

Each jurisdiction's response to the National Cabinet's SME Commercial Leasing Principles during COVID-19

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Following the announcement of the National Cabinet Mandatory Code of Conduct - SME Commercial Leasing Principles During COVID-19 (Code) on 7 April 2020, states and territories across the country have separately introduced legislation administering aspects of the Code.

At the time of publication:

- ACT, New South Wales, Tasmania and Victoria have introduced legislation adopting and administering aspects of the Code
- Queensland is expected to release regulations adopting and administering the Code shortly, and
- other states and territories have introduced legislation to varying degrees preventing commercial and retail landlords from taking “prescribed action” (which includes eviction and enforcement of leases) against tenants affected by COVID-19 but have yet to adopt or administer the Code to the extent that the Code relates to rental waivers and deferrals.

We have summarised the provisions of each state and territory's legislation in a comparative and categorised table below with references to relevant principles in the Code that apply to those specific categories. We elected to refer to the NSW and Victorian jurisdictions as primary reference points for comparative purposes.

We note that specific advice should be sought with regard to particular facts at hand and we are prepared to assist should you have any questions.

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Relevant Act and Regulations							
<i>National Cabinet Mandatory Code of Conduct SME Commercial Leasing Principles During COVID-19</i>							
<i>Retail and Other Commercial Leases (COVID-19) Regulation 2020</i>	<p><i>COVID-19 Omnibus (Emergency Measures) Act 2020</i></p> <p><i>COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020</i></p>	<p><i>Leases (Commercial and Retail) Act 2001</i></p> <p><i>Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020</i></p>	<p><i>COVID-19 Emergency Act 2020 (QLD)</i></p> <p>No supporting regulation published as of date of publication.</p>	<p><i>COVID-19 Emergency Response Act 2020</i></p> <p><i>COVID-19 Emergency Response (Commercial Leases) Regulations 2020</i></p>	<p><i>Tenancies Legislation Amendment Act 2020</i></p> <p><i>Business Tenancies (Fair Dealings) Act 2003</i></p> <p><i>Business Tenancies COVID-19 Modification Notice 2020</i></p>	<p><i>COVID-19 Disease Emergency (Commercial Leases) Bill 2020</i></p> <p>Bill is awaiting assent – temporary relief against lease termination is provided by the <i>Tasmanian Government Gazette dated 3 April 2020</i></p>	<p><i>Commercial Tenancies (COVID-19 Response) Act 2020</i></p> <p>No supporting regulation published as of date of publication.</p>

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What period does the legislation apply to?							
<p>(cl 5 and Sch 1, cl 3) The Regulations apply to the exercise or enforcement of rights in relation to circumstances occurring during the prescribed period.</p> <p>(cl 3, and Sch 1, cl 1) Definition of prescribed period - 24 April 2020 to 24 October 2020.</p>	<p>(s 22, r 3) The Relevant Period commences 29 March 2020 to 29 September 2020.</p>	<p>(s 177(3), d 3(1)) Prescribed period commences 1 April 2020 to the first day the ACT Government declares no COVID-19 emergency is in force.</p> <p>Minister may extend the application of the declaration by up to 3 months from the above date.</p>	<p>Regulations not yet published for commercial leases.</p>	<p>(s 2(2) and s 6) The prescribed period commences 30 March 2020 up to the date determined by notice in a Gazette, or 30 September 2020, whichever is earlier.</p>	<p>(s 11B) The emergency period subsists while the COVID-19 public health emergency is declared.</p> <p>This section may be suspended by the relevant minister.</p>	<p>(s 3) The financial hardship period commences 1 April 2020 to 12 months after the commencement day or earlier date determined by the Treasurer.</p>	<p>(s 3) The Emergency Period commences 30 March 2020 up to the date determined by notice in a Gazette, or 29 September 2020, whichever is earlier.</p>

