



COVID-19 National Cabinet Mandatory Code of Conduct

A jurisdictional
compendium of
commercial leasing
principles during
COVID-19

28 April 2021
Version 23

Foreword



The COVID-19 pandemic has had a significant impact on businesses and the economy across Australia and the world. Aside from health and societal concerns, the pandemic, social distancing regulation and business restrictions have resulted in an economic downturn, with individuals, businesses and governments looking for ways to alleviate the short and long term impacts.

The disruption faced by landlords and tenants has impacted their commercial leases, affecting offices, retail and industrial. In response, the federal government released a Mandatory Code of Conduct, outlining a set of good faith leasing principles to support negotiations between landlords and their tenants.

While the Code aims to balance the interests of landlords and tenants, each state and territory has been tasked to legislate as appropriate. This scenario has resulted in uncertainty across the industry as each state has set out to implement legislation in their own different ways.

This compendium outlines the key aspects of the legislation as it applies to each jurisdiction in a themed and logical manner. We have also outlined the state based approach for landlords and tenants navigating land tax and also drawing out the importance of Foreign Investment Review Board considerations.

The pace of change can be unnerving for the industry, as so much is unknown about how the Code and the state based legislation will play out in the future – there is no precedent for a situation like this! For lawyers, we feel there is an ongoing need to come up with practical and pragmatic solutions to help protect landlords' and tenants' interests.

In order to rise above the uncertainty, however, it is critical to remember the spirit in which the Code was introduced and despite this uncertainty that sentiment that should guide our recommendations and behaviour.

We hope this compendium will assist you to navigate your position during these unprecedented times. Please do get in touch with any of the members of our team if we can support you further.

Virginia Briggs
Acting Chief Executive Officer & Managing Partner of the Firm

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Leasing Principles

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
STATE/TERRITORY LEGISLATION								
Principal Act	COVID-19 Legislation Amendment (Emergency Measures) Act 2020	COVID-19 Emergency Response Act 2020 (as amended by the COVID-19 Emergency Response and Other Legislation Amendment Act 2021) (Extension Act)	COVID-19 Emergency Response Act 2020	COVID-19 Omnibus (Emergency Measures) Act 2020	COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020	COVID-19 Emergency Response Act 2020	Commercial Tenancies (COVID-19 Response) Act 2020	Tenancies Legislation Amendment Act 2020
Delegated Legislation	Retail and Other Commercial Leases (COVID-19) Regulation 2020 (Regulation) Conveyancing (General) Regulation 2018 Sch 5	Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (Regulation)	Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 [repealed by Declaration (No 2) and no longer available]	COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 (Regulation)	COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020 Notice Under Section 22	COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020 (Regulation)	Commercial Tenancies (COVID-19 Response) Regulations 2020 (Regulation)	Nil.
Amendment/ Extension Legislation	Retail and Other Commercial Leases (COVID-19) Amendment Regulation 2020 (Amendment Regulation) Retail and Other Commercial Leases (COVID-19) Regulation (No 2) 2020 (Extension Regulation) Retail and Other Commercial Leases (COVID-19) Regulation (No 3) 2020 (Further Extension Regulation) COVID-19 Recovery Bill 2021	COVID-19 Emergency Response – Waiver and Deferral of Rents and Instalments) Regulation 2020 [This Regulation does not implement the leasing principles but commits the Queensland Government to providing rent relief for businesses who rent premises from the State government to mitigate the financial impact arising from the COVID-19 pandemic.] Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2020 (Extension Regulation) Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2021 (Amendment Regulation) COVID-19 Emergency Response and Other	Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (No 2)	COVID-19 Commercial and Residential Tenancies Legislation Amendment (Extension) Act 2020 COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Miscellaneous Amendments Regulations 2020 (Extension Regulation) COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Amendment Regulations 2020 (Further Extension Regulation) COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Amendment Regulations 2021 (SME Amendment Regulation)	COVID-19 Disease Emergency (Commercial Leases) Act 2020 (Commercial Leases Act) COVID-19 Disease Emergency (Commercial Leases) Regulations 2020 (Regulation) COVID-19 Disease Emergency (Commercial Leases) (Financial Hardship Cessation Day) Notice 2021	COVID-19 Emergency Response (Expiry and Rent) Amendment Bill 2020 COVID-19 Emergency Response (Commercial Leases No 2) (Prescribed Period) Variation Regulations 2020 (Extension Regulation)	Commercial Tenancies (COVID-19 Response) Amendment Regulations 2020 (Extension Regulation) Commercial Tenancies (COVID-19 Response) Amendment Regulations 2021 (Amendment Regulation) Commercial Tenancies (COVID-19 Response) Amendment Regulations (No. 2) 2021 (Further Amendment Regulation)	Business Tenancies COVID-19 Modification Notice 2020 [This notice does not implement the leasing principles but mandates that a landlord must not give a tenant a notice to quit unless the landlord has for at least 30 business day, made good faith efforts to negotiate with the tenant to allow the tenant to remain in the premises (some exceptions apply). The notice also provides the Local Court with various powers to make appropriate cost orders in leasing disputes due to COVID-19.]

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		Legislation Amendment Act 2021 (Amendment Act)						
Useful External Resources	New South Wales Small Business Commissioner – commercial leases and COVID-19 FAQs	Queensland Small Business Commissioner - Small business leasing advice and dispute resolution	ACT Government – COVID-19 commercial tenancies information (including a PDF document with guidance notes for landlords and tenants)	Victorian Small Business Commission - commercial tenancy relief scheme - support for tenants and landlords in response to COVID-19 FAQs	Consumer, Building and Occupation Services Tasmania – Changes to commercial tenancies during COVID-19 (including advice pages for landlords and tenants)	Small Business Commissioner South Australia – Essential Information for Lessees and Lessors dealing with COVID-19.	Small Business Development Corporation – FAQs – COVID-19 commercial tenancy changes State Administrative Tribunal – Commercial Tenancy COVID-19 Response	Northern Territory Consumer Affairs – commercial leases affected by COVID-19
PANDEMIC PERIODS								
Initial period								
Starts	24 April 2020	29 March 2020	1 April 2020	29 March 2020	1 April 2020	30 March 2020	30 March 2020	18 March 2020
Ends	23 October 2020	30 September 2020	28 September 2020	29 September 2020	31 January 2021	30 September 2020	29 September 2020	26 June 2020
Extended period								
Starts	24 October 2020	1 October 2020	28 September 2020 (revoking the first Declaration)	30 September 2020	Currently no plans for extension	1 October 2020	30 September 2020	Currently no plans for an extended period
Ends	31 December 2020 Note 1: There is a second extended period to 28 March 2021 for retail tenants only which have an annual turnover of up to \$5 million (Second Extended Period). Note 2: On 25 March 2021, the New South Wales Parliament passed the <i>COVID-19 Recovery Bill</i> , which, inter alia, introduced s 88 of the <i>Retail Leases Act 1994</i> . The effect of this is to preserve the statutory protections afforded by the Further Extension Regulation upon its repeal (which will occur on 1 July 2021). The practical consequence of this is that, if a tenant's leases is an "impacted lease" during the currency of the Further Extension Regulation, then	31 December 2020 Note: The Regulation has been extended by the Extension Act until 30 September 2021 or such earlier date as prescribed by regulation. The period during which the leasing principles apply expires on 31 December 2020	The earlier of either the first day no COVID-19 emergency is in force or any later day notified by the Minister; or 31 January 2021.	28 March 2021	N/A	3 January 2021	28 March 2021	N/A

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	the provisions of the Further Extension Regulation continue to apply, despite its repeal. This is to ensure that landlords cannot take action against eligible tenants for circumstances arising during the prescribed period unless they comply with their obligations under the Further Extension Regulation. This does not impact a landlord's rights in relation to breaches of a lease that occur either before or after the prescribed period.							
ELIGIBILITY								
Eligible Lease	<ul style="list-style-type: none"> retail shop lease under the <i>Retail Leases Act 1994</i> (this includes any agreement under which a person grants to another person for value a right of occupation of premises for the purpose of the use of the premises as a retail shop, whether or not the right is a right of exclusive occupation, whether the agreement is express or implied, and whether the agreement is oral or in writing, or partly oral and partly in writing); or any agreement regarding the leasing of premises or land for commercial purposes to which the <i>Conveyancing Act 1919</i> applies. does not apply to non-retail licences. does not apply to leases entered into after 24 April 2020 (but does apply to options or any other extension or renewal of a lease on 	<p>Initial period: provided that the tenant is an eligible tenant, and the lease (or an agreement to enter into the lease) is binding on the tenant (whether or not the lease has commenced) as at 28 May 2020, then:</p> <ul style="list-style-type: none"> a retail shop lease under the <i>Retail Shop Leases Act 1994</i>; or a lease, other than a retail shop lease, under which the premises are to be wholly or predominantly used for carrying on a business (a prescribed lease); and if a tenant under an affected lease is a franchisee, then a lease under which the franchisor is the tenant of the premises occupied by the franchisee is also an affected lease. does not include a lease under which 	<ul style="list-style-type: none"> any lease subject to the <i>Leases (Commercial and Retail) Act 2001</i> that was entered into before 7 April 2020 (including leases usually excluded from application of the Act under section 12(2)(a) and (b). (s 3(2) of the Declaration). 	<ul style="list-style-type: none"> a lease of retail premises within the meaning of the <i>Retail Leases Act 2003</i> (Vic); a lease of premises which are let for the sole or predominant purpose of carrying on a business; or a licence, sub-licence (or agreement for a licence or sub-licence), whether or not in writing or partly in writing, and whether express or implied, under which a person has the right to occupy, non-exclusively, a part of premises for the sole or predominant purpose of carrying on a business. <p>Does not apply to a retail lease or a non-retail commercial lease if:</p> <ul style="list-style-type: none"> the tenant is 'connected with' or an 'affiliate' of one or more entities (within the meaning of sections 328-125 and 328-130 the <i>Income Tax Assessment Act 1997</i> (Cth), respectively) and 	<ul style="list-style-type: none"> tenancies where the premises, or the part of premises, to which the lease relates are being used (or were, at any time during the period from 1 February 2020 to 9 April 2020, being used) by the tenant, wholly or predominantly for the carrying on of any business, trade or profession. <p>(cl (a) of the 9 April 2020 Notice under Section 22 of the Principal Act).</p> <p>The Commercial Leases Act covers commercial leases, meaning:</p> <ul style="list-style-type: none"> a lease to which Schedule 1 to the <i>Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998</i> (Tas) applies; or a lease of premises occupied, or to be occupied, wholly or predominantly for business purposes. <p>The Act does not apply in relation to:</p> <ul style="list-style-type: none"> a lease that is within a class of leases 	<ul style="list-style-type: none"> retail shop lease under the <i>Retail and Commercial Leases Act 1995</i>; or a lease under the <i>Landlord and Tenant Act 1936</i>; or any other agreement for value for the right to occupy premises for carrying on a business (whether or not the right is a right of exclusive occupation; whether the agreement is expressed or implied; whether the agreement is oral or in writing, or partly oral and partly in writing). does not apply to a lease under the <i>Pastoral Land Management and Conservation Act 1989</i> or a lease under the <i>Crown Land Management Act 2009</i>. <p>(r 3(1) of the Regulation).</p>	<p>'small commercial lease' which is a:</p> <ul style="list-style-type: none"> retail shop lease under the <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i> (under section 3 of that Act, a retail shop lease means a lease that provides for the occupation of a retail shop. This definition is subject to some exceptions, including where the retail shop has a lettable area that exceeds 1000 square metres.); lease of premises that is used by a tenant who owns or operates a small business; or a lease where the tenant is an incorporated association under the <i>Associations Incorporation Act 2015</i>; or or a lease prescribed by the Regulation, which includes a lease where the tenant is a corporation registered under the <i>Corporations (Aboriginal and Torres</i> 	<ul style="list-style-type: none"> retail shop leases or any other agreement (including sublease) under which business premises are let or hired to a person (whether or not for exclusive possession or in writing); and business leases that do not fall within the <i>Business Tenancies (Fair Dealings) Act 2003</i> such as a shop that has a lettable area of 1,000 m² or more, or a shop that is leased to a listed corporation) are still eligible. <p>(s 5(1) of the Principal Act).</p>

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	<p>the same terms as the existing lease).</p> <ul style="list-style-type: none"> does not apply to leases under the <i>Agricultural Tenancies Act 1990</i>. <p>(r 3 of the Retail Regulation, Extension Retail Regulation and Further Extension Regulation, r 1 of the Commercial Regulation and Extension Commercial Regulation).</p>	<p>the premises are to be used wholly or predominantly for a farming business under the <i>Farm Business Debt Mediation Act 2017</i>.</p> <ul style="list-style-type: none"> does not include a lease, permit, licence or sublease under the <i>Land Act 1994</i> unless it is a sublease of premises under a lease that has a rental category of 13 or 16 under that Act, or the sublessor under the sublease is not a government leasing entity within the meaning of the <i>Land Regulation 2009</i>. <p>(s 23(8) of the Principal Act, r 5 of the Regulation).</p> <p>Extended period: In addition to the above, the lessee must also be eligible for JobKeeper for the period starting on 28 September 2020 and ending on 4 January 2021.</p> <p>(new r 5(3A) created by r 3 of the Extension Regulation).</p>		<p>the aggregate turnover of the group of entities exceeds \$50 million;</p> <ul style="list-style-type: none"> the premises may be used wholly or predominantly for agricultural, pastoral, horticultural, apicultural, poultry farming, dairy farming or similar activities; or an entity has a prescribed method of control or influence, through the holding of prescribed interest, right or power, in relation to acts or decisions relating to the ownership, management or affairs of a tenant that is a body corporate. <p>(s 12-14 of the Principal Act, r 5 and 6 of the Regulation and new r 4A created by r 5 of the Extension Regulation).</p>	<p>prescribed by Regulation; and</p> <ul style="list-style-type: none"> a commercial lease in relation to premises being occupied wholly or predominantly for business purposes by a lessee on behalf of the lessor. <p>(s 4, 5 and 9(2) of the Commercial Leases Act).</p>		<p><i>Strait Islander) Act 2006</i> (Cth) and uses the land or premises for a commercial purpose.</p> <p>(s 3 of the Principal Act).</p> <ul style="list-style-type: none"> note that a 'small business' is a business that: has a relatively small share of the market in which it competes; is managed personally by the owner or directors; is not a subsidiary of a larger business; or is declared to be a small business. <p>[The Principal Act stipulates that the provisions of any lease or any other contract or agreement are taken to be modified to the extent necessary to give effect to the operation of the Principal Act. A lease or any other contract or agreement is also of no effect to the extent that it purports to exclude or restrict the operation of the Principal Act. A purported waiver of a right, remedy or benefit conferred on a person under the Act is also of no effect.]</p> <p>(s 6 and 7 of the Principal Act).</p>	
Eligible Tenant	<p>Initial period: tenants that:</p> <ul style="list-style-type: none"> qualify for the JobKeeper scheme under sections 7 and 8 of the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth); and have a turnover in the 2018-2019 financial year of less than \$50 million. 	<p>Initial period: the tenant under the lease:</p> <ul style="list-style-type: none"> is an SME entity* (being an entity that carries on business or is a non-profit body during the current financial year and one or both of the following apply: the entity has a likely annual turnover of less than \$50 million 	<p>tenants that:</p> <ul style="list-style-type: none"> qualify for the JobKeeper scheme under the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth), sections 7 and 8; and have a turnover in the 2018-2019 financial year of less than \$50 million. <p>(s 3(1) of the Declaration).</p>	<p>Initial period: a tenant that:</p> <ul style="list-style-type: none"> is an employer who qualifies for the JobKeeper scheme and is a participant in the JobKeeper scheme; and is an SME entity. <p>Note that an SME entity is an entity that carries on business or is a non-profit body during the current</p>	<p>a tenant whose:</p> <ul style="list-style-type: none"> turnover, in a continuous one month period since 1 February 2020, has reduced by more than 30% in at least one continuous one month period since 1 February 2020; and the turnover for the period from 1 February 2019 to 31 January 2020 is not more than \$50 million. 	<p>a tenant that:</p> <ul style="list-style-type: none"> is suffering financial hardship as a result of the COVID-19 pandemic; and has a turnover in a relevant year of less than \$50 million, <p>is an 'affected lessee'. (r 3(2) of the Regulation).</p> <p>A tenant will be taken to be suffering financial</p>	<p>Initial period:</p> <ul style="list-style-type: none"> have a turnover in the 2018-2019 financial year of less than \$50 million; and during that relevant period, qualify for the JobKeeper scheme under section 7 of the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth), or has at any 	

