



**FOR  
LEASE**

# COVID-19 SME COMMERCIAL LEASING PRINCIPLES *Fact Sheet*

The National Cabinet has released the 'Mandatory Code of Conduct: SME Commercial Leasing Principles during COVID-19' ("Code") for small/medium enterprise tenants. The Code imposes a set of good faith leasing principles in relation to commercial leases (including retail, office and industrial).

This document provides a brief summary of the [Code](#) and therefore should not be relied on as a substitute for reading the Code.

## Objective

The Code's objective is to share in a proportionate and measured manner, the financial risk and cash flow impact during the COVID-19 period whilst seeking to balance the interests of tenants and landlords.

The Code encourages negotiations be conducted on a case by case basis and that parties will agree to tailored and bespoke arrangements.

## ELIGIBILITY CRITERIA

The Code **applies to all commercial tenancies** (including retail, office and industrial).

To be eligible for the Code protections, the tenant must be:

- an eligible business for the JobKeeper program
- have a turnover of less than \$50 million;
- have a 30% or greater loss in revenue.

The Code expects that even if tenants do not meet this criteria, the Code should apply "in spirit" to all leasing arrangements for affected businesses.

## KEY PRINCIPLE

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 of the tenant's trade during the COVID-19 period and a subsequent reasonable recovery period.

The duration of the rent relief is to be consistent with the period of disruption to the business effected by the COVID-19 pandemic.

## WHAT IS THE MINIMUM LEVEL OF RENT ASSISTANCE?

Rental waiver **must** constitute a minimum 50% of the total reduction in rent payable. This means that 50% of the agreed reduced rental amount should be waived by the landlord. Meanwhile, the other half is to be deferred for future payment in accordance with the Code.

It is also intended that reduction in turnover should be met by cashflow relief as described in Appendix 1 of the Code.

Tenants may waive the requirement for a 50% minimum waiver by agreement.

## ARE OUTGOINGS AND OTHER CHARGES PAYABLE DURING THE TERM OF THE LEASE?

Landlords are expected:

- to proportionately pass on to the tenant any reduction in statutory charges e.g. land tax and rates;
- to share any benefit it receives due to a deferral of loan payments it receives with the tenant in a proportionate manner;
- waive recovery of outgoings or other expenses during the period the tenant is not able to trade. However, the Landlord may reduce services as required in such circumstances.



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### DO TENANTS HAVE TO REPAY DEFERRED RENT?

Payment of rental deferrals by the tenant must be amortised over the balance of the lease term or for a period of no less than 24 months, whichever is the greater, unless otherwise agreed by the parties.

Repayments should not commence until the earlier of:

- COVID-19 pandemic ending (as defined by the Australian Government) or
- the existing lease expiring,

and taking into account a reasonable subsequent recovery period.

### CAN I CHARGE INTEREST ON WAIVED OR DEFERRED PAYMENTS?

Lessors are not permitted to charge Interest or other charges on deferred/unpaid rent or outgoings.

### ARE TENANTS BOUND BY THE REMAINING TERMS OF THE LEASE?

Subject to any amendments to the lease agreement negotiated under the Code, tenants must continue to adhere to the terms of the lease. The tenant will forfeit any protections provided under the Code, if it fails to materially comply with the substantive terms of the lease.

### PROHIBITIONS UNDER THE CODE

- Prohibition on termination of leases for non-payment of rent;
- Freeze on rent increases;
- Prohibition on landlords from making a claim on a bank guarantees or security deposit for non-payment of rent;
- Prohibition on penalties for tenants who stop trading or reduce opening hours;
- Prohibition on charging interest on unpaid rent or outgoings;

- Prohibition on levying any penalties if tenants reduce opening hours or cease to trade due to the COVID-19 pandemic.

### EXAMPLE

Tenant states/proves their downturn is 50%.

Rent is \$10,000 per month.

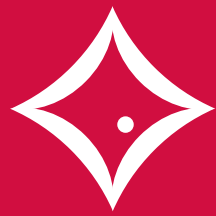
The rent payable by the tenant will reduce proportionately by 50% thereby reducing rent payable to \$5,000 per month.

Total rent reduction = \$5,000

At least 50% of that reduction (\$2,500) must be waived by the landlord.

The remaining \$2,500 is deferred rent and will be payable by the tenant over the balance of the lease term or over the next 24 months, whichever is the greater.

**Disclaimer:** The information in this document is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, we do not guarantee that the information in this document is accurate at the date it is received or that it will continue to be accurate in the future. ✦



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