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Which leases does the legislation apply to?							
<p>(cl 3) Retail shop leases as defined in the <i>Retail Leases Act 1994</i>.</p> <p>(Sch.1, cl 1) Any agreement to which the <i>Conveyancing Act 1919</i> applies relating to the leasing of premises or land for commercial purposes (Lease).</p> <p>Excludes any leases:</p> <ul style="list-style-type: none"> entered into after the commencement of the Regulations (24/4/20), but not by means of an option to extend or renew a lease or extension or renewal of an existing lease on the same terms as the existing lease, or 	<p>(s 13(1), s 12) Retail leases under the <i>Retail Leases Act 2003</i>.</p> <p>(s 13(1), s 14(1)) Commercial lease or licence (incl sub-leases / sub-licences) for the sole or predominant purpose of carrying on a business at the premises.</p> <p>(s 13(1)(a) and r 3) lease or licence must be 'in effect' as of 29 March 2020.</p> <p>(Lease)</p> <p>(s 13(2), r 6) Excludes leases where the premises are used predominantly for farming, grazing and pastoral purposes.</p>	<p>Retail leases under the <i>Leases (Commercial and Retail) Act 2001</i> entered into before 7 April 2020 (prescribed lease).</p>	<p>(s 23) Regulations may be made in relation to leases, including retail leases, sub-leases, licences or other agreements where a person grants a right to another person to occupy premises, other than as a residence.</p>	<p>(s 7(16)) Retail shop lease within the meaning of the <i>Retail and Commercial Leases Act 1995</i>, or</p> <p>A lease under the <i>Landlord and Tenant Act 1936</i>, including a retail shop lease to that Pt 4 applies to.</p> <p>Any agreement under which a person grants or agrees to grant another person for value a right to occupy premises for carrying on a business (whether</p>	<p>Business leases are defined in s 5(1) of the <i>Business Tenancies (Fair Dealings) Act 2003</i> (i.e. retail leases).</p> <p>Note that retail leases in NT includes non-exclusive rights to possession of premises (Lease).</p>	<p>(s 4) Applies to a lease under the <i>Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998</i> and is wholly or predominantly used for business purposes.</p> <p>Includes a lease or agreement to grant a person a right to occupy premises whether – written or oral (or in part) (Lease).</p> <p>Regulations may prescribe excluded leases.</p>	<p>(s 3) Any agreement under which a person grants or agrees to grant another person for value a right to occupy premises for carrying on a business (whether exclusive or not, written or oral). (Lease)</p> <p>This excludes long stay, residential, pastoral, mining leases or other leases prescribed by Regulations.</p>

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<ul style="list-style-type: none"> under the <i>Agricultural Tenancies Act 1990</i>. <p>Note: although not explicitly stated, the Regulations would extend to apply to sub-leases and licences provided they meet the above criteria.</p>				<p>exclusive or not, written or oral).</p> <p>(s 7(16)(d)) This excludes pastoral leases and crown leases.</p>			
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Which tenants does the legislation apply to?							
Eligible Tenants: General							
<p>Some provisions only apply if the lessee is an "impacted lessee". (cl 4 and Sch 1 cl 2) An impacted lessee is a lessee:</p> <ul style="list-style-type: none"> • who qualifies for the JobKeeper scheme¹, • With turnover in the 2018-2019 financial year must have been less than \$50 million (applies to franchisees at franchisee level from premises, company at 	<p>The Regulations apply to Eligible Leases.</p> <p>(s 13(b)) Eligible Lease is where the tenant is an employer who qualifies for and is a participant in the JobKeeper scheme, and the tenant is an SME Entity³ being an entity carrying on a business (or a non-profit body) during this current year with an annual turnover that is likely to be less than \$50 million in this current year or is less than</p>	<p>The declaration applies to an impacted tenant: tenant of a Retail Lease which meets the same criteria as in NSW.</p>	<p>Regulations pending.</p>	<p>Some provisions of the Act only apply to tenants under leases that suffer financial hardship.</p> <p>(r 4(1)) A tenant under a Lease will be taken to be suffering financial hardship if it is eligible for, or receiving, a JobKeeper payment in respect of the business of the lessee (whether in</p>	<p>All tenants under a retail lease.</p>	<p>(s 5) Some provisions of the Act only apply to a protected lease: a lease with a lessee which has, during the financial hardship period become an eligible person.</p> <p>(s 6) An eligible person is determined in the same manner as an</p>	<p>(s 3) Some provisions of the Act only apply to tenants of a small commercial lease which is:</p> <ul style="list-style-type: none"> • a retail shop lease within the meaning of the <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i> • a lease for the purpose of

¹ Sections 7 and 8 of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* of the Commonwealth (JobKeeper scheme). A key requirement of eligibility is that the lessee must have a projected GST turnover for a period (either a month or quarter) that falls short of the current GST turnover for the equivalent period (month or quarter) in 2019 by 30%.

³ Regulation 5(1) of *SME Entity Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020* (Cth) (SME Guarantee Rules).

