Business Commissioner South Australia – Essential Information for Lessees and Lessors dealing with COVID-19	ACT Government – COVID-19 commercial tenancies information	Consumer, Building and Occupation Services Tasmania – Changes to commercial tenancies during COVID-19