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	<p>(r 4 of the Retail Regulation, r 2 of the Commercial Regulation).</p> <p>Extended period: tenants that:</p> <ul style="list-style-type: none"> qualify for the JobKeeper scheme under sections 7, 8, 8A and 8B of the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth); and have a turnover in the 2018-2019 financial year of less than \$50 million. <p>(r 4 of the Extension Retail Regulation, r 2 of the Extension Commercial Regulation).</p> <p>Second extended period: retail tenants that:</p> <ul style="list-style-type: none"> qualify for the JobKeeper scheme under sections 7, 8, 8A and 8B of the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth); and have a turnover in the 2018-2019 financial year of less than \$5 million. <p>(r 4 of the Further Extension Regulation).</p>	<p>for the current financial year; or</p> <ul style="list-style-type: none"> the entity or non-profit body had an annual turnover of less than \$50 million in the previous financial year); and the tenant or an entity that is connected with, or an affiliate of, the tenant responsible for, or involved in, employing staff for the business carried on at the leased premises, is eligible for the JobKeeper scheme (but note that an entity that is a franchisee is not connected with, or an affiliate of, the franchisor merely because the entity is a franchisee). <p>(r 5 of the Regulation).</p> <p>Extended period: the tenant under the lease:</p> <ul style="list-style-type: none"> is an SME entity* (being an entity that carries on business or is a non-profit body during the current financial year and one or both of the following apply: the entity has a likely annual turnover of less than \$50 million for the current financial year; or the entity or non-profit body had an annual turnover of less than \$50 million in the previous financial year); and the tenant under the lease or an entity that is connected with, or 		<p>financial year and one or both of the following apply:</p> <ul style="list-style-type: none"> it has a likely annual turnover of less than \$50 million for the current financial year; or it had an annual turnover of less than \$50 million in the previous financial year. <p>(s 13 of the Principal Act, r 3 of the SME Amendment Regulation and s 5(1) of the <i>Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020</i> (Cth) (SME Rules)).</p> <p>Extended period: a tenant that:</p> <ul style="list-style-type: none"> is an entity entitled under section 6, 11 or 12A of the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth) (JobKeeper Rules) for a JobKeeper payment; and is an SME entity. <p>Note that an SME entity is an entity that carries on business or is a non-profit body during the current financial year and one or both of the following apply:</p> <ul style="list-style-type: none"> it has a likely annual turnover of less than \$50 million for the current financial year; or it had an annual turnover of less than \$50 million in the previous financial year. <p>(s 13 of the Principal Act, new r 4A created by r 5 of the Extension Regulation, r 3 of the SME Amendment</p>	<p>(cl (b) and (c) of the 9 April 2020 Notice under Section 22 of the Principal Act).</p> <p>Under the Commercial Leases Act a lessee is an eligible person at a time if the time occurs after the person is or:</p> <ul style="list-style-type: none"> becomes entitled, under the JobKeeper Rules, for a JobKeeper payment or becomes qualified, under the JobKeeper Rules, for the JobKeeper scheme; and becomes an SME entity; or the person satisfies the criteria prescribed by the Regulation, <p>even if any of the criteria ceases to apply to the person during the financial hardship period.</p> <p>(s 6(1) of the Commercial Leases Act).</p> <p>Note that an SME entity is an entity that carries on business or is a non-profit body during the current financial year and one or both of the following apply:</p> <ul style="list-style-type: none"> it has a likely annual turnover of less than \$50 million for the current financial year; or it had an annual turnover of less than \$50 million in the previous financial year. <p>(s 5(1) of the <i>Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020</i> (Cth)).</p>	<p>hardship as a result of the COVID-19 pandemic if the tenant is eligible for, or receiving, a JobKeeper payment in respect of the business of the tenant (whether in their capacity as an employer or on their own behalf).</p> <p>(r 3(5) of the Regulation).</p> <p>The Court may make a determination as to whether or not a tenant is an affected lessee and in making such a determination may have regard to:</p> <ul style="list-style-type: none"> whether or not the tenant is eligible for, or receiving, a JobKeeper payment in respect of the business of the tenant (whether in their capacity as an employer or on their own behalf); any reduction in turnover of the business of the tenant (as verified by financial records or statements provided by the tenant) during a specified period as compared with another specified period determined by the Court as being relevant to the circumstances of whether or not a tenant is suffering financial hardship as a result of the COVID-19 pandemic. <p>(r 9(3) and r 9(4) of the Regulation).</p>	<p>time prior to 28 September 2020 during the initial period, satisfied the decline in turnover test set out in section 8 of those Rules.</p> <p>(Schedule 1 cl 2(1) of the Regulation).</p> <p>Extended periods: For the period beginning on 28 September 2020 and ending on 3 January 2021, tenants that:</p> <ul style="list-style-type: none"> have a turnover in the 2019-2020 financial year of less than \$50 million; and during that relevant period, qualify for the JobKeeper scheme or nevertheless satisfy any test relating to turnover during July, August and September 2020 by which a person can qualify for the JobKeeper scheme during these months. <p>(new Schedule 1 cl 2(1A) and Schedule 1 cl 2(1C) created by r 7(2) of the Extension Regulation).</p> <p>For the period beginning on 4 January 2021 and ending on 28 March 2021, tenants that:</p> <ul style="list-style-type: none"> have a turnover in the 2019-2020 financial year of less than \$50 million; and during that relevant period, qualify for the JobKeeper scheme or nevertheless satisfy any test relating to turnover during October, November and December 2020 by which a person can qualify for the 	

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		<p>an affiliate of, the tenant responsible for, or involved in, employing staff for the business carried on at the leased premises, must also be eligible for the JobKeeper scheme for the period starting on 28 September 2020 and ending on 4 January 2021.</p> <p>(r 5 of the Regulation, new r 5(3A) created by r 3 of the Extension Regulation).</p> <p>*Note: The definition of SME Entity was amended in November 2020 by the <i>Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Amendment Rules 2020</i> (Cth) to increase the turnover threshold for SME entities from \$50 million to \$120 million. The Amendment Regulation amended the definition of SME Entity to clarify that the \$50 million threshold applies and was always intended to apply.</p> <p>The Amendment Regulation also includes transitional provisions to address any steps taken regarding leases which may have become an 'affected lease' as a result of the threshold change. Those leases (defined in the Amendment Regulation as 'ineligible leases') are deemed to never have been an 'affected lease', and are not afforded the protections under the Regulation. Further amending regulations are</p>		Regulation and s 5(1) of the SME Rules).				<p>JobKeeper scheme during these months. (new Schedule 1 cl 2(1B) and Schedule 1 cl 2(1C) created by r 7(2) of the Extension Regulation).</p>	

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
		expected to be released shortly.						
Definition of Turnover	<ul style="list-style-type: none"> for franchisees, this is the turnover of the business conducted at the premises or land concerned; for entities that are members of a group (i.e. related bodies corporate), this is the group turnover; in any other case, this is the turnover of the business conducted by the tenant; and turnover includes internet sales of goods and services. <p>(r 4 of the Retail Regulation, Extension Retail Regulation and Further Extension Regulation, r 2 of the Commercial Regulation and Extension Commercial Regulation).</p>	<ul style="list-style-type: none"> the annual turnover of the business carried on by the tenant at the premises; or if the tenant is an entity connected with, or an affiliate of, another entity, the aggregate turnover of the entities; the turnover of a business includes income earned from internet sales but does not include a grant or assistance given by the Commonwealth, State or a local government to mitigate the effects of the COVID-19 emergency. <p>(r 5(3) and 5(5) of the Regulation).</p>	<ul style="list-style-type: none"> for franchisees, this is the turnover of the business conducted at the premises or land concerned; for corporations that are members of a group (i.e. related bodies corporate), this is the group turnover; in any other case, this is the turnover of the business conducted by the tenant. <p>(s 3(1) of the Declaration).</p>	<p>Initial period:</p> <p>The annual turnover of an entity for a financial year is the total of the following that is earned or received by an entity in the most recent financial year in the course of the business:</p> <ul style="list-style-type: none"> the proceeds of sales of goods and/or services; commission income; repair and service income; rent, leasing and hiring income; government bounties and subsidies; interest, royalties and dividends; and other operating income. <p>(s 5(2) of the SME Rules, r 5 of the Regulation and r 3 of the SME Amendment Regulation).</p> <p>Extended period:</p> <p>The annual turnover of an entity for a financial year is the total of the following that is earned or received by an entity in the most recent financial year in the course of the business:</p> <ul style="list-style-type: none"> the proceeds of sales of goods and/or services; commission income; repair and service income; rent, leasing and hiring income; government bounties and subsidies; 	<p>The annual turnover of an entity for a financial year is the total of the following that is earned in the year in the course of the business:</p> <ul style="list-style-type: none"> the proceeds of sales of goods and/or services; commission income; repair and service income; rent, leasing and hiring income; government bounties and subsidies; interest, royalties and dividends; and other operating income. <p>(s 5(2) of <i>Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020</i> (Cth)).</p>	<p>The following turnover in a relevant year was less than \$50 million:</p> <ul style="list-style-type: none"> if the lessee is a franchisee - the turnover of the business conducted at the premises the subject of the commercial lease; if the lessee is a corporation that is a member of a group (i.e. related bodies corporate) - the turnover of the group; in any other case - the turnover of the business conducted by the lessee at the premises the subject of the commercial lease; and turnover includes internet sales of goods and services. <p>(r 3(2)(b) and r 3(4) of the Regulation).</p> <p>'Relevant year' means:</p> <ul style="list-style-type: none"> the 2018/19 financial year; or a 12 month period or such lesser period as determined by the Court; or a 12 month period or such lesser period determined by the Minister by notice in the Gazette. <p>(r 3(1) of the Regulation).</p>	<ul style="list-style-type: none"> for franchisees, this is the turnover of the business conducted at the premises or land concerned; for corporations that are members of a group (i.e. related bodies corporate), this is the group turnover; and in any other case, this is the turnover of the business conducted by the tenant at the land or premises that are the subject of the small commercial lease. <p>(Schedule 1 cl 2(1) of the Regulation, new Schedule 1 cl 2 (1C) created by r 7(2) of the Extension Regulation).</p>	

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<ul style="list-style-type: none"> interest, royalties and dividends; and other operating income. <p>A 'coronavirus economic response payment' (as defined in section 6 of the <i>Coronavirus Economic Response Package (Payments and Benefits) Act 2020</i> (Cth) (JobKeeper Act)) should not be included for the purposes of calculating 'turnover' under the Regulation and Extension Regulation. This includes all of the kinds of payments provided for by the JobKeeper Rules.</p> <p>(s 5(2) of the SME Rules, r 5 of the Regulation, new r 5(2) and 5(3) created by r 6 of the Extension Regulation and s 6 of the JobKeeper Act).</p>				
RENT RELIEF PROCESS								
Process to initiating rent relief	<p>Initial period:</p> <p>Any party to a commercial lease to which an impacted lessee is a party (an impacted lease), may request the other parties to renegotiate the rent payable under, and other terms of, the impacted lease.</p> <p>A party to an impacted lease must, if requested, renegotiate in good faith the rent payable under, and other terms of, the impacted lease.</p> <p>An impacted lessee must give the lessor the following in respect of the impacted lease:</p> <ul style="list-style-type: none"> a statement to the effect that the tenant is an impacted lessee; and evidence that the lessee is an impacted lessee. 	<p>Initial period and extended period:</p> <p>A party (the <i>initiator</i>) to an affected lease may, in writing, ask another party to the lease to negotiate the rent payable under, and other stated conditions of, the lease.</p> <p>After the initiator's request is made, the parties must, as soon as practicable, give each other information relating to the request that is:</p> <ul style="list-style-type: none"> true, accurate, correct and not misleading; and sufficient to enable the parties to negotiate in a fair and transparent way. <p>Examples of sufficient information include:</p> <ul style="list-style-type: none"> a clear statement about the terms of 	<p>Either party may initiate, but the obligation is on the landlord to have engaged with the tenant about rent relief. As set out in the Declaration, a landlord must not give a termination notice to an impacted tenant in relation to a prescribed breach unless the landlord has engaged in good faith negotiations with the tenant.</p> <p>(s 6(1) of the Declaration).</p>	<p>Initial period:</p> <p>A tenant under an eligible lease may request rent relief from the landlord.</p> <p>A tenant's request for rent relief must be in writing and accompanied by:</p> <ul style="list-style-type: none"> a statement that the tenant's lease is an eligible lease and not excluded from the operation of the Regulation; and information that evidences that the tenant is an SME entity and qualifies for and is a participant in the JobKeeper scheme. <p>On receipt of such a request, the landlord must offer rent relief to the tenant within 14 days after receiving that request (or a different timeframe as agreed between the</p>	<p>A party to a protected lease must, as soon as possible after the commencement day (being 3 June 2020), continue to conduct, or enter into and conduct, negotiations during the financial hardship period in relation to the rent payable under the lease.</p> <p>A party to a protected lease may request the other party to the lease to renegotiate the rent payable under the lease.</p> <p>A party to a protected lease must, if such request is made, renegotiate in good faith the rent payable under the lease.</p> <p>(s 12(1) and s 18 of the Commercial Leases Act).</p>	<p>The parties to a commercial lease and any guarantor or other person with an interest in the lease must make a genuine attempt to negotiate in good faith the rent payable under, and other terms of, the commercial lease during the applicable prescribed period.</p> <p>(r 6 of the Regulation).</p>	<p>Initial period and extended period:</p> <p>A tenant may request rent relief from the landlord. As a result of the Further Amended Regulations, the final day for an eligible tenant to make a rent relief request relating to the emergency period is 27 May 2021.</p> <p>(Schedule 1 cl 5, 6 and 8 of the Regulation).</p> <p>A tenant's request must be in writing and accompanied by:</p> <ul style="list-style-type: none"> a statement that the tenant's lease is a small commercial lease, and the tenant is an eligible tenant in relation to the small commercial lease; sufficient and accurate information that 	

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	<p>If the impacted lessee does not provide such a statement and evidence of their impacted lessee status, the lessor is deemed to have complied with these requirements. As these evidentiary obligations were introduced under the Amendment Regulation, they only extend to renegotiations commenced but not completed before the amendments commenced (on 3 July 2020).</p> <p>Under the Retail Regulation, the evidentiary requirements do not extend to a matter for which a retail tenancy claim has been made pursuant to section 71 of the <i>Retail Leases Act 1994</i>. Similarly, under the Commercial Regulation, the new obligations do not extend to proceedings which have commenced in a court. (r 4(1), 7 and 13 of the Retail Regulation as amended by the Amendment Regulation, r 2(1), 5 and 11 of the Commercial Regulation as amended by the Amendment Regulation).</p> <p>Extended period: Any party to a commercial lease to which an impacted lessee is a party (an impacted lease) may request the other parties to renegotiate the rent payable under, and other terms of, the impacted lease. A party to an impacted lease must, if requested, renegotiate in good faith the rent payable under, and other terms of, the impacted lease. Renegotiations must commence within 14 days of receiving the request or</p>	<p>the lease the initiator is seeking to negotiate; and</p> <ul style="list-style-type: none"> a statement by the tenant that demonstrates why the lease is an affected lease, accompanied by supporting information and evidence, such as: accurate financial information or statements about the turnover of the tenant's business; information demonstrating that the tenant is an SME entity, having regard to any entities that the tenant is connected with, or an affiliate of; evidence of the tenant's eligibility for, or participation in, the jobkeeper scheme; information about any steps the tenant has taken to mitigate the effects of the COVID-19 emergency on the tenant's business, including the details of any assistance being received by the tenant from the Commonwealth, State or a local government; and in relation to a franchisor, information about any concession or benefit provided to or by the franchisor in relation to rent or outgoings for the premises occupied by the franchisee, and any undertakings to pass those concessions or benefits on to the franchisee. 		<p>landlord and the tenant in writing).</p> <p>The offer must apply during the relevant period and be based on all the circumstances of the lease. It must relate to up to 100% of the rent payable during the relevant period. No less than 50% of the relief offered must be in the form of a waiver, unless otherwise agreed in writing.</p> <p>Following receipt of a landlord's offer by the tenant, the tenant and the landlord must negotiate in good faith with a view to agreeing on the rent relief to apply during the relevant period. (r 10 of the Regulation).</p> <p>Extended period: A tenant under an eligible lease may request rent relief from the landlord. A tenant's request for rent relief must be in writing and accompanied by:</p> <ul style="list-style-type: none"> a statement from the tenant: <ul style="list-style-type: none"> that the tenant's lease is an eligible lease; that the lease is not excluded from the operation of the Regulation; and setting out the tenant's decline in turnover that is associated with only the premises, information that evidences that the tenant is an SME entity and is an entity entitled to a JobKeeper payment under section 6, 11 or 12A of the JobKeeper Rules, including: <ul style="list-style-type: none"> the receipt number issued by the 			<p>evidences that the tenant is an eligible tenant in relation to the small commercial lease;</p> <ul style="list-style-type: none"> sufficient and accurate information that evidences the reduction in the tenant's turnover that the tenant has experienced during the initial period and the extended period (if applicable) or relevant part of the initial period and the extended period (if applicable), for which the tenant is eligible and is associated with the business conducted at the land or premises that are the subject of the small commercial lease. <p>Upon receipt of a request for rent relief a landlord must offer relief within 14 days of receiving the request or such other agreed period. A landlord's offer must be in writing and in accordance with the principles set out in Schedule 1 cl 7 of the Regulation. [See below: <i>Factors to take into account when negotiating rent</i>] Following receipt of the landlord's offer, the tenant and landlord must negotiate with a view to agreeing on rent relief to apply during the initial period and the extended period (if applicable). Rent relief under the Regulation may be given effect by the landlord and tenant by a written variation or any other written agreement between</p>	