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group level ² (incl foreign entities) and in any other case the turnover of the lessee's business). Turnover includes internet sales.	<p>\$50 million for the previous financial year.</p> <p>Tenant corporation in a corporate group is not an eligible lease if:</p> <ul style="list-style-type: none"> • (s 13(3)(a)), r 7(1)) for a tenant and <i>entities connected</i>⁴ to the tenant – the aggregate turnover exceeds \$50 million, or • (s 13(3)(b)), r 7(2)) for a tenant and any <i>affiliates</i>⁵ to the tenant – the aggregate turnover exceeds \$50 million. 			<p>their capacity as an employer or on their own behalf).</p> <p>(Eligible Lease)</p>		<p>impacted lessee in NSW.</p> <p>Regulations may prescribe additional definitions to a protected lease.</p>	<p>operating a small business from the premises</p> <ul style="list-style-type: none"> • a lease where the tenant is an incorporated association, or • a lease as prescribed in Regulations. <p>A 'small business' is defined in s 3 of <i>Business Development Corporation Act 1983</i> (WA) - wholly owned and operated by an individual /</p>

² Related bodies corporate within the meaning of the Corporations Act 2001 (see also cl 4(3) and Sch 1, cl 2(3)).

⁴ As defined in s 328-125 of the *Income Tax Assessment Act*

⁵ As defined in s 328-130 of the *Income Tax Assessment Act*

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	<p>Turnover is defined in Regulation 5(2) of SME Guarantee Rules - proceeds of sales, commission income, repair and service income, rent, leasing and hiring income, government bounties and subsidies, interest, royalties and dividends, or other operating income.</p> <p>The above differs to use of GST turnover as a measure to qualify and participate in the JobKeeper scheme and is arguably wider than GST turnover.</p>						<p>partnership / company, relatively small market share, managed personally by the owner / or directors and isn't a subsidiary of, or does not form part of, a larger business or enterprise.</p> <p>Act does not refer to a tenant's eligibility for JobKeeper payments.</p>
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Requirement for parties to act in good faith							
<p>(cl 7(3) and Sch 1, cl 5(3)) A party to a lease must, if requested, renegotiate in good faith the rent payable under, and other terms of, the lease.</p> <p>Note: this obligation appears to apply to all leases but only an impacted lessee has a right pursuant to the Regulations to request the other parties to renegotiate rent (cl 7(2) and Sch 1, cl 5(2)). Intent is that this only applies to impacted lessees.</p>	<p>(r 8) Parties must act reasonably and in good faith in all discussions and actions associated with the Regulations.</p>	<p>(d 4) Landlord taken to engage in good faith negotiations with an impacted tenant if it, in acknowledging the financial hardship suffered by the tenant because of the economic impact of COVID-19, negotiates with the tenant having regard to the overarching principles and the Code.</p>	<p>Regulations pending.</p>	<p>The Act and Regulations do not provide any guidance on this.</p>	<p>Landlord must make good faith efforts to negotiate with the tenant prior to issuing a notice to terminate the lease.</p>	<p>Same as SA, however there are specific obligations on parties to negotiate without engaging in misleading and deceptive conduct.</p>	<p>Same as SA</p>

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No Termination or Enforcement of Leases by Landlord

Code – applicable leasing principles

1. Landlords can't terminate leases due to non-payment of rent during the pandemic or reasonable subsequent recovery period.

