



FACT SHEET – PROPERTY

The COVID19 crisis financial response has predominantly been directed to businesses with the focus being on maintaining employment to the greatest extent possible. There has been growing concern among landlords and tenants on the ability to continue to maintain lease arrangements and the National Cabinet has responded with recent announcements concerning a moratorium on evictions and a Code of Conduct for arrangements between Landlords and SME tenants. These matters are detailed further below.

Moratorium on Evictions

On 29 March 2020, the National Cabinet announced a 6-month moratorium on evictions for commercial and residential tenancies in financial distress who are unable to meet their lease commitments due to the impact of COVID-19. Landlords and tenants not significantly affected by COVID-19 are expected to honour their lease and rental agreements.

Mandatory Code of Conduct

On 7 April 2020, the National Cabinet announced that the states and territories will implement a mandatory Code of Conduct in the commercial property sector. State and Territories are expected to subsequently legislate the code into law. A copy of the code can be found [here](#).

Who will it apply to?

The code applies from 3 April 2020 to all commercial tenancies (including retail, office and industrial) where the tenant is suffering financial stress or hardship as a result of the COVID-19 pandemic, defined by their eligibility for the Commonwealth Government's JobKeeper programme, up to an annual turnover up to \$50 million. See [here](#) for JobKeeper eligibility.

How does the code apply?

The following set of principles must be followed:

1. Landlords must not terminate leases due to non-payment of rent during the COVID-19 pandemic period (or reasonable subsequent recovery period).
2. Tenants must remain committed to the terms of their lease, subject to any amendments to their rental agreement.
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, based on the reduction in the tenant's trade during the COVID-19 pandemic period (or reasonable subsequent recovery period).
4. Rental waivers must constitute no less than 50% of the total reduction in rent payable.
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.
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 lease.
7. A landlord should seek to share any benefit it receives due to deferral of loan payments, with the tenant in a proportionate manner.
8. Landlords should where appropriate seek to waive recovery of any other expense (or outgoing payable) by a tenant, during the period that tenant is not able to trade.



9. If negotiated arrangements under this Code necessitate repayment, this should occur over an extended period in order to avoid placing an undue financial burden on the tenant.
10. No fees, interest or other charges should be applied to the rent waivers or rent deferrals.
11. Landlords must not draw on a tenant's security (cash bond, bank or personal guarantee) for the non-payment of rent.
12. The tenant should be provided with an opportunity to extend its lease for an equivalent period of the rent waiver and deferral period.
13. Landlords agree to a freeze on rent increases (except for retail leases based on turnover rent) for the duration of the COVID-19 pandemic period (or reasonable subsequent recovery period).
14. Landlords must not apply any prohibition or levy any penalties if tenants reduce opening hours or cease to trade due to the COVID-19 pandemic.

Practical Example

A commercial tenant who qualifies for the JobKeeper Programme, business turnover has reduced by 40% due to COVID-19 pandemic. The tenant's current leasehold is \$60,000+GST annually, with payments of \$5,000+GST to be paid monthly.

The tenant would be eligible for a total 40% rent waiver and deferral based on the reduction of turnover. At least half of this (20%) would need to be a rent waiver and with the balance being a rent deferral, which is to be recouped over at least 24 months in a manner negotiated by landlord and tenant.

If the tenant was to receive a 20% rent waiver, the tenant would receive a \$1,000+GST rent waiver and a \$1,000+GST rent deferral per month during the COVID-19 pandemic period (or reasonable subsequent recovery period). The \$1,000+GST rental deferral would need to be repaid over a minimum of 24 months. The tenant would still be required to pay \$3,000+GST to the landlord each month.

What if the Landlords and Tenants cannot reach agreement?

If the parties cannot reach agreement on leasing arrangements, the matter should be referred and subjected to applicable state or territory retail/commercial leasing dispute resolution processes for binding mediation.

Does the code apply to Residential tenancies?

No, it only applies to commercial tenancies.

How do Landlords verify the reduction in the tenant's trade?

Landlords and tenants are expected to act in an open, honest and transparent manner, and will each provide sufficient and accurate information within the context of negotiations to achieve outcomes consistent with this code.





Queensland Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020

The *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* came into effect in Queensland on 28 May 2020. The Regulation implements the National Cabinet Mandatory Code of Conduct – SME commercial leasing principles during COVID-19 and applies to lease arrangements between 29 March 2020 to 30 September 2020.