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	<p>another period agreed to by the parties.</p> <p>A party to the impacted lease may make a second or subsequent request for renegotiation if the request is made during the prescribed period, and does not relate to rent for a period which rent has already been reduced, waived or deferred following a previous renegotiation.</p> <p>An impacted lessee must give the lessor the following in respect of the impacted lease:</p> <ul style="list-style-type: none"> a statement to the effect that the tenant is an impacted lessee; and evidence that the lessee is an impacted lessee. <p>If the impacted lessee does not provide such a statement and evidence of their impacted lessee status, the lessor is deemed to have complied with these requirements.</p> <p>An impacted lessee will also need to provide evidence that they are eligible for the second stage of JobKeeper in order to request a renegotiation of the lease for the extended period.</p> <p>A renegotiation commenced but not concluded under the Regulation (i.e. prior to 24 October 2020) may be continued and concluded under the Extension Regulation. Similarly, a renegotiation commenced but not concluded before 31 December 2020 under the Extension Regulation, may be continued and concluded after this date.</p> <p>Under the Extension Retail Regulation, the evidentiary requirements do not extend to a matter for</p>	<p>Once a request has been made:</p> <ul style="list-style-type: none"> the parties must negotiate the conditions of the lease the subject of the initiator's request; within 30 days after a party receives sufficient information about a request, the landlord must offer the tenant a reduction in the amount of rent payable under the lease, and any proposed changes to other stated conditions; the offer must relate to any or all of the rent payable under the affected lease during the initial period and the extended period (if applicable) and in respect of the initial period, provide for no less than 50% of the rent reduction offered to be in the form of a waiver of rent (this obligation does not apply during the extended period) and have regard to the factors set out in the row below. <p>On receiving the landlord's offer, the tenant and landlord must cooperate and act reasonably and in good faith in negotiating a reduction in the amount of rent payable under the lease for the initial period and the extended period (if applicable), including any conditions relating to the reduction in rent.</p> <p>(r 14 and 15 of the Regulation, amendment</p>		<p>Commissioner of Taxation when the tenant elected to participate in the JobKeeper scheme; and</p> <ul style="list-style-type: none"> a copy of the tenant's most recent notice under the JobKeeper Rules to the Commissioner of Taxation, as evidence that the tenant is an entity entitled under section 6, 11 or 12A of the JobKeeper Rules for a JobKeeper payment, and information that evidences the tenant's stated decline in turnover, including at least one of the following: <ul style="list-style-type: none"> extracts from the tenant's accounting records; or the tenant's business activity statement relating to the relevant turnover test period; or statements issued by an ADI in respect of the tenant's account; or a statement prepared by a practising accountant. <p>A tenant's decline in turnover must be:</p> <ul style="list-style-type: none"> expressed as a whole percentage; and calculated consistently with the actual 'decline in turnover test' applying to the tenant and in relation to the most recent turnover test period applying to the tenant (see sections 8 and 8A of the JobKeeper Rules). <p>On receipt of such a request, the landlord must offer rent relief to the</p>			<p>the landlord and tenant that gives effect to the rent relief, either directly or indirectly.</p>	

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	<p>which a retail tenancy claim has been made pursuant to section 71 of the <i>Retail Leases Act 1994</i>. Similarly, under the Extension Commercial Regulation, the new obligations do not extend to proceedings which have commenced in a court. (r 4(1), 7 and 13 of the Extension Retail Regulation, r 2(1), 5 and 11 of the Extension Commercial Regulation).</p> <p>Second extended period:</p> <p>Any party to a commercial lease to which an impacted lessee is a party (an impacted lease) may request the other parties to renegotiate the rent payable under, and other terms of, the impacted lease.</p> <p>A party to an impacted lease must, if requested, renegotiate in good faith the rent payable under, and other terms of, the impacted lease. Renegotiations must commence within 14 days of receiving the request or another period agreed to by the parties.</p> <p>A party to the impacted lease may make a second or subsequent request for renegotiation if the request is made during the prescribed period, and does not relate to rent for a period which rent has already been reduced, waived or deferred following a previous renegotiation.</p> <p>An impacted lessee must give the lessor the following in respect of the impacted lease:</p> <ul style="list-style-type: none"> ▪ a statement to the effect that the tenant is an impacted lessee; and 	<p>of r 15 by r 7 of the Extension Regulation).</p>		<p>tenant within 14 days after receiving that request (or a different timeframe as agreed between the landlord and the tenant in writing).</p> <p>The offer must apply to the period starting on the date of the tenant's request for rent relief and ending on 28 March 2021, and be based on all the circumstances of the lease. It must relate to up to 100% of the rent payable during the period starting on the date of the tenant's request for rent relief and ending on 28 March 2021. No less than 50% of the relief offered must be in the form of a waiver, unless otherwise agreed in writing.</p> <p>The landlord's request for rent relief must be, at a minimum, proportional to the decline in the tenant's turnover associated with only the premises.</p> <p>Following receipt of a landlord's offer by the tenant, the tenant and the landlord must negotiate in good faith with a view to agreeing on the rent relief to apply during the period starting on the date of the tenant's request for rent relief and ending on 28 March 2021.</p> <p>(r 10 of the Regulation, amendment of r 10 by r 8 of the Extension Regulation and r 5 of the Further Extension Regulation).</p>				

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	<ul style="list-style-type: none"> evidence that the lessee is an impacted lessee. <p>If the impacted lessee does not provide such a statement and evidence of their impacted lessee status, the lessor is deemed to have complied with these requirements.</p> <p>An impacted lessee will also need to provide evidence that they are eligible for the third stage of JobKeeper which will commence on 4 January 2021 in order to request a renegotiation of the lease for the Second Extended Period.</p> <p>A renegotiation commenced but not concluded under the Further Extension Regulation (i.e. prior to 28 March 2021) may be continued and concluded after 28 March 2021.</p> <p>Under the Further Extension Regulation, the evidentiary requirements do not extend to a matter for which a retail tenancy claim has been made pursuant to section 71 of the <i>Retail Leases Act 1994</i>. (r 4, 7 and 13 of the Further Extension Regulation).</p>							
Factors to take into account when negotiating rent	<p>Negotiations of both the rent and other terms must have regard to:</p> <ul style="list-style-type: none"> the economic impacts of the COVID-19 pandemic; and the Leasing Principles set out in the Code. <p>(r 7(4) of the Retail Regulation and r 7(6) of the Extension Retail Regulation and Further Extension Regulation, r 5(4) of the Commercial Regulation and r 5(6) of the Extension Commercial Regulation).</p>	<p>When making an offer of rent relief, landlords must have regard to:</p> <ul style="list-style-type: none"> all the circumstances of the tenant and the affected lease, including the reduction in turnover of the business carried on at the leased premises during the initial period and during the extended period (if applicable); the extent to which a failure to reduce the rent payable under 	<p>A landlord engages in good faith negotiations with an impacted tenant if the landlord, in acknowledging the financial hardship suffered by the tenant because of the economic impact of COVID-19, negotiates with the tenant having regard to the overarching principles and leasing principles set out in the Code.</p> <p>(s 4 of the Declaration). [See comments in relation to the Leasing Principles]</p>	<p>Initial period:</p> <p>A landlord's offer of rent relief must take into account:</p> <ul style="list-style-type: none"> the reduction in a tenant's turnover associated with the premises during the relevant period; any waiver given in respect of outgoings or other expenses payable under the lease (pursuant to r 14(2) of the Regulation); 	<p>Negotiations for rent relief must have regard to the individual circumstances of the protected lessee and of the lessor, taking into account such matters as:</p> <ul style="list-style-type: none"> the degree of financial hardship of the lessee and of the lessor; whether the lease has expired and the lease is being held over or whether the lease is about to expire; whether the lessee, or the lessor, is in administration or 	<p>Negotiations of both the rent and other terms must have regard to:</p> <ul style="list-style-type: none"> the economic impacts of the COVID-19 pandemic on the parties to the lease; the provisions of the Act and the Regulation; and the National Cabinet's code of conduct. <p>[See comments in relation to the Leasing Principles.]</p>	<p>The following principles apply to a landlord's offer of rent relief and negotiations between landlords and tenants in relation to rent relief:</p> <ul style="list-style-type: none"> an offer of rent relief must apply to the applicable prescribed period; the rent relief offered must be at least proportionate to the reduction in the tenant's turnover that is associated with the business conducted at the land or premises 	

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	[See comments in relation to the Leasing Principles]	<p>the lease would compromise the tenant's ability to comply with the tenant's obligations under the lease, including the payment of rent;</p> <ul style="list-style-type: none"> the landlord's financial position, including any financial relief provided to the landlord as a COVID-19 response measure; if a portion of rent or another amount payable under the lease represents an amount for land tax, local government rates, statutory charges, insurance premiums or other outgoings – any reduction in, or waiver of, the amount payable; and to the extent the request relates to the extended period, the offer may include or consist of any rent reduction already offered or given in relation to that period. <p>(r 15(2)(c) of the Regulation, new r 15(2A) created by r 7 of the Extension Regulation).</p>		<ul style="list-style-type: none"> whether a failure to offer sufficient rent relief would compromise a tenant's capacity to fulfil the tenant's ongoing obligations under the eligible lease, including the payment of rent; a landlord's financial ability to offer rent relief, including any relief provided to a landlord by any of its lenders as a response to the COVID-19 pandemic; and any reduction to any outgoings charged, imposed or levied in relation to the premises. <p>(r 10(4) of the Regulation).</p> <p>Extended period: A landlord's offer of rent relief must take into account:</p> <ul style="list-style-type: none"> any waiver given in respect of outgoings or other expenses payable under the lease (pursuant to r 14(2) of the Regulation); whether a failure to offer sufficient rent relief would compromise a tenant's capacity to fulfil the tenant's ongoing obligations under the eligible lease, including the payment of rent; and any reduction to any outgoings charged, imposed or levied in relation to the premises. <p>If the rent charged under an eligible lease is inclusive of outgoings chargeable to the tenant with respect to the premises, the landlord</p>	<p>receivership or is about to, or reasonably likely to, become insolvent or enter into administration or receivership;</p> <ul style="list-style-type: none"> the leasing principles set out in the National Code; and any matters prescribed by the Regulation. <p>[See comments in relation to the Leasing Principles] (s 12(2) and 18(3) of the Commercial Leases Act). Parties must not engage in misleading or deceptive conduct in negotiations relating to the rent payable under the lease. (s 12(1)(b) of the Commercial Leases Act).</p>	<p>In making an order in relation to rent relief, the Magistrates Court must have regard to the following:</p> <ul style="list-style-type: none"> the obligations of the lessor under the Act, a relevant Act and the Regulation; the reduction in turnover of the business of the lessee during the applicable prescribed period; whether the lessor has, during the applicable prescribed period, agreed to waive recovery of any outgoings or other expenses payable by a lessee under the lease; whether a failure to provide rent relief would compromise the lessee's ability to fulfil the lessee's ongoing obligations under the lease, including the payment of rent; the ability of the lessor to provide rent relief, including any relief provided to the lessor by a third party in response to the COVID-19 pandemic; any reduction by a third party to outgoings in relation to the premises the subject of the lease; any other matter the Court thinks fit. <p>(r 6 and 9(8) of the Regulation).</p>	<p>that are the subject of the small commercial lease and the tenant has experienced during the applicable prescribed period;</p> <ul style="list-style-type: none"> unless otherwise agreed, the rent relief provided by the landlord must be adjusted from time to time (but not more frequently than monthly) during the applicable prescribed period, to take into account any variation in the reduction in the tenant's turnover that the tenant experiences during the applicable prescribed period; unless otherwise agreed, the tenant's reduction in turnover is to be calculated using the principles, or updated principles, of any relevant test relating to decline in turnover applicable to the JobKeeper scheme set out in the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth); an offer may relate up to 100% of the rent payable under the commercial lease; an offer must provide that not less than 50% of the rent relief is to be in the form of a waiver of rent, unless the landlord and tenant agree otherwise in writing; an offer must provide that more than 50% of the relief is to be in the form of a waiver if failure to provide more 	

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				<p>must offer rent relief under r 10(4) of the Regulation with respect to the rent payable inclusive of outgoings.</p> <p>(r 10(4) of the Regulation, amendment of r 10(4) by r 8(3) of the Extension Regulation and new r 10(4A) created by r 8(4) of the Extension Regulation).</p>			<p>than 50% of the rent relief in the form of a waiver of rent would compromise the tenant's capacity to fulfil its ongoing obligations under the lease, and the landlord has the financial capacity to provide more than 50% of the relief in the form of a waiver of rent;</p> <ul style="list-style-type: none"> where the landlord is a tenant under a headlease and is provided rent relief under that headlease, it must pass on the benefit of the rent relief to the tenant. <p>(Schedule 1 cl 7 of the Regulation, amendment of Schedule 1 cl 7 by r 10 of the Extension Regulation).</p>	
<p>Can a tenant seek rent relief more than once?</p>	<p>Extended period: Yes. A party to the impacted lease may make a second or subsequent request for renegotiation of the rent payable and other terms of the lease. This request must be made during the prescribed period (i.e. prior to 31 December 2020) and the request cannot relate to rent for a period which has already been reduced, waived or deferred following a previous renegotiation. (r 7(3) of the Extension Retail Regulation, r 5(3) of the Extension Commercial Regulation).</p> <p>Second extended period: Yes. A party to the impacted lease may make a second or subsequent request for renegotiation of the rent payable and other terms of the lease. This request must</p>	<p>Yes. If, after a reduction in the amount of rent is agreed between the parties to an affected lease (whether the agreement is entered into before or after commencement), a ground on which the previous negotiations were based changes in a material way, a party may ask another party to negotiate a further reduction in rent during the initial period or the extended period (if applicable). The above process applies, as if the party making the request were the initiator of the request. However, the landlord's offer need not include a waiver of rent for at least 50% of the reduction offered to the extent it relates to the initial period.</p>	<p>Silent.</p>	<p>Initial period: Yes. If the financial circumstances of a tenant under an eligible lease materially change after a variation to the eligible lease has been made, or an agreement has been reached relating to rent relief, the tenant may make a further request to the landlord under that lease for rent relief and follow the same process outlined in r 10 of the Regulation. However, a landlord's offer of rent relief is not required to provide that 50% of the rent relief be in the form of a waiver. (r 11 of the Regulation).</p> <p>Extended period: Yes. A tenant may make a further request to the landlord for rent relief under r 10 of the Regulation if a variation of</p>	<p>Yes, but no express right – rather, it is implied to the Regulation. However, unless the parties agree otherwise in writing, the parties to a protected lease must not renegotiate the rent payable under the lease within 3 months of an agreement for rent relief being reached, otherwise the protections set out in section 18 of the Commercial Leases Act do not apply to the parties. (r 5 of the Regulation).</p>	<p>Silent. However, if between 30 March 2020 and 14 May 2020 ('designated period') the parties to a commercial lease have agreed to modify the operation of the lease (including agreeing to rent relief), then an order of the Court may not operate to modify or affect that agreement insofar as that agreement operated during the designated period, but may, if the Court so determines, operate to modify or affect the operation of that agreement as it purports to operate after the designated period. Additionally, if the parties to a commercial lease entered into an agreement (i.e. for rent relief) before the end of the initial period and the</p>	<p>Yes, in three ways. Firstly, if before the Regulation was adopted, the landlord and tenant entered into an agreement so as to provide rent relief and the tenant believes that that rent relief is less favourable than the rent relief that might be provided to the tenant under the Regulation, the tenant may make a request for rent relief under Schedule 1 cl 5 of the Regulation and the landlord and tenant must follow the process set out in the Regulation in relation to that request. (Schedule 1 cl 10 of the Regulation). Secondly, if the financial circumstances of an eligible tenant in relation to a small commercial lease materially change after a variation to the small commercial lease, or an agreement has been</p>	<p>Silent.</p>

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	be made during the prescribed period (i.e. prior to 28 March 2021) and the request cannot relate to rent for a period which has already been reduced, waived or deferred following a previous renegotiation. (r 7(3) Further Extension Regulation).	To the extent the request relates to the extended period, the landlord's offer: <ul style="list-style-type: none"> need not include a waiver of rent for at least 50% of the reduction offered; and may include or consist of any rent reduction already offered or given in relation to that period before the commencement of the Extension Regulation. (r 16 of the Regulation, new r 16(5) created by r 8 of the Extension Regulation).		lease (or other agreement) has been entered into to give effect to a rent relief arrangement and: <ul style="list-style-type: none"> subsequently the financial circumstances of the tenant under the eligible lease materially change; or the variation or agreement was made prior to the commencement of the Extension Regulation and does not comply with the requirement for the landlord to provide a tenant with proportional rent relief; or the rent relief does not apply to the whole of the period commencing on the date of the tenant's request for rent relief and ending on 28 March 2021. The landlord and tenant must follow the same process outlined in r 10 of the Regulation and amendment of r 10 by r 8 of the Extension Regulation. (r 11 of the Regulation, amendment of r 11 by r 9 of the Extension Regulation and r 6 of the Further Extension Regulation).		terms of that agreement apply beyond the end of the initial period, either party may apply to the Small Business Commissioner (SBC) for mediation of a relevant dispute that relates to the terms of that agreement insofar as they apply in relation to the extended period, provided that the tenant is, or is claiming to be, an affected lessee in the extended period. However, the parties are unable to change the operation of that agreement insofar as it applies in respect of the initial period. (new r 8(2a) and 8(2b) of the Extension Regulation). The Court is also empowered to make an order that varies, revokes or substitutes the terms of an agreement (i.e. for rent relief) entered into by the parties to the commercial lease as contemplated by the Regulation, as well as being able to vary or revoke an order made by the Court in the initial period that purports to apply in respect of a period that occurs after or extends beyond the end of the initial period. (new r 9(5)(ea) and 9(10a) of the Extension Regulation).	reached relating to rent relief under the Regulation, the tenant may make a further request for rent relief to the landlord, and the landlord and tenant must follow the rent relief process under Schedule 1 cl 6 of the Regulation. (new Schedule 1 cl 10(3) created by r 12 of the Extension Regulation). Thirdly, if rent relief provided under an agreement or variation to the small commercial lease has come to an end before the end of the applicable prescribed period an eligible tenant may, during the applicable prescribed period, make a further request for rent relief. (Schedule 1 cl 10(3) of the Regulation).	
Confidentiality requirements	Silent. [However, r 8(1) of the Retail Regulation imports the operation of Part 8 (and section 69) of the <i>Retail Leases Act 1994</i> (NSW). As such, in relation to retail leases, statements made and documents provided	A party to an eligible lease dispute must not disclose protected information obtained under, or as a result of, the operation of the Regulation, other than: <ul style="list-style-type: none"> with the consent of the person to whom 	Silent.	A landlord or tenant under an eligible lease must not divulge or communicate protected information obtained under or in connection with the operation of the Regulation.	A person must not divulge or communicate confidential personal information, confidential information relating to business processes or confidential financial information (including information about a prescribed factor in	A person must not divulge or communicate personal information, information relating to business processes or financial information obtained in connection with a mediation under the Regulation.	A party must not disclose protected information under or in connection with the operation of the Code. Several exceptions apply which allow information to be disclosed in good faith, including:	Silent.