11. Landlords 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.

<p>(cl 6(1) and Sch1, cl 4(1)) and (cl 7(1) and Sch 1 cl 5(1)) If a lessor must not take any "prescribed action" against an impacted lessee on the grounds of a breach during the prescribed period where the breach is:</p> <ul style="list-style-type: none"> a failure to pay rent and/or outgoings and other amounts under the lease, and the business operating under the lease not being open for trade (as specified in the lease). 	<p>(r 9(1)) A tenant of an Eligible Lease is not in breach if they do not pay rent or outgoings if:</p> <ul style="list-style-type: none"> it has requested for relief and complied with procedures in the Regulations, or where rent relief is agreed, it complies with any agreed rent relief arrangement. <p>(r 9(2) to (4)) A landlord of an Eligible Lease must not take similar action to prescribed action in NSW in</p>	<p>(d 3) A prescribed breach is defined in the same manner as a prescribed action in NSW.</p> <p>(d 8) A prescribed action is same as NSW, but includes recovery of interest and other remedy at common law.</p> <p>(d 6, 8) A landlord must not serve a termination notice to an impacted tenant or take prescribed action against a tenant in relation to a prescribed breach</p>	<p>Regulations pending.</p>	<p>(s 7(3)) A landlord of an Eligible Lease must not take any prescribed action against the tenant during the prescribed period on the grounds of a tenant similar to NSW - further Regulations may prescribe additional grounds of breaches.</p> <p>(s 7(16)) A prescribed action is the same as in the ACT.</p>	<p>(cl.3) A landlord must not give a tenant a notice to terminate a Lease unless, for a period of 30 business days, the landlord has made good faith efforts to negotiate with the tenant to allow the tenant to remain in the premises.</p> <p>The 30 business days runs concurrently with any time required by parties to commence and finalise alternative</p>	<p>(s 7, 13) A landlord must not during the financial hardship period take a prohibited lessor action for a tenant breach similar to NSW except that the Act includes an additional ground, being a failure by a tenant to meet criteria based on sales performance.</p> <p>Regulations may prescribe for additional grounds of tenant breach.</p>	<p>(s 8, 9) A landlord of an Eligible Lease must not take any prohibited action against the tenant during the prescribed period if a tenant breaches the lease in the same manner as in SA.</p> <p>(s 8) A prohibited action bears the same meaning as prescribed action in ACT and SA.</p> <p>(s 12) Similar to SA: between 30 March 2020 to 24 April 2020, an prohibited action</p>
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<p>Lessor can take a prescribed action after it has taken steps to renegotiate in good faith the rent with the lessee having regard to the economic impact of the COVID-19 pandemic and the Code) (cl 7 or Sch 1, cl 5).</p> <p>Lessor is not prevented from taking a prescribed action on grounds not related to the economic impacts of the COVID-19 pandemic (cl 10 and Sch 1, cl 8)</p> <p>(Cl 3, and Sch 1, cl 1)</p> <p>Prescribed action includes (but not limited to) termination of the commercial lease, recovery of the whole / part of a security bond or personal guarantee.</p>	<p>relation to a tenant where the above applies.</p> <p>The Regulations do not prohibit a landlord of an Eligible Lease from enforcing unpaid rent for a period outside the Relevant Period or a breach of agreed rent relief.</p>	<p>unless the landlord first engaged in good faith negotiations with the tenant.</p> <p>(d 7) Magistrates Court must not confirm termination of a lease served before the start of this declaration, unless it's satisfied the landlord negotiated in good faith.</p> <p>(d 5) extends to prescribed action taken before commencement of the Regulations, or after their expiry, if it relates to a prescribed breach in the prescribed period.</p>		<p>(s 7(12)) Any action by a landlord that commenced from 30 March 2020 to 9 April 2020 but not yet completed or finalised will remain incomplete or ongoing or will be stayed or suspended until the end of the prescribed period.</p>	<p>dispute resolution processes.</p> <p>Any notices issued contrary to the Gazette is void.</p> <p>This does not apply to:</p> <ul style="list-style-type: none"> premises that are drug premises within the meaning of the <i>Misuse of Drugs Act</i>, or a notice to quit issued due to illegal conduct or conduct that caused or will cause substantial damage to the premises. 	<p>A prohibited lessor action is similar to a prescribed action in SA.</p> <p>(s 10) Similar to SA, actions commenced prior to the commencement of this Act will be taken to be stayed or suspended until the end of the financial hardship period.</p>	<p>will be taken to be stayed or suspended until the end of the Emergency Period.</p>

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No Termination of Lease by Tenants <i>Code – applicable leasing principles</i> 2. Tenants must remain committed to the terms of their lease, subject to any amendments to their rental agreement negotiated under this Code. Material failure to abide by substantive terms of their lease will forfeit any protections provided to the tenant under this Code.							
The Regulations do not expressly state that a lessee must otherwise remain committed to their lease. However, the notes to the Regulations clarify that the above referenced clause is intended to reflect this leasing principle.	Same as NSW but no references in the Act and Regulations are made to the above principle. However, such covenants should already be contained in contract under applicable lease agreements.	The Code is referenced in full in the declaration and applies to tenants in the conduct of good faith negotiations.	Regulations pending.	Same as Vic.	Same as Vic.	Same as Vic.	Same as Vic.