The main purposes of the Regulation are to mitigate the effects of the COVID-19 pandemic on landlords and tenants under affected commercial and retail leases and to establish a process for resolving small business tenancy disputes and affected lease disputes.

Which leases are affected by the regulation?

The Regulation primarily governs an affected lease in accordance with the provided definition. A lease will be considered an affected lease if the following conditions are met:

- the lease is a retail shop lease, or a lease carrying on business; and
- the lease is binding on the tenant as at 28 May 2020 (whether or not it has commenced); and
- the tenant is a Small-Medium Enterprise ('SME') entity (which is generally an entity with less than \$50 million turnover); and
- the tenant is eligible for the JobKeeper Payment scheme.

If these conditions are met, the lease will be considered an affected lease and will be subject to the Regulation. Note that farming, agricultural and pastoral leases are generally excluded from Regulation and are not an affected lease.

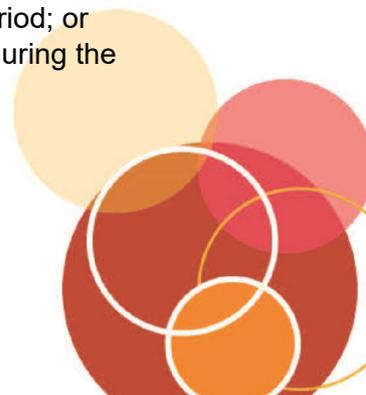
What actions are Landlords prohibited from doing?

Landlords are prohibited from taking any of these actions or starting court or tribunal proceedings for any of the following:

- recovery of possession, exercising a right of re-entry or forfeiture;
- termination of the lease or eviction of the tenant;
- seizure of any property, including for the purpose of securing payment of rent;
- damages;
- the payment of interest on, or a fee or charge relating to, unpaid rent or outgoings;
- a claim on a bank guarantee, indemnity or security deposit for unpaid rent or outgoings;
- the performance of an obligation by the lessee or another person under a guarantee under the lease; or
- exercising or enforcing another right the by the landlord under the lease or other agreement.

On the grounds of:

- a failure to pay rent for a period occurring wholly or partly during the response period; or
- the tenant not operating the business during the hours required under the lease during the response period.





However, the above prohibited actions can be taken:

- in accordance with an agreement made under the COVID Regulation, including to resolve a dispute, or an order of a court or tribunal
- a substantial failure by the tenant to comply with an obligation about negotiations under the COVID Regulation; or
- on a ground not related to the COVID emergency.

What obligations are on the Landlord and Tenant?

The landlord and the tenant under an affected lease must:

- cooperate;
- act reasonably; and
- act in good faith

in all discussions and actions which are associated with lessening the effect of the COVID-19 emergency; and other matters such as:

- renegotiating rent;
- renegotiating conditions of the lease
- exchanging information relevant to those negotiations
- extending the term of the lease
- reducing services at the premises.

What is the process to renegotiate rent due to COVID-19?

Either party to an affected lease can initiate the process to renegotiate rent and other conditions of the lease. The initiating request must be in writing. After the initiator's request, the parties must give each other information that is:

- true, accurate, correct and not misleading; and
- sufficient to enable the parties to negotiate in a fair and transparent way.

What are examples of sufficient information?

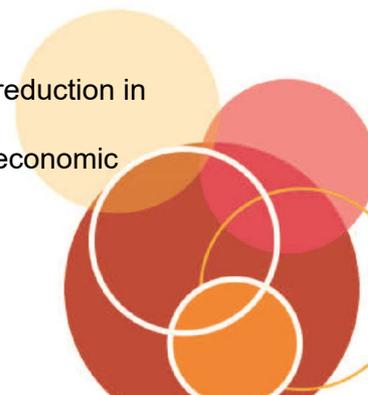
A statement by the tenant that demonstrates why the lease is an affected lease (plus supporting financial information), steps taken by the tenant to mitigate the effects of the COVID-19 emergency and evidence of the tenant's eligibility for Jobkeeper.

What rent reduction must be offered under the Regulation?

Within 30 days after the parties provide sufficient information, the landlord must offer the tenant a reduction in the amount of rent payable under the lease, along with any other proposed changes to the lease terms.

