

## Mandatory Commercial & Retail Tenancies Code Covid-19 rent relief

The Prime Minister Scott Morrison announced on 7 April 2020 the mandatory commercial tenancies code which will apply to commercial and retail tenancies Australia-wide. This code has now been legislated in Queensland through the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Respond) Regulation 2020 (the **Regulation**). We have summarised key queries below with general information detailing how the Regulation will operate. **Please note that each situation is different and specific advice must be sought with regard to the particular facts at hand.**

Key Point	Summary
Who does the Regulation apply to?	<p>The Regulation applies to “affected” retail and commercial leases where:</p> <ol style="list-style-type: none"> <li>the lease is binding on the parties on commencement of the lease (whether or not the lease has actually commenced);</li> <li>the tenant is an “SME entity” meaning the tenant has a turnover of \$50 million or less; and</li> <li>the tenant is eligible for the JobKeeper program.</li> </ol> <p>If a tenant is not eligible for JobKeeper, the lease may still be considered an “affected lease” under the Regulation where an entity connected with or an affiliate of the tenant that is responsible for or involved in employing the staff in the business of the tenant is eligible for JobKeeper.</p> <p>An individual or company will be considered to be an affiliate of the tenant if they act, or could reasonably be expected to act, in accordance with the tenant’s directions or wishes, or in concert with the tenant, in relation to the affairs of the business of the individual or company.</p> <p><b>For the purposes of item 3 above, the tenant and its affiliates’ aggregated turnover must be \$50 million or less.</b></p>
What about leases commencing after 29 March 2020?	<p>The Regulation will capture leases that commence after 29 March 2020.</p> <p>Note however that relief will only apply to rent and outgoings payable by a tenant during the period from 29 March 2020 to 30 September 2020 (<b>Response Period</b>).</p>
What if an agreement for relief has already been made?	<p>The Regulation makes it clear that it does not affect the validity of an agreement entered into before or after commencement of the Regulation that is inconsistent with the Regulation.</p> <p>Parties are free to enter into an agreement inconsistent with the Regulations.</p>
When is a tenant eligible and what needs to be proved?	<p>In order to determine the tenant’s eligibility to relief, the Regulation requires the tenant to provide sufficient and accurate information to the landlord evidencing their eligibility.</p>

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	<p>Examples of such information includes financial information, statements on the turnover of the business, evidence of the eligibility for or participation in the JobKeeper program and steps that the tenant has taken to mitigate the effects of Covid-19 on their business.</p> <p>The Landlord is then required to provide an offer to the tenant for rent relief within 30 days from receipt of sufficient information.</p>
<p><b>What kind of relief is available?</b></p>	<p>There is no mandatory amount of rent relief required to be offered.</p> <p>The relief offered to a tenant must relate to the Response Period and have regard to:</p> <ol style="list-style-type: none"> <li>1. all the circumstances of the tenant, including reduction in turnover;</li> <li>2. the extent to which a failure to reduce the rent payable would compromise the tenant's ability to comply with the lease; and</li> <li>3. the landlord's financial position, including whether it has received any financial relief.</li> </ol> <p>At least 50% of the rent relief granted <b><u>must be waived</u></b>.</p> <p>The remainder of the rent relief must then be deferred.</p> <p>For example, if a tenant has been forced to stop trading and lost 100% of its revenue and the landlord offers a 100% reduction in rent for the Response Period. At least 50% of the rent payable must be waived and the remainder of the rent otherwise payable during that period may be deferred to be repaid by the Tenant after the end of the Response Period.</p> <p>The parties may negotiate further relief should the circumstances change in a material way during the Response Period.</p>
<p><b>Does the relief also apply to outgoing?</b></p>	<p>Landlords are also required to pass on any reduction they receive in statutory charges, such as land tax and rates, or insurance premiums to the tenant where the tenant contributes to such charges.</p> <p>In circumstances where the tenant is unable to operate from the premises because of the Covid-19 pandemic, the Landlord is entitled to cease or reduce services (e.g. waste removal or security) as reasonably required.</p>
<p><b>Are there repayment obligations and what are the timeframes?</b></p>	<p>Deferred rental payments must be repaid no earlier than 1 October 2020 and over a period between 2 and 3 years</p> <p>This means a tenant may continue to repay the deferred Rent after the expiration of the Lease if there is less than 2 years remaining on the term.</p> <p>For example, if the tenant has 3 months remaining on the term, the tenant will still be granted a minimum 2 year period commencing 1 October 2020 to repay the deferred rent in equal monthly amounts</p> <p>The Landlord may hold security provided under the Lease until the deferred rent is repaid, regardless of whether the lease has expired.</p> <p>Any rent waived is not to be repaid.</p>

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<p>Can tenants request a lease extension?</p>	<p>If rent is waived or deferred, the landlord <b>must</b> offer the tenant an extension to the term of the lease on the same conditions for an equivalent period as the period rent was waived or adjusted.</p> <p>Should the landlord require the premises after the lease ends for an existing lease obligation or for its own commercial purpose, then this obligation does not apply.</p>
<p>What are the restrictions on Landlords?</p>	<p>During the Response Period, landlords under applicable leases will be prevented from:</p> <ol style="list-style-type: none"> <li>1. recovering possession of the premises;</li> <li>2. terminating the lease;</li> <li>3. evicting the tenant;</li> <li>4. seizing any tenant property;</li> <li>5. forfeiting the lease;</li> <li>6. charging interest or other penalty charges;</li> <li>7. drawing on the security under the lease; or</li> <li>8. enforcing a guarantee,</li> </ol> <p>where that action relates to failure to pay rent, outgoings or carrying on the permitted use from the Premises.</p> <p>The Landlord must also not charge any fees, interest or other charges to the Tenant with respect to the rent waived and/or deferred.</p>
<p>What if the Tenant and Landlord cannot agree?</p>	<p>Where parties cannot reach agreement on leasing arrangements, the Regulation includes a dispute resolution process for the parties to follow.</p>
<p>What are the obligations on the Tenant?</p>	<p>Tenants are still required to comply with the terms of the lease, where possible. The protections under the Regulation only apply to the tenant's obligation to pay rent, outgoings and keep the business open and operating and so do not apply to tenants that fail to comply with other substantive terms of the lease.</p> <p>Despite this, the tenant is not taken to be in breach of the lease for any act or omission that occurs after 23 April 2020 that is required under a Covid-19 response measure or a law of the commonwealth or state.</p>

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