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	<p>during the course of a mediation are confidential and are not able to be adduced in evidence in legal proceedings.] (r 8(1) of the Retail Regulation, Extension Retail Regulation and Further Extension Regulation).</p>	<p>the information relates; or</p> <ul style="list-style-type: none"> to a professional advisor or financier who agrees to keep the information confidential; or to the extent the information is available to the public; or as authorised by the Small Business Commissioner; or as authorised under any Act or law. <p>Protected information means personal information and information relating to business processes or financial information, including information about the trade of a business. (r 20 of the Regulation).</p>		<p>Several exceptions apply which allow information to be divulged:</p> <ul style="list-style-type: none"> with the consent of the person to whom the information relates; or to a professional adviser or actual/prospective financier who agrees to keep it confidential; or as authorised by the Small Business Commission or under law; or for the purposes of any proceeding in a court or tribunal. <p>(r 19 of the Regulation).</p>	<p>relation to a business) obtained in connection with the operation of the Act.</p> <p>Several exceptions apply which allow information to be divulged:</p> <ul style="list-style-type: none"> with the consent of the person to whom the information relates; or in connection with the administration of the Act; or to a person acting in a professional capacity as an adviser; or as authorised by the mediation provider or under the <i>Commercial Arbitration Act 2011</i> (Tas); or for the purposes of legal proceedings; or to a police officer, or a law enforcement officer. <p>If the confidentiality requirements are breached, a civil penalty (max. 300 penalty units for a body corporate and max. 50 penalty units for an individual) applies. (s 16 of the Commercial Leases Act).</p>	<p>Several exceptions apply which allow information to be divulged:</p> <ul style="list-style-type: none"> with the consent of the person to whom the information relates; or in connection with the administration of the Act and Regulation; or as authorised by the Commissioner; or for the purposes of legal proceedings; or to a police officer or a law enforcement officer; or as authorised or required by law. <p>(r 8(6) of the Regulation).</p>	<ul style="list-style-type: none"> with the consent of the person to whom the information relates; or to a professional adviser; or to an actual or prospective financier; or under written law; or for the purposes of making a request under section 18 of the Principal Act; or for the purposes of resolving a dispute with the assistance of the Small Business Commissioner (SBC); or for the purposes of an alternative dispute resolution proceeding under the <i>Small Business Development Corporation Act 1983</i> in respect of a dispute; or for the purposes of making an application under section 16(1) of the Principal Act; or for the purposes of proceedings under the Principal Act in the State Administrative Tribunal and for the purposes of proceedings in a court. <p>(Schedule 1 cl 13 of the Regulation).</p>	
ADDITIONAL POINTS								
Prohibited enforcement actions	<p>Means taking action under the provisions of a commercial lease or seeking orders or issuing proceedings in a court or tribunal for any of the following:</p> <ul style="list-style-type: none"> eviction of the lessee from premises or land the subject of the commercial lease; 	<p>Means an action under a lease or another agreement relating to leased premises, or the starting of a proceeding in a court or tribunal, for any of the following in relation to the lease or other agreement:</p> <ul style="list-style-type: none"> recovery of possession; 	<p>Means taking action under the lease or starting a proceeding for any of the following:</p> <ul style="list-style-type: none"> eviction of the tenant from premises or land under the lease; exercise of a right of re-entry to the premises or land; 	<p>Means taking action, or attempting to take action, under the eligible lease, for any of the following:</p> <ul style="list-style-type: none"> recourse to any security; re-entry to, or recovery of, the premises; or eviction of the tenant. <p>(r 9 and 18 of the Regulation, amendment of</p>	<p>A 'prohibited lessor action' includes:</p> <ul style="list-style-type: none"> exercising, or attempting to exercise, in relation to a protected lease, any right, power or remedy, whether under an Act, a law or a term or condition of a protected lease; or 	<p>Means taking action under the provisions of a commercial lease or seeking orders or issuing proceedings in a court for any of the following:</p> <ul style="list-style-type: none"> eviction of the lessee from premises the subject of the commercial lease; 	<p>Means taking action under the provisions of a small commercial lease or for commencing proceedings for any of the following:</p> <ul style="list-style-type: none"> eviction of the tenant from premises the subject of the small commercial lease; exercising a right of re-entry to premises the 	<p>Means giving a notice to quit without having made good faith efforts to negotiate with the tenant to allow the tenant to remain in the premises.</p>

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
	<ul style="list-style-type: none"> exercising a right of re-entry to premises or land the subject of the commercial lease; recovery of the premises or land; distrain of goods; forfeiture; damages; requiring a payment of interest on, or a fee or charge related to, unpaid rent otherwise payable by a lessee; recovery of the whole or part of a security bond under the commercial lease; performance of obligations by the lessee or any other person pursuant to a guarantee under the commercial lease; possession; termination of the commercial lease; any other remedy otherwise available to a lessor against a lessee at common law or under the law of the State of NSW. <p>(r 3 (definition of "prescribed action") of the Retail Regulation, Extension Retail Regulation and Further Extension Regulation, r 1 (definition of "prescribed action") of the Commercial Regulation and Extension Commercial Regulation).</p>	<ul style="list-style-type: none"> termination of the lease; eviction of the tenant; exercising a right of re-entry to premises; seizure of any property, including for the purpose of securing payment of rent; forfeiture; damages; the payment of interest on, or a fee or charge relating to, unpaid rent or outgoings; a claim on a bank guarantee, indemnity or security deposit for unpaid rent or outgoings; the performance of an obligation by the tenant or another person under a guarantee under the lease; exercising or enforcing another right by the landlord under the lease or other agreement relating to the leased premises. <p>(r 9 of the Regulation).</p>	<ul style="list-style-type: none"> recovery of the premises or land; distrain of goods on the premises or land; forfeiture; damages; requiring payment of penalty interest on, or a fee or charge related to, unpaid rent otherwise payable by the tenant; recovery of the whole or part of a security bond under the lease; performance of obligations by the tenant or any other person guaranteeing the tenant's obligations under the lease; possession of the premises or land; any other remedy otherwise available against the tenant under a territory law. <p>(s 8(2) of the Declaration).</p>	<p>r 9 by r 7 of the Extension Regulation and amendment of r 18 by r 12 of the Extension Regulation).</p>	<ul style="list-style-type: none"> seeking orders or issuing proceedings in a court in relation to a protected lessee, <p>during the financial hardship period in connection with any breach of the protected lease by the protected lessee.</p> <p>Without limiting the generality of the above, a 'prohibited lessor action' means doing, or attempting to do, any of the following:</p> <ul style="list-style-type: none"> evicting the lessee from the premises to which a protected lease relates; exercising a right of re-entry to the premises to which a protected lease relates; recovering land; distraining goods; seeking forfeiture; seeking or recovering damages; requiring a payment of interest, or any other fee or charge, on unpaid rent otherwise payable by the lessee; recovering the whole or part of a security bond, or bank guarantee, under, or in relation to, the lease; requiring the performance of obligations by the lessee, or any other person, pursuant to a guarantee, or indemnity, relating to the lessee's obligations under the lease; taking possession; terminating the lease; seeking or applying any other remedy otherwise available to a lessor against a lessee under an Act or the law of Tasmania. 	<ul style="list-style-type: none"> exercising a right of re-entry to premises the subject of the commercial lease; recovery of land; distrain of goods; forfeiture; damages; requiring a payment of interest on unpaid rent otherwise payable by a lessee; recovery of the whole or part of a security bond under the commercial lease; performance of obligations by the lessee or any other person pursuant to a guarantee under the commercial lease; possession; termination of the commercial lease; any other remedy otherwise available to a lessor against a lessee at common law or under the law of the State. <p>(r 3(1) of the Regulation).</p>	<ul style="list-style-type: none"> subject of the small commercial lease; recovery of land; distrain of goods; forfeiture; termination of the small commercial lease; damages; requiring a payment of interest on, unpaid rent or any other unpaid amount of money payable by the tenant; recovery of the whole or part of a security bond under the small commercial lease; performance of obligations by the tenant or any other person pursuant to a guarantee under the small commercial lease (including making a demand on a bank guarantee); any other remedy otherwise available to a landlord against a tenant at common law or under written law. <p>(s 8 of the Principal Act).</p> <p>A landlord is prohibited from increasing any rents that are not determined by reference to turnover during the applicable prescribed period, unless the rent is increased:</p> <ul style="list-style-type: none"> on and after 30 September 2020; and the tenant is not an eligible tenant under a small commercial lease when the rent is increased. <p>(s 11 of the Principal Act).</p>	

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
When a landlord may take enforcement action	<p>A landlord under an impacted lease may only take or continue any prescribed action against an impacted tenant on the grounds of a breach of the impacted lease consisting of a failure to pay rent during the prescribed period, if they have first renegotiated with the tenant the rent payable and other terms of the impacted lease based on the requirements of the Regulation and Extension Regulation.</p> <p>(r 7(1) of the Retail Regulation, Extension Retail Regulation and Further Extension Regulation, r 5(1) of the Commercial Regulation and Extension Commercial Regulation).</p> <p>Also see heading 'Process to initiating rent relief' where an impacted tenant has failed to comply with the Regulation and Extension Regulation to initiate the rent relief process.</p> <p>An act or omission of an impacted lessee required under a law of the Commonwealth or the State in response to the COVID-19 pandemic is taken not to amount to a breach of the commercial lease to which the impacted lessee is a party, and does not constitute grounds for termination of the lease or the taking of any prescribed action by the lessor against the impacted lessee.</p> <p>(r 6(5) of the Retail Regulation and Further Extension Regulation, r 6(6) of the Extension Retail Regulation, r 4(5) of the Commercial Regulation and r 4(6) of the Extension Retail Regulation).</p> <p>Nothing in the Regulation, Extension Regulation or</p>	<p>The Regulation does not prevent the landlord and tenant under the lease agreeing to a prescribed action being taken by the landlord, or agreeing to terminate the lease. However, even if the parties agree to an enforcement action, a party is not prevented from seeking to negotiate a condition of an affected lease because of that agreement.</p> <p>The landlord is also not prevented from taking a prescribed action:</p> <ul style="list-style-type: none"> in accordance with a variation of the lease made under the Regulation; in accordance with a settlement agreement or other agreement between the landlord and the tenant; in accordance with an order of a court or tribunal; if, despite a genuine attempt by the landlord to negotiate rent payable and other conditions of the lease, the tenant has substantially failed to comply with the tenant's obligations under the Regulation in relation to the negotiations; or on a ground that is not related to the effects of the COVID-19 emergency. <p>(r 10 and 12(2) of the Regulation, amendment of r 10 by r 4 of the Extension Regulation).</p> <p>An act or omission of a tenant under a COVID-19 response measure or a</p>	<p>Landlords are prevented from taking prescribed action (which includes terminating a lease), unless the tenant agrees to the termination or action; or the lessor has engaged in good faith negotiations with the tenant, having regard to the Code's leasing principles set out in schedule 1.</p> <p>(s 4 and 5 of the Declaration).</p>	<p>Initial period:</p> <p>Landlords may take enforcement action unless the tenant is a tenant under an eligible lease and the grounds of breach of the lease during the relevant period consist of the tenant:</p> <ul style="list-style-type: none"> failing to pay the amount of rent required to be paid under the lease; reducing the opening hours of the business carried out at the premises; or closing the premises and ceasing to carry out any business at the premises. <p>If any of the above obligations are breached by the landlord, a civil penalty (max. 20 penalty units) applies.</p> <p>(r 9 and 18 of the Regulation).</p> <p>The prohibition against taking enforcement action for non-payment of rent does not apply unless:</p> <ul style="list-style-type: none"> the tenant complies with its obligations related to the prescribed process for negotiating rent relief; and pays the amount of rent agreed in accordance with the variation to the eligible lease (or other agreement reached in respect of rent relief). <p>(r 9(1) of the Regulation).</p> <p>Note: at the end of the first dot point above, the word 'or' appears in the Regulation. It is believed to be an error as it should read 'and'.</p> <p>Extended period:</p>	<p>Lessors may take a prohibited lessor action unless the lease is a protected lease and the grounds of breach of the lease during the financial hardship period consist of:</p> <ul style="list-style-type: none"> a failure to pay rent, fees, levies or charges; or a failure to meet criteria based on sales performance or another prescribed factor; or a failure to pay outgoings that are payable by the lessee to the lessor or another person; or the business operating under the lease not being open for business during the hours, or on the days, specified in the lease; or any other act or omission of a kind prescribed by the Regulation. <p>(s 7 and 13 of the Commercial Leases Act).</p> <p>An act or omission of a lessee or a lessor in relation to a commercial lease (whether or not it is a protected lease) that, during or before the financial hardship period, is:</p> <ul style="list-style-type: none"> required, in response to the disease or disease-related factors, under the laws of the State or the Commonwealth; or reasonably required, in response to the disease or disease-related factors, in order for the lessee or the lessor to comply with the laws of the State or the Commonwealth, <p>will not, during or after the financial hardship period, amount to a breach of the</p>	<p>A landlord under a commercial lease may take prescribed action against a tenant, unless the tenant is an affected lessee and the grounds of breach of the lease during the applicable prescribed period consist of:</p> <ul style="list-style-type: none"> a failure to pay rent; or a failure to pay outgoings; or the business operating under the lease not being open for business during the hours specified in the lease. <p>(r 7(1) of the Regulation).</p> <p>A landlord is not prevented from taking prescribed action against a tenant in respect of a breach of a commercial lease that occurred:</p> <ul style="list-style-type: none"> in the case of a tenant who is an affected lessee in the initial period - before the commencement of the initial period; or in the case of a tenant who is an affected lessee in the extended period (but was not an affected lessee in the initial period) - before the commencement of the extended period. <p>(new r 7(1a) of the Extension Regulation).</p> <p>The prohibition against prescribed action does not apply to or in respect of a failure to pay rent if the amount of rent payable under the lease is, during the applicable prescribed period agreed by the parties under a mediation under the</p>	<p>On and from 29 March 2021.</p> <p>Initial period:</p> <p>A landlord may only take a prohibited action during the initial period on the grounds of a breach by the tenant that occurs during the initial period if the breach does not consist of:</p> <ul style="list-style-type: none"> a failure to pay rent or other amount of money; or the relevant land, premises or business are not open for business at hours specified in the small commercial lease; or any act or omission prescribed by the Regulation. <p>(s 9 of the Principal Act).</p> <p>An act or omission of a tenant during the initial period that is required under a written law in response to the COVID-19 pandemic is not to be regarded as a breach of a small commercial lease; or grounds for termination of a small commercial lease; or grounds for the taking of any prohibited action under, or in respect of, a small commercial lease.</p> <p>(s 10 of the Principal Act).</p> <p>If any of the following actions or measures were taken by a landlord or occurred between 30 March 2020 and 23 April 2020, such actions or measures were taken to be stayed or suspended until the end of the emergency period in so far as the action or measure remained incomplete or ongoing:</p>	<p>A landlord may take enforcement action after having negotiated in good faith for 30 days.</p>