The landlord must offer a rent reduction on the following basis:

- a waiver of at least 50 per cent of the total rent reduction
- considering all the circumstances of the lessee and the affected lease, including reduction in turnover for the premises
- considering the respective capacities of the landlord and tenant to cope with the economic effects of the COVID emergency and any reduction in rent.





Is there a rent freeze?

During the Response Period landlords are prohibited from requiring a tenant to pay increased rent unless the rent is based on turnover. Scheduled increases can be applied but must not be passed on to the tenant until the Response Period ends.

What if the parties agree to a rent deferral?

Where the parties agree to defer part of the rent, repayment of the deferred rent must not commence until 1 October 2020. The deferred component of the rent reduction is to be amortised over a period of at least 2 years and no more than 3 years. No interest, fee or charge must be charged on the rent deferral. The landlord can continue to hold any security provided under the lease until the deferred rent is paid.

Does the Landlord have to offer a lease extension?

If a rent reduction is agreed, then the landlord must also offer a term extension for the reduction period. This would apply to pre-existing agreements to reduce or defer rent. However, the landlord does not need to offer the extension if that would cause a breach of another agreement or interfere with other commercial purposes of the landlord.

Can further rent negotiations take place?

Either party may initiate a repeat of the process if a ground on which the original agreement was based changes in a material way, but any further rent relief need not include 50% of that rent relief as a rent waiver.

What if the parties do not agree?

If the parties have attempted to resolve disputes, however, cannot reach an agreement, parties may issue a dispute notice to the Small Business Commissioner ('commissioner'). The commissioner has the discretion to accept or reject the notice.

The commissioner may reject the notice if:

- it does not relate to eligible lease dispute
- it is frivolous or vexatious
- has not been given in good faith

If the notice has been accepted, the commissioner will arrange for mediation. If after 30 days of giving dispute notice, and the dispute has not been resolved, parties may apply to QCAT or the court.





Land Tax Waiver and Deferral

The National Cabinet has indicated that State and Territory Governments may provide land tax waivers and land tax deferrals on application by landlords. New South Wales and Victoria have announced deferral programs but to date Queensland have not. In any case, the benefits must be passed onto tenants by the landlords to ensure the benefit is being shared by both parties. State by State initiatives are detailed below.

Queensland

Queensland land tax relief is provided in the following forms:

- 25% rebate for eligible properties for the 2019/20 year
- A waiver of the 2% foreign surcharge for the 2019/20 year
- 3 month deferral of land tax liabilities for the 2020/21 year

Only the rebate is conditional, and will be available where all of the following apply –

- The ability of at least one tenant to pay rent is affected by the pandemic;
- Rent relief commensurate with the rebate amount is provided to the tenants;
- You will act in accordance with the Leasing Principals

Victoria

Landowners due to pay 2020 land tax that have at least one non-residential property and total taxable landholdings below \$1 million have the option of deferring their 2020 land tax payment until after 31 December 2020.

The State Revenue Office will contact all taxpayers who are eligible for this deferral.

South Australia

Landowners paying land tax quarterly in 2019-20 will be able to defer payment of their third and fourth quarter instalments for up to six months.

Landowners will be sent their land tax notices of assessment as usual, with information provided on how the deferral will be administered.

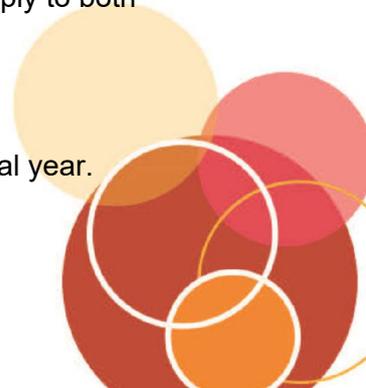
New South Wales

Landowners can go on an eight-month instalment plan to pay their land tax, without interest, starting in May, or they can defer paying for three months with a six-month instalment plan inclusive of interest.

On 13 April, the NSW Government announced a \$440 million rent relief program that would be delivered through land tax reduction of 25% for the rest of this year. The program will apply to both residential and commercial tenants – details to come.

Tasmania

Land tax will be waived for commercial property business owners for the 2020-21 financial year.





The business owner must be liable for the land tax and be able to demonstrate that their business operations have been affected by COVID-19.