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Rent Relief							
Code – applicable leasing principles							
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 and a subsequent reasonable recovery period.							
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 program.							
Waiver and deferral: may also include other forms of agreed variations to existing leases (such as deferral, pausing and/or hibernating the lease) or other commercial agreements between parties							
Any amount of reduction provided by a waiver may not be recouped by the Landlord over the term of the lease							
7. A Landlord should seek to share any benefit it receives due to deferral of loan payments, provided by a financial institution as part of the Australian Bankers Association's COVID-19 response (or any other case-by-case deferral of loan repayments offered to other Landlords), with the Tenant in a proportionate manner							
Procedure							
An impacted lessee (or a lessor for a lease where there is an impacted lessee) to request renegotiation of rent payable, and other terms of, the lease: cl 7(2) and Sch 1, cl 5(2). If requested, a party to such a lease must renegotiate in good faith: cl 7(3) and Sch 1, cl 5(3).	(r 10) A tenant under an Eligible Lease may request rent relief from the landlord. Such request must be in writing accompanied by: <ul style="list-style-type: none"> a statement from the tenant that it is not excluded from the Regulations, and 	See above	Regulations pending.	The Act and Regulations do not currently provide any guidance on this. Further regulations may be introduced to adopt the Code in part or in full.	The Act and Gazette do not currently provide any guidance on this.	(s 12, 18) A party to a protected lease must conduct negotiations in relation to renegotiations of rent payable, any renewal of a protected lease, or exercises of option during the financial hardship period.	Same as SA. Further regulations may be introduced to adopt the Code in part or in full.

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<p>Renegotiation is to have regard to the economic impacts of the COVID-19 pandemic and the leasing principles in the Code: cl 7(4) and Sch 1, cl 5(4).</p>	<ul style="list-style-type: none"> information evidencing that the lease is an Eligible Lease. <p>On receipt of a request pursuant to the above, the landlord must offer rent relief to the tenant within 14 days of receipt or a different timeframe agreed between the parties in writing.</p>						
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Method and quantum							
<p>The Regulations only require renegotiation of rent and other lease terms to have regard to the leasing principles in the Code; they do not oblige compliance with the Code or provide further detail but a mediator or a court will consider the Code in any termination, recovery or enforcement scenario.</p> <p>The Regulations do not prescribe provisions requiring the provision of evidence by a lessee of the economic impact of the COVID-19 pandemic, including any impact on turnover.</p>	<p>(r 10(4)) A landlord's offer must be based on all the circumstances of the Eligible Lease and must:</p> <ul style="list-style-type: none"> relate to up to 100% of the rent payable under the Eligible Lease provide that no less than 50% of rent relief in the form of waiver of rent, unless agreed between the parties in writing, and apply to the Relevant Period. <p>A landlord's offer must take into account:</p> <ul style="list-style-type: none"> reduction in the tenant's turnover associated with the premises during the 	See above.	Regulations pending.	See above.	The Act and Gazette do not currently provide any guidance on this.	<p>(s 12, 18)</p> <p>Negotiations must be conducted with regard to the individual circumstances of each party, taking into account the financial hardship of the parties, term of the lease and whether a party is at risk of insolvency.</p> <p>Parties must provide accurate and sufficient information reasonably necessary during negotiations in relation to rent or financial accommodation.</p>	See above.

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	<p>Relevant Period. Any waiver of outgoings given by the landlord (see below)</p> <ul style="list-style-type: none"> • the tenant's ability to fulfil the ongoing lease obligations without sufficient rent relief (this may assist landlords take into account any turnover from internet sales that are not "associated with the premises") • the landlord's financial ability to offer rent relief (including any relief provided to a landlord by any of its lenders as a response to COVID-19) (see leasing principle 7), and • any reduction to any outgoings charged, 					Parties must not engage in misleading and deceptive conduct in relation to above negotiations.	

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	<p>imposed or levied in relation to the premises (this may also be relevant for leases with gross rents).</p> <p>(r 10(5)) Following the receipt of the landlord's offer, the parties must negotiate in good faith with a view to agreeing on the rent relief to apply.</p> <p>The Regulations do not strictly align with the leasing principles, in that they do not prescribe that the relief that should be granted must be proportionate to the reduction in trade as a result of COVID-19. The Regulations require the landlord to consider all circumstances of the Eligible Lease.</p>						
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Rent waivers							
<p>4. <i>Rental waivers must constitute no less than 50% of the total reduction in rent payable under principle 3 (above) over 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.</i></p> <p><i>Regard must also be had to the Landlord's financial ability to provide such additional waivers.</i></p> <p><i>Tenants may waive the requirement for a 50% minimum waiver by agreement.</i></p>							
As per the Code – see above.	A note in r 10 clarifies that in relation to a waiver, a landlord must not subsequently make any claim for payment of the waived part of rent. This precludes the insertion of any "clawback" provisions as a condition of a rent waiver.	See above.	Regulations pending.	See above.	The Act and Gazette do not currently provide any guidance on this.	(s 18) If requested, parties to a protected lease must renegotiate the rent payable having regard to the Code and any prescribed regulations. A tenant may waive the application of this section. Regulations may prescribe exceptions to this section.	See above.

