

## **Coronavirus and new Code for Commercial Tenants**

As part of its work helping businesses hibernate, the National Cabinet has agreed that short-term intervention is needed for commercial tenancies.

On Friday 3 April 2020, the Prime Minister announced that a mandatory code of conduct (**Code**) will be developed and subsequently legislated by the State and Territory Governments. It will apply for tenancies where the tenant is eligible for the Commonwealth Government's JobKeeper assistance and is a small or medium-sized enterprise (less than \$50 million turnover).

The principles that guide the code will be:

1. Where it can, rent should continue to be paid, and where there is financial distress as a result of COVID-19 (for example, the tenant is eligible for assistance through the JobKeeper program), tenants and landlords should negotiate a mutually agreed outcome;
2. There will be a proportionality to rent reductions based on the decline in turnover to ensure that the burden is shared between landlords and tenants;
3. There will be a prohibition on termination of leases for non-payment of rent (lockouts and eviction)
4. There will be a freeze on rent increases (except for turnover leases);
5. There will be a prohibition on penalties for tenants who stop trading or reduce opening hours;
6. There will be a prohibition on landlords passing land tax to tenants (if not already legislated);
7. There will be a prohibition on landlords charging interest on unpaid rent;
8. There will be a prohibition on landlords from making a claim to a bank guarantee or security deposit for non-payment of rent;
9. Ensure that any legislative barriers or administrative hurdles to lease extensions are removed (so that a tenant and landlord could agree a rent waiver in return for a lease extension)

For landlords and tenants that sign up to the code of conduct, States and Territories have agreed to look at providing the equivalent of at least a three month land tax waiver and three month land tax deferral on application for eligible landowners, with jurisdictions to continue to monitor the situation. Landlords must pass on the benefits of such moves to the tenants. In cases where parties have signed to the code of conduct, the ability for tenants to terminate leases as mentioned in the National Cabinet Statement on 29 March 2020 will not apply. The proposed Code will be discussed at the next meeting of the National Cabinet on Tuesday 7 April.

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Our office will continue to monitor the amendments introduced by the Victorian state government and keep clients up-to-date.

In light of the National Cabinet's announcement, it's important that landlords consider the above principles if they receive a request for rent relief.

Equally, for tenants, the principles of the proposed Code should inform any proposal for relief. However, as noted, further clarity should be forthcoming in the next few days.

Our office can assist parties with understanding their respective rights and obligations, representing parties in negotiations, and documenting relevant arrangements.

Lastly, we note that the Victorian Small Business Commission is offering a mediation service for retail tenants with rent disputes in response to COVID-19.

If you wish to discuss any of the above issues, please feel free to contact me.

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