Western Australia

Businesses impacted by COVID-19 can also apply for an interest-free payment arrangement and for late payment penalties to be waived for transfer duty, landholder duty or land tax. One-off \$2,500 credit available for Synergy and Horizon Power customers that consumed less than 50 megawatt hours (MWh) per annum would be available to those suffering economic hardship due to the coronavirus lockdown.

Northern Territory

Power and water bills will be reduced by 50% for business owners which have been affected by COVID-19.

Australian Capital Territory

All general rates notices will be delayed by four weeks. Homeowners with a household income of less than \$160,000 will also be able to defer their rates for 12 months, if they have suffered at least a 25 per cent drop in their income due to COVID-19. Residential landlords, whose tenants have been impacted, will be offered rebates if they agree to lower rents by at least 25 per cent. Households already receiving the Utilities Concession will receive an additional \$200 rebate through their electricity bill.

Small business owners with electricity usage below 100 megawatts per year will see rebates of \$750 automatically applied to their next electricity bill in around June or July 2020. Commercial rate payers will receive a credit of \$2,622 (equivalent to the annual fixed charge) to their 2019-20 general rates, in quarter four. This will be applied automatically.





HomeBuilder

The Commonwealth Government announced on 4 June 2020, the HomeBuilder program, which will provide eligible owner-occupiers with a non-taxable grant of \$25,000 to build a new home or substantially renovate an existing home where the contract is signed between 4 June 2020 and 31 December 2020. Constructions must commence within 3 months of the contract date.

Who is eligible?

To be eligible for HomeBuilder, the following must be satisfied:

- You are a natural person (not a company or trust);
- You are at least 18 years old;
- You are an Australian citizen;
- You meet one of the following two income caps:
 - \$125,000 per annum for an individual applicant based on your 2018-19 tax return or later; or
 - \$200,000 per annum for a couple based on both 2018-19 tax returns or later.
- You enter into a building contract between 4 June 2020 and 31 December 2020 to either:
 - Build a new home as principal place of residence, where the property value does not exceed \$750,000; or
 - Substantially renovate your existing home as a principle place of residence, where the renovation contract is between \$150,000 and \$750,000, and where the value of your existing property does not exceed \$1.5 million.
- Construction must commence within three months of the contact date.

Owner-builders and those seeking to build a new home or renovate an existing home as an investment are ineligible for HomeBuilder.

Building contracts must be at arm's length, being commercial reasonable and the contract price should be at fair market price.

What renovations can be undertaken?

Renovation works must be to improve the accessibility, safety and liveability of the dwelling. It cannot be used for additions to the property such as swimming pools, tennis courts, outdoor spas and saunas, shed or garages (unconnected to the property). Renovations or building work must be performed by a registered or licenced building service 'contractor,' with the name of the builder on the building licence or permit.

What if you already hold vacant land?

- If you own vacant land before 4 June 2020, and then build, the total value of the land and new build cannot exceed \$750,000;
- If you buy the land after announcement, and then build, the total value of the land and build cannot exceed \$750,000; or
- If you own a property which contains an existing house and plan to demolish this existing house with the intention to rebuild, will be eligible for the HomeBuilder grant. This will be counted as a substantial renovation, and therefore subject to the renovation price range of \$150,000 to \$750,000 provided the total value of the house and land of the property does not exceed \$1.5 million pre-renovation.





How to apply?

Applications for HomeBuilder will become available the Government of the State or Territory that you live in, or plan to live in, signs the National Partnership Agreement with the Commonwealth Government, which should happen in the very near future. HomeBuilder is uncapped grant, so there is no limit on the amount of applications.

It is expected the following information will be required to process your application:

- proof of identity;
- a copy of the contract, dated and signed by you and the nominated registered or licenced builder;
- a copy of the builder's registration or licence (depending on the state you live in);
- a copy of your 2018-19 tax return (or later) to demonstrate your eligibility against the income cap; and
- documents such as council approvals, building contracts or occupation certificates and evidence of land value.

How can we help?

We can provide support to commercial tenants by determining the reduction in trade and eligibility for the JobKeeper Programme so this information can be made available to landlords to obtain a rent waiver and deferral.

We can also provide support to landlords by verifying the accuracy of the information provided by tenants seeking a rent waiver and deferral.

Cordner Advisory will provide further updates regarding the property sector as the situation continues to evolve.

Next steps

Contact us on 5504 5700 or email info@cordner.com.au to discuss your circumstances and how we can assist you.