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Rent Relief – Other: Further Assistance, Documentation of Rent Relief							
As per the Code – see above.	<p>(r 10(6)) Agreed rent relief may be given effect in the form of a lease variation or other agreement that gives effect to rent relief (this includes an incentive deed or deed of settlement).</p> <p>(r 11) If the financial circumstances of a tenant materially change after a rent relief agreement, the tenant can commence the above process again.</p> <p>(r 11(2)) If the tenant makes a second request, the landlord is not required to provide a minimum 50% rent waiver in any new agreement.</p>	See above.	Regulations pending.	See above.	The Act and Gazette do not currently provide any guidance on this.	Parties must bear their own costs in preparation of any variation of a protected lease pursuant to this section.	See above.

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Rent Deferrals and repayment terms							
<i>Code – applicable leasing principles</i>							
5. <i>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.</i>							
9. <i>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. 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.</i>							
As per the Code – see above.	(r 16(1) and (4)) If agreed rent relief includes a deferral, the following regulations apply unless otherwise agreed between the parties. (r 16(2)(a)) Any deferred rent may not be recovered until the earlier of: <ul style="list-style-type: none"> • 29 September 2020, or • the expiry of the Eligible Lease (disregarding any extension required to be offered below). 	See above.	Regulations pending.	See above.	The Act and Gazette do not currently provide any guidance on this.	(s 18) The Act requires parties renegotiating any rent payable under a protected lease to consider the application of the Code.	See above.

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	<p>(r 16(2)(b)) Any deferred rent must be amortised over the greater of:</p> <ul style="list-style-type: none"> the balance of the term (including an extension required to be offered in r 13 summarised below), or 24 months. <p>(r 16(3)) The method of amortisation is to be agreed by the parties. Parties are free to negotiate unequal instalments of rent deferral repayments.</p>						
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Tenant's right to extend a lease

National Code – applicable leasing principles

12. *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 item 2 above. 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.*

Beyond having regard to this in renegotiations, this is not obliged by the Regulations or detailed any further in the Regulations, but a mediator or a court will consider the Code in any termination, recovery or enforcement scenario.	<p>(r 13(1)) If agreed rent relief includes a deferral of rent, the landlord must offer the tenant an extension of the Eligible Lease.</p> <p>(r 13(2) and (3)) The extension must:</p> <ul style="list-style-type: none"> • be for the equivalent period for which the rent is deferred unless parties agree otherwise, and • be on the same terms as the existing lease. 	See above.	Regulations pending.	See above.	The Act and Gazette do not currently provide any guidance on this.	<p>(s 15) If a tenant requests, a landlord of a protected lease must extend the term of the lease until the end of the financial hardship period, or a longer agreed period.</p> <p>The extended lease must be on terms no less favourable to the tenant as the protected lease as modified by this Act and must be in accordance with this Act.</p>	See above.
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						<p>This section does not apply if:</p> <ul style="list-style-type: none"> the lease is a sub-lease, and the head lease will cease to apply the lessor has agreed with another party to lease the premises after expiry of the protected lease, or the lessor intends to occupy the premises to carry on a business. 	
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Tenant's right to share in reduction in Outgoings and Expenses

Code – applicable leasing principles

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.
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. Landlords reserve the right to reduce services as required in such circumstances.

(cl 6(4) and Sch 1, cl 4(4)) If the lessee is an impacted lessee, then if the lessee pays a fixed amount that represents land tax or another statutory charge, or insurance payable by the lessor, and that land tax, statutory charge or insurance is reduced, the impacted lessee is exempt from the operation of the provision obliging payment of the charge to the extent of the reduction.	(r 15) If any outgoings charged or levied in relation to an Eligible Lease are reduced, the tenant is only required to pay for the proportional share of the reduced outgoing payable under the Eligible Lease. Any excess payments made in advance must be reimbursed to the tenant as soon as possible. The Regulations do not prescribe that a reimbursement must be by way of repayment or as a credit to rent for future outgoings.	See above.	Regulations pending.	(s 7(6)) A landlord of an Eligible Lease must not require the tenant to pay land tax or reimburse the landlord for payment of land tax for an Eligible Lease. (s 7(7)) The above section does not limit the operation of the <i>Commercial and Retail Leases Act 1995</i> , which already prohibits recovery of land tax for retail shop leases.	The Act and Gazette do not currently provide any guidance on this.	(s 18) The Act requires parties renegotiating any rent payable under a protected lease to consider the application of the Code.	See above.
(cl 7(4) and Sch 1 cl 5(4)) Reference to National leasing principle 8 (waiver of recovery of outgoings) in							

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obligation to re-negotiate rent.	<p>(r 14)(2)) A landlord of an Eligible Lease must consider waiving recovery of any outgoing or expense payable by a tenant for any part of the Relevant Period that the tenant is not able to operate their business from the Eligible Lease premises.</p> <p>The Regulations require the landlord only to consider outgoings relief, arguably in line with any consideration provided for rent relief in r 10 summarised above.</p> <p>(r 14(3)) A landlord of an Eligible Lease may cease to provide or reduce provision of any service at the Eligible Lease premises as is reasonable with the circumstances, and in accordance with any reasonable request of the tenant.</p>			Also, see above.			