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	<p>Further Extension Regulation prevents a lessor and an impacted lessee agreeing to the parties taking any action in relation to the commercial lease (including the lessor taking any prescribed action or the parties agreeing to terminate the commercial lease).</p> <p>(r 6(6) of the Retail Regulation and Further Extension Regulation, r 6(7) of the Extension Retail Regulation, r 4(6) of the Commercial Regulation and r 4(7) of the Extension Commercial Regulation).</p>	<p>law of the Commonwealth or another State in response to the COVID-19 emergency is taken not to amount to a breach of the lease, and does not constitute grounds for termination of the lease or the taking of any prescribed action by the landlord against the tenant.</p> <p>(r 47(2) and (3) of the Regulation).</p> <p>[If between 29 March 2020 and 27 May 2020 a Landlord started a proceeding for a lease dispute or started action that would constitute taking a prescribed action (r 12 of the Regulation) which has not concluded, that proceeding or action is stayed or suspended until the extended period ends (31 December 2020).]</p> <p>(amendment of r 48 by r 12 of the Extension Regulation).</p>		<p>Landlords may take enforcement action unless the tenant is a tenant under an eligible lease and the grounds of breach of the lease during the relevant period consist of the tenant:</p> <ul style="list-style-type: none"> ▪ failing to pay the amount of rent or outgoings required to be paid under the lease; ▪ reducing the opening hours of the business carried out at the premises; or ▪ closing the premises and ceasing to carry out any business at the premises. <p>If any of the above obligations are breached by the landlord, a civil penalty (max. 20 penalty units) applies.</p> <p>(r 9 and 18 of the Regulation, amendment of r 9 by r 7 of the Extension Regulation and amendment of r 18 by r 12 of the Extension Regulation).</p> <p>The prohibition against taking enforcement action for non-payment of rent or outgoings does not apply unless:</p> <ul style="list-style-type: none"> ▪ the tenant complies with its obligations related to the prescribed process for negotiating rent relief; and ▪ pays the amount of rent or outgoings agreed in accordance with the variation to the eligible lease (or other agreement reached in respect of rent relief). <p>(r 9(1) of the Regulation, amendment of r 9(1) by r 7(2) of the Extension Regulation).</p>	<p>lease and does not constitute grounds for the taking of any prohibited lessor action by the lessor or the taking of any action by the lessee against the lessor.</p> <p>(s 11 of the Commercial Leases Act).</p> <p>If, during the period before the commencement day, a lessor has taken or commenced, but not yet completed or finalised, a prohibited lessor action in relation to a protected lessee, that the lessor would not have been able to undertake or commence during the financial hardship period by virtue of the provisions of the Act, the action, operation or effect, insofar as it remains incomplete or ongoing, must be stayed or suspended until the end of the financial hardship period.</p> <p>(s 10 of the Commercial Leases Act).</p>	<p>Regulation or determined by the Court under the Regulation, and the failure to pay rent constitutes a breach of the agreement or order of the Court (as the case may be).</p> <p>(r 7(2) of the Regulation).</p> <p>Subregulation (2) does not apply to, or in respect of, a failure to pay rent that constitutes a breach of an agreement under a mediation under r 8 of the Regulation, or an order of the Court under r 9 of the Regulation (as the case requires), made before the end of the initial period in respect of that period if:</p> <ul style="list-style-type: none"> ▪ the agreement or order relates to the payment of rent in respect of a period that occurs after, or extends beyond, the end of the initial period; and ▪ the breach of the agreement or order of the Court occurs in relation to the operation of that agreement or order in the extended period (in so far as it applies to that period); and ▪ the lessee is an affected lessee in the extended period. <p>(new r 7(2a) of the Extension Regulation).</p> <p>An act or omission of a tenant under the laws of the State in response to the COVID-19 pandemic will not constitute grounds for taking any prescribed action.</p> <p>(r 7(3) of the Regulation).</p>	<ul style="list-style-type: none"> ▪ a landlord taking a "prohibited action"; ▪ a landlord taking any other measure that the landlord would not have been able to undertake or commence during the emergency period (by virtue of the operation of Part 3 of the Principal Act); ▪ the operation of the terms of a small commercial lease having an effect contrary to the operation of Part 3 of the Principal Act; or ▪ the rent payable under a small commercial lease being increased (contrary to the operation of the Part 3 of the Principal Act). <p>(s 12 of the Principal Act).</p> <p>Extended period:</p> <p>A landlord may take a prohibited action during the extended period on the grounds of a breach by the tenant that occurs during the extended period if the breach does not consist of:</p> <ul style="list-style-type: none"> ▪ a failure to pay rent or other amount of money; or ▪ the relevant land, premises or business are not open for business at hours specified in the small commercial lease; or ▪ any act or omission prescribed by the Regulation. <p>(s 9 of the Principal Act).</p> <p>A landlord may also take a prohibited action in the following circumstances:</p> <ul style="list-style-type: none"> ▪ insolvency - where the tenant is insolvent at 	

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				Note: at the end of the first dot point above, the word 'or' appears in the Regulation. It is believed to be an error as it should read 'and'.		Any prescribed action taken during the period between 30 March 2020 and 9 April 2020 (inclusive) against a tenant suffering financial hardship as a result of the COVID-19 pandemic will be stayed or suspended until the end of the applicable prescribed period. (r 10 of the Regulation).	<p>the time the prohibited action is taken;</p> <ul style="list-style-type: none"> ▪ failure to pay rent / money - where: <ul style="list-style-type: none"> – the tenant under the small commercial lease is not an eligible tenant when the prohibited action is taken; – the prohibited action is taken on grounds of a breach by the tenant which consists of a failure to pay rent or another amount of money that occurred during the emergency period (whether before, on or after 30 September 2020); – the breach is not the subject of dispute being dealt with and unresolved under Part 5 of the Principal Act; – the tenant has not made a request for rent relief under the Code in relation to any unpaid rent to which the breach relates; and – the landlord has not granted the tenant a waiver, deferral or reduction in respect of any unpaid other amount payable by the tenant under the lease to which the breach relates, ▪ failure to keep premises open - where: <ul style="list-style-type: none"> – the tenant under the small commercial lease is not an eligible tenant when the prohibited action is taken or the breach occurs; and – the prohibited action is taken on grounds of a breach by the tenant which consists of a failure keep the premises open 	

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
							<p>(whether before, on or after 30 September 2020).</p> <p>(new r 2D created by r 4 of the Extension Regulation).</p> <p>An act or omission of a tenant during the extended period that is required under a written law in response to the COVID-19 pandemic is not to be regarded as a breach of a small commercial lease; or grounds for termination of a small commercial lease; or grounds for the taking of any prohibited action under, or in respect of, a small commercial lease.</p> <p>(s 10 of the Principal Act).</p> <p>On and after 30 September 2020, any stay or suspension imposed under section 12 of the Principal Act ceases in the following circumstances and at the following specified times:</p> <ul style="list-style-type: none"> ▪ if: <ul style="list-style-type: none"> – a tenant is insolvent on 30 September 2020, on 30 September 2020; – a tenant becomes insolvent after 30 September 2020 but before the end of the emergency period, on the day on which the tenant becomes insolvent; ▪ if a tenant is not an eligible tenant: <ul style="list-style-type: none"> – in the case of a prohibited action or other measure taken by the landlord, on the day on which the stayed event ceases to be a prohibited action or other measure that the landlord is prevented from taking or commencing; – in the case of an effect contrary to the Principal 	

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							<p>Act being stayed or suspended, on the day on which the effect ceases to be an effect that is contrary to the Principal Act;</p> <ul style="list-style-type: none"> ▪ in relation to an increase in rent, if: <ul style="list-style-type: none"> – a tenant is not an eligible tenant on 30 September 2020, on 30 September 2020; – a tenant ceases to be an eligible tenant after 30 September 2020 but before the end of the emergency period, on the day on which the tenant ceases to be an eligible tenant. <p>(new r 4A-C created by r 6 of the Extension Regulation).</p> <p>Post-extended period: A landlord cannot take prohibited action after the extended period (i.e. 29 March 2021) on the grounds of breach by the tenant that occurs during the emergency period if the breach:</p> <ul style="list-style-type: none"> ▪ consists of: <ul style="list-style-type: none"> – a failure to pay rent or other amount of money; or – the relevant land, premises or business are not open for business at hours specified in the small commercial lease; or – any act or omission prescribed by the Regulation, and ▪ occurred when the tenant was an eligible tenant; and ▪ is the subject of a dispute being dealt with, but not yet 	

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							resolved, under Part 5 of the Principal Act. (new r 4AA created by r 4 of the Amendment Regulation).	
APPLICATION OF LEASING PRINCIPLES								
Termination Principle 1 (landlords must not terminate leases for non-payment of rent) <i>Landlords must not terminate leases due to non-payment of rent during the COVID-19 pandemic period (or reasonable subsequent recovery period).</i>	Implemented (r 6(1)(a) of the Retail Regulation, r 6(2)(a) of the Extension Retail Regulation and r7(1)(a) of the Further Extension Regulation, r 4(1)(a) of the Commercial Regulation and r 4(2)(a) of the Extension Commercial Regulation).	Implemented (r 12 of the Regulation, amendment of r 12 by r 5 of the Extension Regulation). [The Queensland Civil and Administrative Tribunal (QCAT) or a court may award costs against the landlord in a proceeding relating to a prescribed action taken by a landlord in contravention of the Regulation.]	Implemented (s 4 and Schedule 1 of the Declaration). [Landlords are prevented from taking prescribed action (which includes terminating a lease), unless they have engaged in good faith negotiations with the tenant, having regard to the Code's leasing principles set out in Schedule 1.]	Initial period: Implemented (r 9 of the Regulation). [Mandatory where the tenant complies with the Regulation and agreement with the landlord in relation to rent relief. A civil penalty of up to \$3,304.40 may be imposed for a landlord terminating the lease, evicting the tenant or calling on the tenant's security for non-payment of rent.] Extended period: Implemented (r 9 of the Regulation, amendment of r 9 by r 7 of the Extension Regulation). [This also applies to the non-payment of outgoings payable under the lease.] [Mandatory where the tenant complies with the Regulation and agreement with the landlord in relation to rent relief. A civil penalty of up to \$3,304.40 may be imposed for a landlord terminating the lease, evicting the tenant or calling on the tenant's security for non-payment of rent or outgoings.]	Implemented (cl (d) of the Notice under Section 22 of the Principal Act). Implemented (s 13(a) of the Commercial Leases Act).	Implemented (r 7(1) of the Regulation).	Implemented - but amended by the Regulation to allow termination in circumstances outlined above from 30 September 2020. (s 9 of the Principal Act, new r 2D created by r 4 of the Extension Regulation).	Silent.
Lease compliance Principle 2 (tenants must honour leases) <i>Tenants must remain committed to the terms of their</i>	Implemented (r 10 of the Retail Regulation, Extension Retail Regulation and Further Extension Regulation, r 8 of the Commercial Regulation and Extension Commercial Regulation).	Not implemented.	As above.	Partially implemented (r 8 of the Regulation). [Note general obligation on landlords and tenants to cooperate and act reasonably and in good faith in all discussions and actions associated with matters to which the Regulation applies.]	Not implemented.	Not implemented.	Not implemented.	

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<i>lease, subject to any amendments to their rental agreement negotiated under this Code. Material failure to abide by substantive terms of their lease will forfeit any protections provided to the tenant under this Code.</i>								
<p>Proportionate rent reduction</p> <p>Principle 3 (proportionate rent reduction (waivers or deferrals))</p> <p><i>Landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals (as outlined under “definitions,” below) of up to 100% of the amount ordinarily payable, on a case-by-case basis, based on the reduction in the tenant’s trade during the COVID-19 pandemic period and a subsequent reasonable recovery period.</i></p>	<p>Implemented (r 7(4)(b) of the Retail Regulation and r 7(6)(b) of the Extension Retail Regulation and Further Extension Regulation, r 5(4)(b) of the Commercial Regulation and r 5(6)(b) of the Extension Commercial Regulation).</p> <p>[Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle. An explanatory note states: <i>In particular, leasing principle No. 3 in the National Code of Conduct requires landlords to offer rent reductions, in the form of waivers or deferrals of rent, proportionate to a lessee’s reduction in turnover.</i>]</p>	<p>Partially implemented (r 15(2)(c)(i) of the Regulation, amendment of r 15 by r 7 of the Extension Regulation).</p> <p>[This is not mandatory. An offer of rent relief must take into account all the circumstances of the tenant and the affected lease, including the reduction in turnover of the business carried on at the premises during the initial period and the extended period (if applicable). However, this is just one of a number of considerations to be taken into account.</p> <p>There is also no requirement that any portion of an offer of rent reduction in relation to the extended period be in the form of a waiver of rent.]</p>	As above.	<p>Initial period:</p> <p>Implemented (r 4(d)(i), 10 and 11 of the Regulation).</p> <p>[There is no requirement in the Regulation that the rent relief must be proportionate to the tenant’s reduction in turnover, though it is a factor to be taken into account by the landlord when it makes an offer for rent relief to the tenant.]</p> <p>Extended period:</p> <p>Implemented (new r 10(4)(ba) created by r 8(3)(b) of the Extension Regulation).</p> <p>[This is mandatory. A landlord’s request for rent relief must be, at a minimum, proportional to the decline in the tenant’s turnover associated with only the premises.]</p>	<p>Partially implemented (s12(2) and 18 of the Commercial Leases Act).</p> <p>[This is not a strict requirement. Nonetheless, the Act requires parties to renegotiate the rent payable under the lease, having regard to the leasing principles set out in the Code and any matters prescribed by the Regulation.]</p> <p>[The Act also requires parties to a protected lease to renegotiate the rent payable under the lease in good faith.]</p> <p>[Further, all negotiations in relation to the terms of a ‘protected lease’ are to be conducted with regard to the individual circumstances of the ‘protected lessee’ and of the lessor, taking into account such matters as:</p> <ul style="list-style-type: none"> the degree of financial hardship of the lessee and of the lessor; whether the lease has expired and the lease is being held over or whether the lease is about to expire; and whether the lessee, or the lessor, is in administration or receivership or is about to, or reasonably likely 	<p>Partially implemented (r 6 and r 9(5)-(8) of the Regulation, and new r 9(5)(ea), 9(7)(ea) and 9(8)(ea) of the Extension Regulation).</p> <p>[There is no strict requirement that landlords offer rent reductions of up to 100% of the rent payable under the lease, nor that any offer be proportionate to the reduction in the tenant’s trade. Nonetheless, the Regulation does require parties to negotiate the rent payable under, and other terms of, their lease having regard to inter alia, the provisions the National Cabinet’s Code of Conduct, and a reduction in turnover of the business of the tenant during the applicable prescribed period is one of the factors to which the Court must have regard in granting an order for rent relief to an ‘affected lessee’. If the Court makes an order that provides rent relief, at least 50% of the rent relief must in the form of a waiver of rent.]</p>	<p>Implemented (Schedule 1 cl 7(3) and (5) of the Regulation, new Schedule 1 cl 7(3A) and (4) created by r 10 of the Extension Regulation).</p> <p>[Under Schedule 1 cl 7(3) of the Regulation rent relief offered by the landlord must be at least proportionate to the reduction in the tenant’s turnover. For the purposes of Schedule 1 cl 7(3) of the Regulation (unless otherwise agreed by the parties), the tenant’s turnover is to be calculated using the principles of any relevant decline in turnover test applicable to the JobKeeper scheme under <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> (Cth) (including any relevant alternative decline in turnover test determined under that section), with such modifications as are appropriate to reflect Schedule 1 cl 7(3)(a) and (b) of the Regulation, and new Schedule 1 clause 7(3A) created by r 10 of the Extension Regulation.]</p> <p>[Noting under Schedule 1 cl 7(8) of the Regulation,</p>	Silent.

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					to, become insolvent or enter into administration or receivership.]		that if the landlord is a tenant under a lease (the head lease) of the land or premises that are the subject of the small commercial lease, and the landlord, as the tenant, is provided rent relief under the head lease, the landlord must pass on the benefit of the rent relief to the tenant under the small commercial lease.]	
Rent waivers Principle 4 (rental waivers no less than 50% of the total rental reduction) <i>Rental waivers must constitute no less than 50% of the total reduction in rent payable under principle 3 above over the COVID-19 pandemic period and should constitute a greater proportion of the total reduction in rent payable in cases where failure to do so would compromise the tenant's capacity to fulfil their ongoing obligations under the lease agreement. Regard must also be had to the Landlord's financial ability to provide such additional waivers. Tenants</i>	Implemented (r 7(4)(b) of the Retail Regulation and r 7(6)(b) of the Extension Retail Regulation and Further Extension Regulation, r 5(4)(b) of the Commercial Regulation and r 5(6)(b) of the Extension Commercial Regulation). [Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]	Initial period: Implemented in respect of the initial period (r 15(2)(b) of the Regulation). [A landlord's offer must provide for no less than 50% of the rent reduction offered, to be in the form of a waiver of rent. Extended period: [To the extent the request relates to the extended period: <ul style="list-style-type: none"> the offer may include or consist of any rent reduction already offered or given in relation to that period before the commencement of the Extension Regulation; and there is no requirement that any portion of an offer of rent reduction in relation to the extended period be in the form of a waiver of rent. (new r 15(2A) and 15(5) created by r 7 of the Extension Regulation).]	As above.	Implemented (r 10(4)(b) of the Regulation). [The landlord and tenant can agree otherwise in writing. However, the landlord must offer this to the tenant.]	As above.	As above. [If a Court makes an order for rent relief to an affected lessee, then at least 50% of the rent relief determined by the Court must be in the form of a waiver of rent.] (r 9(7) of the Regulation).	Implemented (Schedule 1 cl 7(6) and (7) of the Regulation). [An offer of rent relief must provide that more than 50% of the rent relief is to be in the form of a waiver of rent if failure to provide the waiver of rent would compromise the tenant's capacity to fulfil the tenant's ongoing obligations under the lease; and the landlord has the financial capacity to provide more than 50% of the rent relief in the form of a waiver.]	Silent.

