

COVID-19 – mandatory code of practice for commercial and retail tenancies expected this week

Source: [Prime Minister of Australia](#)

Date: 6 April 2020

Following our [legal update](#) on 26 March 2020, the Prime Minister, Scott Morrison, announced on 3 April 2020 that various stakeholder groups representing landlords and tenants are currently working on a mandatory code of practice to deal with commercial and retail tenancies impacted by the COVID-19 pandemic and that it is expected to be approved by the national cabinet this week. The code will not deal with residential tenancies.

He advised that the proposed code:

- will be implemented by all of the states and territories, through the relevant state and territory legislation where appropriate;
- will be mandatory for tenants who:
 - have an annual turnover of less than \$50 million;
 - have experienced at least a 30% drop in revenue due to the impact of the COVID-19 pandemic; and
 - are participating in the [JobKeeper program](#);
- will not be prescriptive. Instead, it will be up to the affected landlords and tenants to work together to formulate their own mutually-beneficial arrangements. The Prime Minister suggested, for example, that a 3 month or 6 month rent holiday could be granted by a landlord in exchange for the lease term being extended by the same term as the rent holiday period or, alternatively, that the rent payments over the remainder of the term of the lease could be increased to cover the rent that was not paid during the rent holiday period;
- will require landlords and tenants to negotiate in good faith and to follow the principle of proportionality, in that any rent relief granted by a landlord should be proportionate to the drop in revenue suffered by the tenant as a consequence of the COVID-19 pandemic;
- should provide protection to the tenants affected by the code by prohibiting their landlords from evicting them, enforcing guarantees, making claims or charging interest on rent arrears;
- should allow the state and territory governments to provide relief regarding the payment of their rates and fees; and
- should be supported by the banks even though they are not parties to any arrangements reached between landlords and tenants under the code of practice.

The code of practice is expected to be approved by the national cabinet on 7 April 2020.