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Landlord cannot recover fees, charges and interest from tenant

Code – applicable leasing principles

10. No fees, interest or other charges should be applied with respect to rent waived in Principles 3 and 4 above and no fees, charges nor punitive interest may be charged on deferrals in Principles 3, 4 and 5 above.

<p>(cl 7(4) and Sch 1, cl 5(4)) the parties must have regard to this principle when renegotiating.</p> <p>Lessor can't require a lessee to pay interest, fees or charges:</p> <ul style="list-style-type: none"> (cl 6(1) & Sch 1, cl 4(1)) on unpaid rent during the prescribed period arising from a breach being a failure to pay rent, or (cl 6(3) and Sch 1, cl 4(3)) for failure to pay increased rent (payable but for a freeze on rent reviews). 	<p>(r 17) No interest, fees or charges should be imposed by a landlord in relation to any agreed rent deferral.</p> <p>The Regulations do not expressly deal with rent waivers, but it is assumed that if rent is waived, the landlord cannot then seek to recover interest or charges on that amount.</p>	<p>See above.</p>	<p>Regulations pending.</p>	<p>(s 7(3) and (16)) Recovery of interest is defined as a prescribed action that cannot be recovered by a landlord of an Eligible Lease for the prescribed period.</p> <p>Fees and charges are not expressly included in the definition of prescribed action.</p>	<p>The Act and Gazette do not currently provide any guidance on this.</p>	<p>(s 7, 11) Similar to SA, except that the financial hardship period applies.</p>	<p>(s 8, 9) Similar as SA, except that the Emergency Period applies.</p>
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Reduced Trading Hours and other acts in response to the COVID-19 pandemic							
<i>Code – applicable leasing principles</i>							
14. 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							
<p>(cl 6(1)(c) and Sch 1, cl 4(1)(c)) The lessor cannot take any prescribed action against an impacted lessee on the grounds of a breach consisting of the business operating under the lease not being open for the hours specified in the lease</p> <p>(cl 6(5) and Sch 1, cl 4(5)) An act or omission of a lessee required under a law of the Commonwealth or State in response to the pandemic is not to be taken to be a breach of the lease (Although not expressly stated in the Regulations</p>	<p>(r 18) Tenants may reduce or elect to not carry out any business at the premises during the Relevant Period and the landlord must not enforce the Eligible Lease in relation to the tenant's election to do so.</p>	<p>(d 6, 8) A landlord cannot give notices to terminate the lease or take prescribed action due to a tenant's failure to operate the business during the hours required under the lease unless it first engages in good faith negotiations with the tenant.</p>	<p>Regulations pending.</p>	<p>(s 7(4)) An act or omission of a tenant required under the laws of the state in response to the COVID-19 pandemic will not be regarded as a breach of a lease and will not constitute grounds for taking of prescribed action against the tenant.</p> <p>This may include the tenant complying with state directions to not trade, electing to not</p>	<p>The Act and Gazette do not currently provide any guidance on this.</p>	<p>(s 11, 14) Similar to SA, except that the financial hardship period applies.</p> <p>A landlord must not impose a retrospective penalty or prohibition in relation to the above.</p>	<p>(s 10) Similar as SA, except that the Emergency Period applies.</p>