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<i>may waive the requirement for a 50% minimum waiver by agreement.</i>								
Amortisation of rent deferral Principle 5 (amortisation of rental deferrals) <i>Payment of rental deferrals by the tenant must be amortised over the balance of the lease term and for a period of no less than 24 months, whichever is the greater, unless otherwise agreed by the parties.</i>	Implemented (r 7(4)(b) of the Retail Regulation and r 7(6)(b) of the Extension Retail Regulation, r 5(4)(b) of the Commercial Regulation and r 5(6)(b) of the Extension Commercial Regulation). [Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]	Partially implemented (r 17 of the Regulation). [Payment of the deferred rent is to be amortised, using a method agreed between the parties, over a period of at least 2 years but no more than 3 years, but the landlord and tenant can agree otherwise.]	As above.	Implemented (r 16(2)(b) of the Regulation). [The landlord and tenant can agree otherwise in writing.]	As above.	Partially implemented (r 6 and r 9(5)(e) of the Regulation, new r 9(5)(ea) of the Extension Regulation). [The Regulation empowers the Magistrates Court to make an order to defer the payment of rent under a commercial lease for a specified period not exceeding 24 months from the day on which the order is made.] [Noting the above, this is not mandatory, however parties to a commercial lease must make a genuine attempt to negotiate in good faith the rent payable under, and other terms of, the commercial lease during the applicable prescribed period having regard to this principle.]	Implemented (Schedule 1 cl 9(3) and (4) of the Regulation). [The landlord and tenant can agree otherwise.]	Silent.
Statutory charges Principle 6 (landlords must pass on reduction in statutory charges) <i>Any reduction in statutory charges (e.g. land tax, council rates) or insurance will be passed on to the tenant in the appropriate proportion applicable under</i>	Implemented (r 6(4) of the Retail Regulation and Further Extension Regulation and r 6(5) of the Extension Retail Regulation, r 4(4) of the Commercial Regulation and r 4(5) of the Extension Commercial Regulation).	Implemented (r 15(2)(c)(iv) of the Regulation). [This is not mandatory. If a portion of rent or another amount payable under the lease represents an amount for land tax, local government rates, statutory charges, insurance premiums or other outgoings, an offer of rent relief must have regard to any reduction in, or waiver of, the amount payable.]	As above.	Implemented (r 15 of the Regulation). [This is mandatory. A landlord under an eligible lease must not require the tenant to pay any amount in respect of that outgoing that is greater than the tenant's proportional share of the reduced outgoing payable under the lease. If the tenant has already paid to the landlord an amount greater than the tenant's proportional share of the reduced outgoing, the landlord must reimburse the excess amount to the tenant as soon as possible.]	Implemented (r 6 of the Regulation). [This is mandatory. If a protected lessee is required by a provision of the protected lease to pay (otherwise than as part of rent) a fixed amount that represents an amount of statutory charge or insurance premium, and the amount of statutory charge or insurance premium payable by the lessor is reduced, the fixed amount that the protected lessee is required to pay must be reduced in the same proportion as the proportion by which the amount of the statutory charge or insurance premium payable	Partially implemented in respect of land tax for affected lessees (r 7(5) and 7(7) of the Regulation). [Other than as set out above, this is not mandatory, however parties to a commercial lease must make a genuine attempt to negotiate in good faith the rent payable under, and other terms of, the commercial lease during the applicable prescribed period having regard to this principle.]	Implemented (Schedule 1 cl 12 of the Regulation). [If any 'outgoings' (which includes rates and taxes) are reduced in the emergency period, a landlord under the small commercial lease must not require the tenant to pay any amount in respect of that outgoing that is greater than the tenant's proportional share of the reduced outgoing payable under the lease. If the tenant has already paid an amount greater than the tenant's proportional share of the reduced outgoing, the landlord must reimburse	Silent.

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<i>the terms of the lease.</i>					by the lessor has been reduced.] [Parties to a protected lease can agree in writing that this does not apply.]		the excess amount to the tenant as soon as possible.]	
Loan repayments Principle 7 (landlords must share benefits received due to deferral of loan payments) <i>A landlord should seek to share any benefit it receives due to deferral of loan payments, provided by a financial institution as part of the Australian Bankers Association's COVID-19 response, or any other case-by-case deferral of loan repayments offered to other Landlords, with the tenant in a proportionate manner.</i>	Implemented (r 7(4)(b) of the Retail Regulation and r 7(6)(b) of the Extension Retail Regulation and Further Extension Regulation, r 5(4)(b) of the Commercial Regulation and r 5(6)(b) of the Extension Commercial Regulation). [Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]	Implemented (r 15(2)(c)(iii) of the Regulation). [This is not mandatory. An offer of rent relief must take into account the landlord's financial position, including any financial relief provided to the landlord as a COVID-19 response measure.]	As above.	Not implemented. [However, note general obligation on landlords and tenants to cooperate and act reasonably and in good faith in all discussions and actions associated with matters to which the Regulation applies (r 8 of the Regulation).]	Partially implemented (s12(2) and 18 of the Commercial Leases Act). [This is not a strict requirement. Nonetheless, the Act requires parties to renegotiate the rent payable under the lease, having regard to the leasing principles set out in the Code and any matters prescribed by Regulation.] [The Act also requires parties to a protected lease to renegotiate the rent payable under the lease in good faith.] [Further, all negotiations in relation to the terms of a 'protected lease' are to be conducted with regard to the individual circumstances of the 'protected lessee' and of the lessor, taking into account such matters as: <ul style="list-style-type: none"> the degree of financial hardship of the lessee and of the lessor; whether the lease has expired and the lease is being held over or whether the lease is about to expire; and whether the lessee, or the lessor, is in administration or receivership or is about to, or reasonably likely to, become insolvent or enter into administration or receivership.] 	Implemented (r 6 and r 8(8)(e) of the Regulation). [A court must have regard to any relief provided to a landlord by a third party in making an order granting rent relief to an affected lessee.] [Noting the above, this is not mandatory, however parties to a commercial lease must make a genuine attempt to negotiate in good faith the rent payable under, and other terms of, the commercial lease during the applicable prescribed period having regard to this principle.]	Silent.	Silent.
Waiver of expenses Principle 8 (landlords should seek to waive recovery)	Implemented (r 7(4)(b) of the Retail Regulation and r 7(6)(b) of the Extension Retail Regulation and Further Extension Regulation, r 5(4)(b) of the Commercial Regulation and	Implemented (r 15(2)(c)(iv) and 19 of the Regulation, amendment of r 19 by r 10 of the Extension Regulation). [This is not mandatory. If a portion of rent or	As above.	Implemented (r 8 and 14(2) of the Regulation). [This is not mandatory. However, the landlord has a good faith obligation to consider this where tenants	As above.	Implemented (r 6 and r 8(8)(c) of the Regulation). [A court must have regard to whether a landlord has agreed to waive recovery of any outgoings or other	Implemented (Schedule 1 cl 11 of the Regulation).	Silent.

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of any other expenses) <i>Landlords should where appropriate seek to waive recovery of any other expense (or outgoing payable) by a tenant, under lease terms, during the period the tenant is not able to trade. Landlords reserve the right to reduce services as required in such circumstances.</i>	r 5(6)(b) of the Extension Commercial Regulation). [Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]	another amount payable under the lease represents an amount for land tax, local government rates, statutory charges, insurance premiums or other outgoings, an offer of rent relief must have regard to any reduction in, or waiver of, the amount payable.]		are unable to operate from the premises.]		expenses payable by a tenant under the lease in making an order granting rent relief to an affected lessee.] [Noting the above, this is not mandatory, however parties to a commercial lease must make a genuine attempt to negotiate in good faith the rent payable under, and other terms of, the commercial lease during the applicable prescribed period having regard to this principle.]		
Repayment period Principle 9 (any negotiated repayment should occur over an extended period) <i>If negotiated arrangements under this Code necessitate repayment, this should occur over an extended period in order to avoid placing an undue financial burden on the tenant. No repayment should commence until the earlier of the COVID-19 pandemic ending (as defined by the Australian Government) or</i>	Implemented (r 7(4)(b) of the Retail Regulation and r 7(6)(b) of the Extension Retail Regulation and Further Extension Regulation, r 5(4)(b) Commercial Regulation and r 5(6)(b) of the Extension Commercial Regulation). [Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]	Implemented (r 17(2) of the Regulation, amendment of r 17 by r 9 of the Extension Regulation). [The agreement between the parties must not require payment of the deferred rent, to the extent it relates to the initial period, to commence until the day after the end of the initial period and, to the extent it relates to the extended period, to commence until the day after the end of the extended period. The payment must be amortised, using a method agreed between the parties, over a period of at least 2 years but no more than 3 years commencing on the day after the end of the initial period or extended period (as applicable). The landlord may continue to hold any security deposit given to the landlord until the	As above.	Implemented (r 16 of the Regulation, amendment of r 16 by r 10 of the Extension Regulation and r 7 of the Further Extension Regulation). [This is mandatory. However, the landlord and tenant may agree otherwise in writing.]	As above.	Implemented (r 6 and r 9(5)(e) of the Regulation, new r 9(5)(ea) of the Extension Regulation). [A court may make an order to defer the payment of rent under a commercial lease (or under an agreement entered into by the parties to the commercial lease as contemplated by the Regulation) for a specified period not exceeding 24 months from the date on which the order is made.] [This is not mandatory, however parties to a commercial lease must make a genuine attempt to negotiate in good faith the rent payable under, and other terms of, the commercial lease during the applicable prescribed period having regard to this principle.]	Implemented (Schedule 1 cl 9(2) of the Regulation). [If a deferral is offered, the landlord must also offer the tenant an extension of the term of the lease on the same terms and conditions that applied under the lease immediately before the initial period. The landlord does not need to offer an extension of the lease if: the landlord is the tenant under a lease and any extension would be inconsistent with the head lease; or the extension would be inconsistent with any contract or agreement already entered into by the landlord with another person. The landlord must not request payment of any part of the deferred rent until the earlier of the day on which the extended period ends or the expiry of the term of the lease. However, the landlord and tenant may agree otherwise in writing.]	Silent.

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<i>the existing lease expiring, and taking into account a reasonable 'subsequent recovery period.</i>		deferred rent has been paid.]						
Interest and charges Principle 10 (no fees/charge s/interest should be applied in respect of rental waivers or deferrals) <i>No fees, interest or other charges should be applied with respect to rent waived in principles 3 and 4 above and no fees, charges nor punitive interest may be charged on deferrals in principles 3, 4 and 5 above.</i>	Implemented (r 7(4)(b) of the Retail Regulation and r 7(6)(b) of the Extension Retail Regulation and Further Extension Regulation, r 5(4)(b) of the Commercial Regulation and r 5(6)(b) of the Extension Commercial Regulation). [Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]	Implemented (r 17(2)(c) of the Regulation). [However, this does not prevent the landlord from requiring the tenant to pay interest or any other fee or charge if the tenant fails to comply with the conditions on which the rent is deferred.]	As above.	Initial period: Implemented (r 17 of the Regulation). Extended period: Implemented (amendment of r 17 by r 11 of the Extension Regulation). [This applies to any payment of rent deferred by variation to an eligible lease (or other agreement entered into to give effect to rent relief) or in compliance with a binding order or an order of a court or the Victorian Civil and Administrative Tribunal (VCAT).]	Implemented (s 7(2)(g), 13 and 18(2) of the Commercial Leases Act). [A 'prohibited lessor action' includes 'requiring a payment of interest, or any other fee or charge, on unpaid rent otherwise payable by the lessee', but its application is limited - refer to comments above in respect of 'When a landlord may take enforcement action'.] [Other than as set out above, this is not mandatory, however parties to a protected lease must renegotiate the rent payable under the lease in good faith.]	Implemented (r 6 and r 7(1) of the Regulation). [A 'prescribed action' includes 'requiring a payment of interest on unpaid rent otherwise payable by a lessee', but its application is limited – refer to comments above in respect of 'When a landlord may take enforcement action'.] [Other than as set out above, this is not mandatory, however parties to a commercial lease must make a genuine attempt to negotiate in good faith the rent payable under, and other terms of, the commercial lease during the applicable prescribed period having regard to this principle.]	Implemented - but amended by the Extension Regulation to allow 'prohibited action' to be taken if the tenant is insolvent from 30 September 2020. (s 9 of the Principal Act and new r 2D created by r 4 of the Extension Regulation).	Silent.
Security Principle 11 (landlords must not draw on tenants' security for non-payment of rent) <i>Landlords must not draw on a tenant's security for the non-payment of rent (be this a cash bond, bank guarantee or personal guarantee) during the period of the COVID-19</i>	Implemented (r 6(1)(a) of the Retail Regulation, r 6(2)(a) of the Extension Retail Regulation and r 7(1)(a) of the Further Extension Regulation, r 4(1)(a) of the Commercial Regulation and r 4(2)(a) of the Extension Commercial Regulation).	Implemented (r 9 and 12 of the Regulation, amendment of r 12 by r 5 of the Extension Regulation). [A 'prescribed action' includes 'a claim on a bank guarantee, indemnity or security deposit for unpaid rent or outgoings', and a landlord cannot take a prescribed action for a failure to pay rent or outgoings for a period occurring wholly or partly during the initial period or extended period.] [Note, despite the terms of the lease, if there is a deferral of rent the	As above.	Initial period: Implemented (r 9(4) and 18(4) of the Regulation). [A civil penalty of up to \$3,304.40 may be imposed for a landlord terminating the lease, evicting the tenant or calling on the tenant's security for non-payment of rent.] Extended period: Implemented (r 9(4) and 18(4) of the Regulation, amendment of r 9(4) by r 7(5) of the Extension Regulation and amendment of r 18(4) by r 12(4) of the Extension Regulation). [A civil penalty of up to \$3,304.40 may be imposed	Implemented (s 7(2)(h) and 13 of the Commercial Leases Act). [A 'prohibited lessor action' includes 'recovering the whole or part of a security bond, or bank guarantee, under, or in relation to, the lease'. A lessor is prohibited from taking, or continuing any 'prohibited lessor action' for non-payment of rent. Refer to comments above in respect of 'When a landlord may take enforcement action'.]	Implemented (r 6 and r 7(1) of the Regulation). [A 'prescribed action' includes the 'recovery of the whole or part of a security bond under the commercial lease' and the 'performance of obligations by the lessee or any other person pursuant to a guarantee under the commercial lease', but its application is limited – refer to comments above in respect of 'When a landlord may take enforcement action'.]	Implemented - but amended by the Extension Regulation to allow 'prohibited action' to be taken if the tenant is insolvent from 30 September 2020. (s 9 of the Principal Act and new r 2D created by r 4 of the Extension Regulation).	Silent.

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<i>pandemic and/or a reasonable subsequent recovery period.</i>		landlord may hold any security until the deferred rent has been paid (r 17(3) of the Regulation).]		for a landlord terminating the lease, evicting the tenant or calling on the tenant's security for non-payment of rent or outgoings.] [While r 18(4) of the Regulation only contemplates recourse, or attempt to have recourse, to any security relating to the non-payment of rent under the eligible lease, we consider that there is a typographical error and sub-regulation 18(4) should also include "rent or outgoings" for the purposes of consistency with sub-regulation 9(4).]				
Lease extension Principle 12 (tenant should be provided opportunity to extend lease for equivalent period of rental waiver or deferral) <i>The tenant should be provided with an opportunity to extend its lease for an equivalent period of the rent waiver and/or deferral period. This is intended to provide the tenant additional time to trade, on existing lease terms, during the recovery period after the COVID-19 pandemic concludes.</i>	Implemented (r 7(4)(b) of the Retail Regulation and r 7(6)(b) of the Extension Retail Regulation and Further Extension Regulation, r 5(4)(b) of the Commercial Regulation and r 5(6)(b) of the Extension Commercial Regulation). [Parties are to renegotiate the rent payable, and other terms of the lease, having regard to this principle.]	Implemented (r 18 of the Regulation). [However, under r 18(4) of the Regulation the obligation for the landlord to offer to extend the lease applies only to the extent the landlord is not subject to an existing legal obligation that is inconsistent with the obligation to extend the lease, and does not apply if the landlord demonstrates that the lease cannot be extended because the landlord intends to use the premises for a commercial purpose of the landlord.] [Note, Part 5 of the <i>Retail Shop Leases Act 1994</i> relating to disclosure statements does not apply to a variation of lease agreed under the Regulation (r 8 of the Regulation).]	As above.	Implemented (r 13 of the Regulation). [Parties can agree in writing that this does not apply.]	Partially implemented (s 15 and 18 of the Commercial Leases Act). [Under section 15 of the Act, a lessor must extend the period of the lease on the request of a protected lessee: <ul style="list-style-type: none"> until the end of the financial hardship period; or if agreed between the parties, a longer period. Several exceptions apply: <ul style="list-style-type: none"> the protected lease is a sublease and the lease has ceased or will cease to apply before the end of the financial hardship period; the lessor has entered into, or agreed to enter into, with another person a lease that is to take effect on the expiry of the lease of the protected lessee; or the lessor intends to occupy the premises to which the protected lease relates and there is evidence of the establishment of, or intention to continue, in 	Implemented (r 6 and r 8(9) of the Regulation). [In making an order to defer the payment of rent under a commercial lease (or under an agreement entered into by the parties to the commercial lease as contemplated by the Regulation) for a period not exceeding 24 months, a court may also make an order extending the term of the lease for the period for which the rent is deferred under the order.] [Noting the above, this is not mandatory, however parties to a commercial lease must make a genuine attempt to negotiate in good faith the rent payable under, and other terms of, the commercial lease during the applicable prescribed period having regard to this principle.]	Implemented (Schedule 1 cl 9(6) and (7) of the Regulations). [The landlord and tenant can agree otherwise. The requirement does not apply if the landlord is the tenant under a lease (the head lease) of the land or premises that are the subject of the small commercial lease and the extension would be inconsistent with the head lease or the extension of the lease would be inconsistent with an agreement already entered into by the landlord with another person that relates to the land or premises.]	Silent.

