

COVID-19 and commercial tenancies

– guide to the national mandatory code of conduct

What is the code of conduct?

The code is a mandatory set of leasing principles imposed on commercial tenancies (including retail, office and industrial tenancies) suffering financial stress or hardship as a direct result of the COVID-19 pandemic. It was approved by the National Cabinet on 7 April 2020.

What is the purpose of the code?

It requires landlords and tenants to negotiate, in good faith, temporary amendments to their existing leasing arrangements, in accordance with certain leasing principles.

Who does the code apply to?

The code applies to commercial tenancies with small and medium sized tenants who have an annual turnover of less than \$50m and who are eligible for the federal government's JobSeeker program (e.g. their turnover has dropped by at least 30%).

When will the code take effect?

The code will be implemented through state and territory legislation and will take effect from a date after 3 April 2020 (to be decided by each state and territory).

How long will the code be in operation?

It will remain in effect for as long as the JobSeeker program remains operational (currently – 27 September 2020).

What are the key leasing principles of the code?



No termination of leases for non-payment of rent

Landlords cannot terminate leases for non-payment of rent during the COVID-19 pandemic period and a reasonable recovery period.



Landlords must offer rent reductions

Landlords must offer rent reductions proportionate to the tenants' reductions in trade during the COVID-19 pandemic period and a reasonable recovery period, by way of rent waivers (at least 50%) and deferrals. Waived rent cannot be recouped. Deferred rent must be spread over the remaining lease term or a period of at least 24 months (whichever is greater).



Landlords must pass on benefits

Landlords must pass on to tenants the proportionate benefit of any loan deferral payments or any reduced statutory charges (e.g. land tax) or insurance costs.



No charges or interest on rent waivers or deferrals

Landlords cannot apply any charges or interest on waived or deferred rent.



No recovery of outgoings if tenants unable to trade

Landlords cannot seek to recover other expenses or outgoings while a tenant is unable to trade.



No drawing on tenants' securities

Landlords cannot draw on tenants' securities (e.g. cash bonds or bank guarantees) for non-payment of rent during the COVID-19 pandemic period and a reasonable recovery period.



Rent freeze

Landlords must put a freeze on all rent increases (except for turnover rent under retail leases) during the COVID-19 pandemic period and a reasonable recovery period.



Landlords must offer lease extensions

Landlords must offer lease extensions for periods equivalent to rent waiver or deferral periods.



No penalties for reduced/ceased trading

Landlords cannot take any action or impose any penalties if tenants reduce opening hours or cease to trade due to the COVID-19 pandemic.



Binding mediation

If the parties cannot reach an agreement, the matter must be referred for binding mediation to the applicable commercial/retail leasing dispute resolution forum.

What should landlords and tenants do now?

- Discuss current situation as soon as possible.
- Tenants should verify their eligibility for protection under the code by providing appropriate financial information to their landlords.
- Engage in negotiations, in good faith, to agree mutually beneficial temporary arrangements which are consistent with the principles of the code.
- Document the agreed temporary arrangements in a formal deed of variation.

What about commercial tenancies not covered by the code?

These landlords and tenants can still adopt the same principles in negotiating temporary amendments to their existing leasing arrangements as it is intended that the principles should apply "in spirit" to all affected businesses; however, these commercial tenancies are not strictly bound by it.