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this could extend to closures required by law).				trade, or to reduce trading capacity.			
<p>Moratorium on Rent Review</p> <p><i>Code – applicable leasing principles</i></p> <p>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 and a reasonable subsequent recovery period, notwithstanding any arrangements between the Landlord and the Tenant.</p>							
<p>(cl 6(2) and Sch 1, cl 4(2)) If a lessee is an impacted lessee, rent payable must not be increased (other than rent or a component of rent determined by reference to turnover). i.e. rent increases that are due during the prescribed period are lost.</p> <p>(cl 6(3) and Sch 1, cl 4(3)) No prescribed action can be taken against an impacted lessee after the prescribed period alleging a breach in the lease for a failure to pay an increased rent amount in the circumstances of the</p>	<p>(r 12) A landlord must not increase the rent during the Relevant Period (other than turnover rent) unless otherwise agreed in writing.</p> <p>The Regulations do not clarify if the ability to increase rent is lost, or merely suspended.</p>	<p>The Code is referenced in full in the declaration and applies to tenants in the conduct of good faith negotiations.</p>	<p>Regulations pending.</p>	<p>(s 7(5)) Rent payable under an Eligible Lease (other than turnover rent) must not increase during the prescribed period, except if otherwise agreed in writing.</p>	<p>The Act and Gazette do not currently provide any guidance on this.</p>	<p>(s 17) Similar to SA</p>	<p>(s 11, 12(5)) Rent payable under a small commercial lease (other than turnover rent) must not increase and is taken to be stayed or suspended until the end of the Emergency Period.</p> <p>Parties cannot contract out of this section.</p>

NSW	Vic	ACT	Qld	SA	NT	Tas	WA
bullet point immediately above.							
Confidentiality							
Confidentiality is not contemplated by the Regulations.	(r 19) Any communication pertaining to these Regulations must be kept confidential except if required to be disclosed by law, required for dispute resolution, determination or proceedings, or to be provided to advisors or financiers.	Same as NSW.	Regulations pending.	(s 7(15)) Same as Vic but expressly makes reference to information about the turnover of a business.	Same as NSW.	(s 12, 16) information provided during negotiations and confidential information must be treated in the same manner as Vic.	Same as NSW.

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Disputes and Mediation							
Code – where Landlords and Tenants 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 state or territory retail/commercial leasing dispute resolution processes for binding mediation, including Small Business Commissioners/Champions/Ombudsmen where applicable. Landlords and Tenants must not use mediation processes to prolong or frustrate the facilitation of amicable resolution outcomes							
<p>(cl 8) For leases that are retail shop leases to which the <i>Retail Leases Act</i> applies, the dispute resolution provisions in that Act apply.</p> <p>(cl 9) If the matter proceeds to the Tribunal or a court, then the Tribunal or court must have regard to the leasing principles in the Code.</p> <p>For other leases, disputes must be submitted to mediation with the Small Business Commissioner: Sch 1, cl 6. If the matter proceeds to a court then the court must have regard to</p>	<p>(r 20) Any dispute under the Regulations are subject to the dispute procedures in the <i>Retail Leases Act 2003</i>, irrespective of whether the lease was a retail lease under the Act.</p> <p>Generally, disputes must be referred to the Victorian Small Business Commissioner in the first instance and will (in most cases) be subject to compulsory mediation before the matter can be referred to the Victorian Civil and Administrative Tribunal or courts.</p>	<p>The Act and Declaration do not currently provide any guidance on this.</p>	<p>Regulations pending.</p>	<p>(s 7(8)) A party to an Eligible Lease may apply to the Small Business Commissioner (SBC) for mediation of a dispute as to whether a tenant is suffering from financial hardship, or a determination as to whether a tenant is suffering from financial hardship.</p> <p>(s 19(2)(b) and r 4(2)) In making its determination, the SBC must have</p>	<p>The Act and Gazette do not currently provide any guidance on this.</p>	<p>(s 20 – 27) Parties may refer a dispute to the director of Consumer Affairs for mediation.</p> <p>The director has various powers to compel provision of information.</p> <p>Each party bears their own costs to mediation.</p> <p>A party may alternatively seek arbitration under the Commercial Arbitration Act 2011.</p>	<p>(s 16, 18) A party to a small commercial lease may apply to the Small Business Commissioner (SBC) for consent to have the dispute determined by a Tribunal, or for assistance to attempt to resolve a dispute in respect of the Act.</p> <p>(s 19) The SBC may issue a certificate to refer a dispute to a Tribunal if dispute resolution has failed or is unreasonable in the circumstances.</p>

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the leasing principles in the Code: Sch 1, cl 7.	The above does not apply to injunctive relief.			<p>regard to the tenant's eligibility for JobKeeper and reduction in turnover of the business of the tenant.</p> <p>(s 7(9)) Parties may appeal the SBC's determination to the Magistrates Court.</p> <p>(s 7(10)) A party to a lease may apply to the SBC for mediation of any other dispute arising in relation to COVID-19.</p>		Regulations may prescribe additional requirements or procedure.	(s 17) The Tribunal is empowered to make orders in relation to disputes having regard to the financial capacities of parties and principles of fairness, including orders for compensation, rent waivers and deferrals (if the Code is adopted in WA) and termination of a small commercial lease in circumstances relating to financial hardship.