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
					<p>or from the premises, such a business by the lessor and of the steps taken by the lessor in furtherance of that intention; or</p> <ul style="list-style-type: none"> the circumstances apply as prescribed by the Regulation.] <p>[However, the section does not mandate that lessors have to provide lessees an opportunity to extend the lease for an equivalent period of the rent waiver/deferral.]</p> <p>[Separately, under section 18 of the Act, parties are to renegotiate the rent payable, having regard to the leasing principles set out in the Code and any matters prescribed by the Regulation.</p> <p>The Act requires that parties to a protected lease renegotiate the rent payable under the lease in good faith.]</p> <p>[Under section 12(2) of the Act, all negotiations in relation to the terms of a 'protected lease' are to be conducted with regard to the individual circumstances of the 'protected lessee' and of the lessor, taking into account such matters as:</p> <ul style="list-style-type: none"> the degree of financial hardship of the lessee and of the lessor; whether the lease has expired and the lease is being held over or whether the lease is about to expire; and whether the lessee, or the lessor, is in administration or receivership or is about to, or reasonably likely to, become insolvent or enter into administration or receivership.] 			

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p>Rent increase freeze</p> <p>Principle 13 (landlords to freeze rent increases)</p> <p><i>Landlords agree to a freeze on rent increases (except for retail leases based on turnover rent) for the duration of the COVID-19 pandemic and a reasonable subsequent recovery period, notwithstanding any arrangements between the landlord and the tenant.</i></p>	<p>Implemented (r 6(2) and 6(3) of the Retail Regulation and Further Extension Regulation, r 6(3) and 6(4) of the Extension Retail Regulation, r 4(2) and 4(3) of the Commercial Regulation and r 4(3) and 4(4) of the Extension Commercial Regulation).</p> <p>[This effectively suspends all fixed, consumer price index, market review and other rent increases from coming into effect during the prescribed period, but does provide an exception when rent or a component of rent is determined by reference to turnover.]</p>	<p>Implemented (r 13 of the Regulation, amendment of r 13 by r 6 of the Extension Regulation).</p> <p>[The effect of the Regulation is that any rent review that is scheduled to take place during the initial period or the extended period will still take place, but the landlord cannot give effect to an increase in rent (i.e. charge the increased rent to the tenant) until the extended period ends. The parties are unable to contract out of this provision (r 10(2) of the Regulation, amendment of r 10(2) by r 4(4) of the Extension Regulation).]</p>	<p>As above.</p>	<p>Implemented (r 12 of the Regulation).</p> <p>[This effectively suspends all fixed, consumer price index, market review and other rent increases from coming into effect during the relevant period if the lease is an eligible lease, but does provide an exception for retail leases to the extent they provide for rent to be determined by reference to the volume of trade of a tenant's business.]</p> <p>[Parties can agree in writing that this does not apply.]</p>	<p>Implemented (cl (e) of the Notice).</p> <p>Implemented (s 17 of the Commercial Leases Act, which was proclaimed to commence on 24 July 2020).</p> <p>[This effectively suspends all fixed, consumer price index, market review and other rent increases from coming into effect during the financial hardship period while the lease is a protected lease.]</p> <p>[Parties to a protected lease can agree in writing that this does not apply.]</p> <p>[The Regulation provides an exception for when rent or a component of rent is determined by reference to 'turnover', which expressly:</p> <ul style="list-style-type: none"> includes gross takings, gross receipts, gross income and any similar concept; and excludes, for example, the amount of revenue from online transactions in certain circumstances. 	<p>Implemented (r 7(4) of the Regulation).</p> <p>[Parties can agree that this does not apply.]</p> <p>[This effectively suspends all fixed, consumer price index, market review and other rent increases from coming into effect during the prescribed period (or periods) if a tenant is an affected lessee but does provide an exception when rent or a component of rent is determined by reference to turnover.]</p>	<p>Implemented (s 11 of the Principal Act) and partially revoked (new r 4A created by r 6 of the Extension Regulation).</p> <p>[This effectively suspends all fixed, consumer price index, market review and other rent increases from coming into effect during the initial period and the extended period (if applicable), but does provide an exception when rent or a component of rent is determined by reference to turnover.]</p> <p>[On and after 30 September 2020, the rent freeze does not apply if a tenant is not an eligible tenant at the time of the rent increase.]</p>	<p>Silent.</p>
<p>Reduced trade</p> <p>Principle 14 (Landlords may not apply any penalties for reduced opening hours or cessation of trade)</p> <p><i>Landlords may not apply any prohibition or levy any penalties if tenants reduce opening hours or cease to trade due to the COVID-19 pandemic.</i></p>	<p>Implemented (r 6(1)(c) of the Retail Regulation, r 6(2)(c) of the Extension Retail Regulation and r 7(1)(c) of the Further Extension Regulation, r 4(1)(c) of the Commercial Regulation and r 4(2)(c) of the Extension Commercial Regulation).</p>	<p>Implemented (r 12(1)(c) of the Regulation, amendment of r 12(1)(c) by r 5(2) of the Extension Regulation).</p> <p>[A landlord cannot take a 'prescribed action' for the business carried on at the leased premises not being open for business during the hours required under the lease during the initial period or the extended period.]</p>	<p>As above.</p>	<p>Implemented (r 18 of the Regulation, amendment of r 18 by r 12 of the Extension Regulation).</p> <p>[A civil penalty of up to \$3,304.40 may be imposed for a landlord terminating the lease, evicting the tenant or calling on the tenant's security if, during the relevant period, the tenant reduces its opening hours or closes the premises and ceases to carry out any business at the premises.]</p>	<p>Implemented (s 7, 13 and 14 of the Commercial Leases Act).</p> <p>[A lessor in relation to a protected lease cannot take or continue any 'prohibited lessor action' in respect of any breach by the lessee during the financial hardship period consisting of, amongst other things:</p> <ul style="list-style-type: none"> the business operating under the lease not being open for business during the hours, or on the days, specified in the lease; or an act or omission of a lessee required (or reasonably required), in response to the disease or disease-related factors under the laws of 	<p>Implemented (r 6 and r 7(1) of the Regulation).</p> <p>[However, the landlord is only prevented from taking 'prescribed action' (as defined) if the tenant is an affected lessee and the breach consists of the business operating under the lease not being open for business during the hours specified in the lease, or due to an act or omission of a tenant required under the laws of the State in response to the COVID-19 pandemic.]</p>	<p>Implemented (s 9(b) of the Principal Act).</p> <p>[A landlord cannot take 'prohibited action' during the applicable prescribed period on the grounds of breach if the breach consists of the land or premises that are the subject of the small commercial lease, or the business carried on there, not being open for business at hours or times specified in the small commercial lease.]</p> <p>[On and after 30 September 2020, landlords may take a 'prohibited action' against a tenant for breach relating to failure to keep open premises where the tenant under the small commercial lease is not an eligible tenant when the</p>	<p>Silent.</p>

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					<p>the State or the Commonwealth.</p> <p>[Refer to comments above in respect of 'When a landlord may take enforcement action'.]</p> <p>[Further, section 14 of the Act prohibits a lessor in relation to a protected lease from, at any time during or after the end of the financial hardship period:</p> <ul style="list-style-type: none"> ▪ exercising, in relation to the protected lessee, any right; ▪ making any claim; ▪ having any cause of action or remedy; or ▪ levying any penalty, <p>in respect of the lessee, during all or any part of the financial hardship period:</p> <ul style="list-style-type: none"> ▪ ceasing to trade or indicating that it may cease to trade; ▪ ceasing to carry on a business, trade or profession or indicating that it may cease to carry on a business, trade or profession; ▪ ceasing to remain open to the public or customers for the purposes of trading or carrying on a trade or profession; or ▪ indicating that it may cease to remain open to the public or customers for the purposes of trading or carrying on a trade or profession.] 		prohibited action is taken, or the breach occurs (new r 2D created by r 4 of the Extension Regulation).]	
MEDIATION								
Mediation Additional Principle - Parties should be referred to mediation in regards to	Implemented (r 8 of the Retail Regulation, Extension Retail Regulation and Further Extension Regulation, r 6 of the Commercial Regulation and the Extension Commercial Regulation).	Implemented (parts 3 & 5 of the Regulation). [Before starting mediation under the Regulation, for an affected lease dispute or small business lease dispute (each an eligible lease dispute), the parties	As above. The requirement for landlords to engage in good faith negotiations with an impacted tenant will be supported by the Local Business Commissioner on a voluntary basis.	Initial period: Implemented (part 6 of the Regulation). [The mediation regime under the Regulation mirrors the regime under the Dispute Resolution sections (Part 10) of the	Implemented (part 6 of the Commercial Leases Act). Parties are required to attempt to resolve any dispute that arises during the financial hardship period or that, in the financial hardship period, relates to a right or	Implemented (r 8 of the Regulation). [A party to a commercial lease may apply to the Small Business Commissioner (SBC) for mediation of a 'relevant dispute' (as defined in r	Implemented (Part 5 of the Principal Act). [The parties cannot commence proceedings in the State Administrative Tribunal (SAT) without either agreeing that the matter should not be	Before a hearing and determination of an application for a warrant of possession, the Local Court must refer the matter to the Northern Territory Civil and Administrative Tribunal

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
<p>leasing arrangement disputes</p> <p><i>Where landlords and tenants cannot reach agreement on leasing arrangements (as a direct result of the COVID-19 pandemic), the matter should be referred and subjected (by either party) to applicable state or territory retail/commercial leasing dispute resolution processes for binding mediation, including Small Business Commissioners/Ombudsmen where applicable.</i></p> <p><i>Landlords and tenants must not use mediation processes to prolong or frustrate the facilitation of amicable resolution outcomes.</i></p>	<p>[Under the Retail Regulation and Extension Retail Regulation, Part 8 of <i>the Retail Leases Act 1994</i> operates where the dispute concerns a retail tenancy and the parties must first seek to mediate the matter. If mediation fails under Part 8 to resolve the dispute, the Registrar will issue a certificate of failed mediation and the matter can then be referred for determination as necessary in the NSW Civil and Administrative Tribunal.]</p> <p>[Under the Commercial Regulation and Extension Commercial Regulation, the Office of the Small Business Commissioner NSW (SBC) is to convene a mediation and the parties must first seek to mediate the matter. If mediation fails to resolve the dispute, the SBC must certify in writing that mediation has failed to resolve the dispute and give reasons for the failure. After this certificate has been given, a landlord can then seek to exercise its rights under the lease to terminate the commercial lease, seek to recover possession of the premises or land, and exercise or enforce any other right of the landlord under the lease.]</p> <p>[All impacted lessees will need to demonstrate that they satisfy the eligibility criteria and will also need to be able to show the extent to which their turnover or revenue has reduced. The parties should be prepared to provide current, as well as pre-COVID-19, financial information in order to demonstrate the reduction in turnover or revenue.]</p>	<p>to the lease must attempt to resolve the dispute. In attempting to resolve the dispute, each party must cooperate and act reasonably and in good faith in all discussions and actions associated with resolving the dispute.]</p> <p>[An affected lease dispute means a dispute under or about an affected lease, or about the use or occupation of leased premises, arising from or relating to the operation of the Regulation, including the application of the Regulation to the lease.]</p> <p>[A small business lease dispute means a dispute under or about a lease, other than an affected lease dispute, if the lessee under the lease carries on a small business on the leased premises.]</p> <p>[Under the Regulation, a party to an eligible lease dispute may give notice of the dispute to the Small Business Commissioner (SBC). The dispute notice must be in the form approved by the SBC. As soon as practicable after receiving a dispute notice, the SBC must either accept or dismiss the dispute notice. It may only dismiss the notice if it considers the dispute notice does not relate to an eligible lease, is frivolous or vexatious, or has not been given in good faith.]</p> <p>[The Regulation requires the SBC to arrange a mediation conference. Among other things, the</p>		<p><i>Retail Leases Act 2003</i> (Vic). That is, an eligible lease dispute (dispute about the terms of the eligible lease arising in relation to a matter to which the Regulation applies) must first be referred to the Victorian Small Business Commission (VSBC) for mediation before a party can commence a proceeding in VCAT or a Court. An eligible lease dispute may only be the subject of a proceeding in VCAT or a court (other than the Supreme Court) if VSBC has certified in writing that mediation has failed, or is unlikely to resolve the dispute, or the landlord or tenant has sought, and the Supreme Court has granted, leave to commence a proceeding in relation to the dispute.]</p> <p>[VSBC will facilitate a mediation but will not compel an outcome. If a mediation fails, a dispute can be referred to a tribunal or court. Parties can choose to go to either VCAT or the Court to have the dispute under the Regulation determined – VCAT does not have exclusive jurisdiction of the eligible lease dispute – unlike a retail lease dispute. If parties go to VCAT, section 92 of the <i>Retail Leases Act 2003</i> (Vic) would apply which provides for each party to bear its own costs.]</p> <p>[Mediation under this section is not limited to formal mediation procedures. Mediation extends to preliminary assistance in dispute resolution such as the</p>	<p>obligation under the Act, by direct negotiation.</p> <p>If this is unsuccessful, either party is able to apply to the mediation provider for mediation of the dispute.</p> <p>The mediation provider is able to mediate a dispute and require information of the parties.</p> <p>A civil penalty (max. 200 penalty units for a body corporate and max. 40 penalty units for an individual) applies for failure to provide such information without reasonable excuse.</p> <p>A party to a protected lease may, whether or not either party has applied for mediation, seek to have a dispute arbitrated under the <i>Commercial Arbitration Act 2011</i> (Tas).</p>	<p>3(1) of the Regulation which includes a dispute in relation to the provision of rent relief during the applicable prescribed period).]</p> <p>[A tenant may not apply to the SBC unless it is, or is claiming to be, an affected lessee.]</p> <p>[Additionally, if the parties to a commercial lease entered into an agreement (i.e. for rent relief) before the end of the initial period, and the terms of that agreement apply beyond the end of the initial period, either party may apply to the SBC for mediation of a relevant dispute that relates to the terms of that agreement in so far as they apply in relation to the extended period, provided that the tenant is, or is claiming to be, an affected lessee in the extended period. However, the parties are unable to change the operation of that agreement in so far as it applies in respect of the initial period.]</p> <p>(new r 8(2a) and 8(2b) of the Extension Regulation).</p> <p>[The SBC may exercise any powers or functions the SBC is able to exercise under Part 7 of the <i>Fair Trading Act 1987</i>.]</p> <p>[The SBC must issue the parties with a certificate stating the names of the parties and:</p> <ul style="list-style-type: none"> ▪ if mediation has failed or is unlikely to resolve the dispute - that the mediation has been terminated without resolution; or 	<p>referred to the Small Business Commissioner (SBC) for assisting in resolving the dispute, or the Commissioner certifying either that the dispute is unlikely to be resolved with the assistance of Alternative Dispute Resolution (ADR), or that it would not be reasonable in the circumstances to commence ADR in respect of the dispute, or that ADR has failed.]</p>	<p>for alternative dispute resolution.</p>

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	<p>[The Regulation, Extension Regulation and Further Extension Regulation do not exclude the rules of common law and equity applying in the resolution of disputes concerning the recovery of possession of premises or land from a lessee, or the termination of a commercial lease by a lessor, or the exercise or enforcement of another right of a lessor of premises or land.</p> <p>(r 11 of the Retail Regulation, Extension Retail Regulation and Further Extension Regulation, r 9 of the Commercial Regulation and the Extension Commercial Regulation).]</p>	<p>SBC must nominate a mediator to mediate the affected lease dispute and give written notice to each party to the dispute stating the details of the mediator nominated to mediate the dispute and the time, date and place of the mediation conference to be conducted by the mediator. The conference date must be at least 7 days after the notice is given. A party may, within 2 days after the notice is received, ask the commissioner to change the mediation conference date to a day that is no later than 7 days after the date stated in the notice.]</p> <p>[A party may, within 2 days after the notice is received, ask the mediator to mediate related disputes together at the mediation conference.]</p> <p>[If the mediator receives a request to mediate related disputes and the parties agree, the mediator may give each party to the related disputes a further notice stating details for the mediation.]</p> <p>[Parties must attend the conference. If a party fails to attend a mediation conference, a court or tribunal may award costs against the party in a proceeding relating to the affected lease dispute.]</p> <p>[Evidence of anything said in a mediation conference is not admissible in a proceeding before a court or tribunal.]</p> <p>[Parties have a right to apply to QCAT if they</p>		<p>giving of advice designed to ensure that:</p> <ul style="list-style-type: none"> the landlord and the tenant are fully aware of their rights and obligations; and there is full and open communication between the landlord and the tenant concerning the matter.] <p>[A landlord or tenant may be represented by a legal practitioner in a mediation of an eligible dispute under r 20 of the Regulation. However, the mediator may, if they consider it appropriate to do so, meet with the landlord or the tenant (alone or together with the other party) without their legal practitioners who represent them being present.]</p> <p>[In making an order in a proceeding relating to an eligible lease dispute, VCAT must also have regard to:</p> <ul style="list-style-type: none"> the matters set out in r 10(4)(d) of the Regulation; and any certificate issued by the VSBC under r 23(1) of the Regulation that mediation under Part 6 of the Regulation has failed, or is unlikely to resolve the dispute.] <p>Extended period:</p> <p>Implemented (Part 6 of the Regulation, amendment of Part 6 by r 13 to 22 of the Extension Regulation and amendment of r 21G(2) of the Regulation by r 8 of the Further Extension Regulation).</p> <p>[The mediation regime under the Regulation mirrors the regime under the Dispute Resolution</p> 		<ul style="list-style-type: none"> if mediation would not be reasonable in the circumstances - that fact; or if a party refused to participate, or did not participate in good faith, in mediation - that fact.] <p>[A party to a commercial lease may only apply to the Court for resolution of a relevant dispute in relation to a commercial lease if the SBC has issued a certificate under r 8(4) of the Regulation.]</p>		

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		<p>meet certain criteria, including where the eligible lease dispute is within QCAT's jurisdiction, the lease has not ended and the parties cannot reach a settlement agreement at the mediation.]</p> <p>[If before commencement of the Regulation (28 May 2020) a dispute notice for a retail tenancy dispute was lodged under the <i>Retail Shop Leases Act 1994</i>, then part 8 of that legislation continues to apply for the retail tenancy dispute. However, this does not prevent a party from starting mediation under part 3 of the Regulation.]</p>		<p>sections (Part 10) of the <i>Retail Leases Act 2003</i> (Vic). That is, an eligible lease dispute (dispute about the terms of the eligible lease arising in relation to a matter to which the Regulation applies) must first be referred to the VSBC for mediation before a party can commence a proceeding in VCAT or a Court.</p> <p>A landlord or a tenant under an eligible lease may refer a dispute about the terms of the eligible lease arising in relation to a matter to which the Regulation applies (<i>an eligible lease dispute</i>) to the VSBC for mediation.</p> <p>The VSBC must give written notice of the <i>eligible lease dispute</i> to the other party (dispute notice), which states, among other things, the time within which the landlord or tenant must provide a response to the dispute notice.</p> <p>On receipt of a dispute notice, a landlord or tenant must respond to the VSBC in the form required by the VSBC within 10 business days after receiving the dispute notice (new r 20(2C) created by r 13(1) of the Extension Regulation).</p> <p>If the landlord:</p> <p>(a) does not respond to the dispute notice; or</p> <p>(b) responds to the dispute notice within the timeframe set under subregulation (2C), but that response does not conform with the</p>				

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<p>other requirements under subregulation (2C); or</p> <p>(c) responds to the dispute notice outside of the timeframe set under subregulation (2C), whether or not that response conformed with the formality requirements under subregulation (2C), the VSBC may, no earlier than 10 business days after the landlord receives the dispute notice, arrange for the eligible lease dispute to be the subject of mediation or issue a regulation 20A certificate.</p> <p>(new r 20(2E) created by r 13(1) of the Extension Regulation).</p> <p>VSBC may also issue a regulation 20A certificate if mediation has failed, or is unlikely to resolve the dispute, or if the VSBC is of the view that the landlord has not engaged in the mediation process in good faith.</p> <p>(new r 20A created by r 14 of the Extension Regulation).</p> <p>New Division 1A (Part 6) – Binding orders for rent relief made by Small Business Commission</p> <p>21A - Application for binding order</p> <p>A tenant may apply to the VSBC for a binding order if:</p> <p>(a) the dispute relates to a tenant's request for rent relief under regulation 10; and</p> <p>(b) the VSBC has issued a regulation 20A certificate to the landlord and tenant in respect of the dispute; and</p> <p>(c) the regulation 20A certificate includes a</p>				

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				<p>statement under either regulation 20A(3)(a) or (b), that is, the landlord has failed to respond to the dispute notice in the form required or has not engaged in the mediation process in good faith; and</p> <p>(d) the tenant has not commenced proceedings in VCAT or a court in relation to the dispute.</p> <p>There is no ability under the Regulation for a landlord to apply to the VSBC for a binding order.</p> <p>21B – notice of application of binding order</p> <p>As soon as practicable after receiving an application for a binding order, the VSBC must give the landlord, among other things, written notice of the application for the binding order.</p> <p>Within 5 business days after receiving the material, the landlord may give the VSBC written submissions in response to the application, and any material it considers the tenant has failed to provide to the VSBC.</p> <p>For the purpose of considering an application for a binding order, the VSBC may request, among other things, the tenant to provide evidence that they have taken reasonable steps and have acted in good faith to seek to agree the rent relief with the landlord.</p> <p>21D - The VSBC must not hold any form of hearing for an application for a binding order.</p>				

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				<p>21E - Decision to make a binding order</p> <p>On an application for a binding order, the VSBC must make a binding order that complies with regulations 21F and 21G (which prescribes what a binding order may require) if:</p> <p>(a) notice has been given to the landlord under regulation 21B; and</p> <p>(b) neither the tenant nor the landlord has commenced proceedings in VCAT or a court in relation to the eligible lease dispute to which the application relates; and</p> <p>(c) the VSBC is satisfied that:</p> <p>(i) the application complies with regulation 21A; and</p> <p>(ii) it is fair and reasonable in all the circumstances to make the binding order.</p> <p>Otherwise, the VSBC must dismiss the application.</p> <p>21F - A binding order must be in writing and must state that, among other things, the direction to the landlord to give or agree to give specified rent relief in accordance with regulation 21G.</p> <p>A binding order comes into effect immediately after a copy of it is given to the landlord.</p> <p>21G – A direction to give or agree to give specified rent relief set out in a binding order must comply with regulation 10(4) as if the direction were an offer of rent relief.</p> <p>A direction in a binding order to give, or agree to give, specified rent relief</p>				

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<p>may require the landlord to do either or both of the following things:</p> <p>(a) waive part or all of the rent payable under an eligible lease from the date of the tenant's request for rent relief in respect of which the application for a binding order was made to 28 March 2021; and</p> <p>(b) defer payment of part of the rent payable under an eligible lease from the date of the tenant's request for rent relief in respect of which the application for a binding order was made to 28 March 2021, so that the tenant must pay the deferred rent to the landlord amortised over the greater of—</p> <p>(i) the balance of the term of the eligible lease, including any extension to that term, as provided under regulation 13 or otherwise; and</p> <p>(ii) a period of no less than 24 months.</p> <p>21H - Cessation of binding order process</p> <p>There is no set timeframe within which the VSBC must make the binding order.</p> <p>If a tenant has made an application for a binding order under regulation 21A, but the VSBC has not yet determined that application, the landlord and the tenant may jointly notify the VSBC that they have agreed on the rent relief and a binding order is no longer required.</p> <p>New Division 1B (Part 6) - Amendment of binding order</p> <p>21I - A person who is a tenant or a landlord under</p>				

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<p>an eligible lease in respect of which a binding order has been made may apply to the VSBC for an amendment to, or revocation of, that order.</p> <p>21J - If the VSBC determines that an application under regulation 21I does not have sufficient merit to justify further consideration, the VSBC may dismiss the application.</p> <p>21K - If, other than on an application under regulation 21I, the VSBC considers that a binding order ought to be amended, the VSBC may, in accordance with regulation 21L, propose that the amendment be made.</p> <p>21L – Small Business Commission to give notice if amendment or revocation is to be considered</p> <p>(1) If the VSBC receives an application under regulation 21I and does not dismiss that application under regulation 21J, the VSBC must give notice of the application to:</p> <p>(a) if the application was made by the tenant—the landlord; or</p> <p>(b) if the application was made by the landlord—the tenant.</p> <p>Within 5 business days after receiving the notice, the person to whom it is given may give to the VSBC a written submission regarding the application or proposal.</p>				

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<p>21N - the VSBC must not hold any form of hearing for an application for an amendment to, or the revocation of, a binding order.</p> <p>21O - in deciding whether to grant the application to amend the binding order, or to make the proposed amendment, the VSBC, must have regard to, among other things, a submission given by the tenant or landlord regarding the application or proposal.</p> <p>The VSBC may consider any other matter that the VSBC considers relevant, including whether the binding order contains:</p> <p>(i) a clerical mistake; or</p> <p>(ii) an error arising from an accidental slip or omission; or</p> <p>(iii) a material miscalculation of figures; or</p> <p>(iv) a material mistake in the description of a person, thing or matter referred to in the order; or</p> <p>(v) a defect of form.</p> <p>New Division 1C (Part 6) – Review by VCAT</p> <p>21Q - Applications for review by VCAT</p> <p>A landlord or a tenant under an eligible lease may apply to VCAT for review of any of the following:</p> <p>(a) a decision under regulation 21E(1) to make a binding order in respect of that lease;</p> <p>(b) a decision under regulation 21E(2) to dismiss an application for a binding order in respect of that lease;</p>				

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<p>(c) a decision under regulation 21J(1) to dismiss an application for an amendment to or the revocation of, a binding order made in respect of that lease;</p> <p>(d) a decision under regulation 21O(1)(a) to grant an application for an amendment to, or the revocation of, a binding order made in respect of that lease;</p> <p>(e) a decision under regulation 21O(1)(b) to dismiss an application for an amendment to, or the revocation of, a binding order made in respect of that lease;</p> <p>(f) a decision under regulation 21O(2) to make, or not to make, an amendment to a binding order made in respect of that lease.</p> <p>An application for review under subregulation (1) must be made within 14 days after VSBC makes the decision.</p> <p>In considering an application for review under subregulation (1), VCAT must have regard to the matters set out in regulation 22(2) (discussed below).</p> <p>An application for review of a decision under regulation 21E(1) to make a binding order stays the operation of the binding order unless VCAT orders otherwise.</p> <p>21R - Breach of binding orders</p> <p>A person:</p> <p>(a) who is a tenant under an eligible lease in respect of which a binding order is made; and</p>				

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<p>(b) who considers that the landlord has not complied with the binding order, may apply to VCAT for a determination of whether the landlord has complied with the binding order.</p> <p>VCAT must determine whether the landlord has complied with the binding order, and may make any orders that VCAT considers appropriate, including:</p> <p>(i) an order requiring the landlord to comply with the binding order; and</p> <p>(ii) an order amending the binding order.</p> <p>Mediation</p> <p>An eligible lease dispute may only be the subject of a proceeding in VCAT or a court (other than the Supreme Court) if VSBC has issued a regulation 20A certificate in respect of the dispute.</p> <p>[An eligible lease dispute may only be the subject of a proceeding in the Supreme Court if VSBC has issued a regulation 20A certificate or the landlord or tenant has sought, and the Supreme Court has granted, leave to commence a proceeding in relation to the dispute.]</p> <p>[If a mediation fails, a dispute can be referred to a tribunal or court. Parties can choose to go to either VCAT or the Court to have the dispute under the Regulation determined – VCAT does not have exclusive jurisdiction of the eligible lease dispute – unlike a retail lease dispute. If parties go to VCAT, section 92 of the <i>Retail Leases Act 2003</i> (Vic) would apply which</p>				

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<p>provides for each party to bear its own costs.]</p> <p>[Mediation under this section is not limited to formal mediation procedures. Mediation extends to preliminary assistance in dispute resolution such as the giving of advice designed to ensure that:</p> <ul style="list-style-type: none"> the landlord and the tenant are fully aware of their rights and obligations; and there is full and open communication between the landlord and the tenant concerning the matter.] <p>[A landlord or tenant may be represented by a legal practitioner in a mediation of an eligible dispute under r 20 of the Regulation. However, the mediator may, if they consider it appropriate to do so, meet with the landlord or the tenant (alone or together with the other party) without their legal practitioners who represent them being present.]</p> <p>[In making an order in a proceeding relating to an eligible lease dispute, VCAT must also have regard to:</p> <ul style="list-style-type: none"> the matters set out in r 10(4)(d) of the Regulation and the amendment of r 10(4)(d) by r 8(3)(d) of the Extension Regulation; any regulation 20A certificate issued by the VSBC; any binding order made by the VSBC under new r 21E created by r 16 of the 				

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
				<div>Extension Regulation in relation to the dispute;<ul style="list-style-type: none">▪ if such a binding order has been made by the VSBC, the reasons for ordering the specified rent relief in the binding order;▪ any evidence of the conduct of the landlord and the tenant since the binding order came into effect; and▪ the statement included in the binding order under new r 21F(1)(a) created by r 16 of the Extension Regulation – that is, that the VSBC is of the opinion that the landlord has failed to respond to a dispute notice in the form required under new r 20(2C) created by r 13(1) of the Extension Regulation; or not engaged in mediation in good faith (amendment of r 22(2) by r 17(2) of the Extension Regulation).]</div>				

Land Tax Relief

Please note that the below is a general summary that is not to be relied upon as advice, and application deadlines for particular States have now passed. The below sets out key measures relevant to commercial landlords. Other forms of relief may be available to owner-occupiers or owners of untenanted properties in certain circumstances.

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
Scheme	<ul style="list-style-type: none"> Reduction of up to 50% of 2020 land tax for qualifying landlords. Reduction of up to 25% of 2021 land tax for qualifying landlords. Deferral of outstanding 2020 land tax for up to three months for applicants who applied for relief before 30 September 2020. Landlords may be able to extend deadlines for payments, pay tax in instalments and receive leniency for late payment. 	<ul style="list-style-type: none"> Rebate equivalent to 25% reduction in the relevant property's 2019-2020 and/or 2020-21 land tax for certain eligible properties (note that applications for the 2019-2020 rebate closed on 31 October 2020). Three month deferral of land tax liabilities for the 2020-21 assessment year. Waiver of 2% land tax foreign surcharge for 2019-20 assessment year. 	<ul style="list-style-type: none"> No land tax relief for commercial landowners, (there are limited land tax relief measures for residential landowners). However, landlords of commercial properties may be eligible for commercial tenancy relief in the form of a rates rebate. The relief has been extended until 31 January 2021. 	<ul style="list-style-type: none"> Reduction of either 25% or 50% of 2020 land tax for qualifying landlords. Reduction of 25% of 2021 land tax for qualifying landlords. Deferral of remaining 2020 and 2021 land tax liability until 30 November 2021 for qualifying landlords. 	<ul style="list-style-type: none"> No specific 2019-2020 tax relief measures. However, legislation has been enacted to allow a waiver of land tax for the 2020-21 financial year for certain commercial properties. Landlords can also apply for a deferral or payment plan if they experience financial hardship paying their land tax. 	<ul style="list-style-type: none"> Reduction of up to 50% of 2019-20 land tax for qualifying landlords. Landowners paying land tax quarterly in 2019-20 will be able to defer payment of their third and fourth quarter instalments for up to six months. Land tax reform transitional relief will be increased from 50% to 100% of the land tax increase in an eligible landowner's 2020-21 land tax assessment. 	<ul style="list-style-type: none"> Grants up to 50% of 2019-20 land tax liability (including the Metropolitan Region Improvement Tax component) for certain qualifying property. Landowners can apply for an interest-free payment plan and for late payment penalties to be waived in relation to the payment of their land tax. The WA Government has set a \$100m budget for the program. 	<ul style="list-style-type: none"> The NT does not impose land tax.
Eligibility	<p>To be eligible for the 2020 land tax reduction, a landlord must satisfy each of the following:</p> <ul style="list-style-type: none"> tenant must have annual turnover of no more than \$50 million (this threshold is applied having regard to not just the turnover of the tenant entity but also its related entities); tenant's ability to pay normal rent must be affected by COVID-19 (defined as a 30% revenue drop); and landlord must confirm that they have provided a rent reduction to the affected tenant(s) which is at least as much as the land tax reduction for either or both of the periods: <ul style="list-style-type: none"> 1 April – 30 September 2020; and 1 October – 31 December 2020. 	<p>To be eligible for the land tax reduction for the relevant year (2019-20 or 2020-21), a landlord must satisfy each of the following:</p> <ul style="list-style-type: none"> the ability of one or more tenants to pay their normal rent is affected by COVID-19; landlord must provide rent relief to the affected tenant(s) of an amount at least equivalent to the land tax rebate (if the 2019-20 rebate has been obtained, additional rent relief must be given in order to also qualify for the 2020-21 rebate); and landlord must comply with the QLD leasing principles even if the relevant lease is not regulated. 	<p>Commercial tenancy relief will be provided based on a tiered category system.</p> <p>To be eligible for the full level of relief (a rebate equivalent to 50% of any rent reduction provided to tenants, capped at \$8,000 per quarter), a landlord must satisfy each of the following:</p> <ul style="list-style-type: none"> property must have an average unimproved value of \$2 million or less; and tenant's business must have experienced at least an 80% reduction in business income as a result of COVID-19. <p>To be eligible for a rebate equivalent to 25% of any rent reduction provided to tenants (capped at \$5,000 per quarter), a landlord must satisfy each of the following:</p>	<p>To be eligible for the 2020 25% land tax reduction, a landlord must generally satisfy each of the following:</p> <ul style="list-style-type: none"> tenant must have aggregated turnover of no more than \$50 million in either of the 2019 or 2020 financial years (this threshold is applied having regard to not just the turnover of the tenant entity but also its related entities); tenant's ability to pay normal rent must be affected by COVID-19; tenant must be eligible for the JobKeeper Payment; and landlord must confirm that they have provided genuine rent relief to 	<p>To be eligible for the 2020-21 land tax waiver:</p> <ul style="list-style-type: none"> the land must be 'commercial land' as classified for Government valuation purposes (note that this is subject to the Tasmanian Commissioner of State Revenue's discretion); and the owner of the land must have been adversely financially impacted during the COVID-19 public health emergency, in a way that is 'unexpected and significant.' <p>Examples of adverse financial impact may include a loss of income relating to the land (i.e. loss of rent) or an inability to rent the land.</p>	<p>To be eligible for the land tax reduction, a landlord must satisfy each of the following:</p> <ul style="list-style-type: none"> landlord must not have an outstanding land tax debt prior to 2019-20; the land tax is directly related to the property for which rent has been reduced; tenant must have annual turnover of no more than \$50 million (this threshold is applied having regard to not just the turnover of the tenant entity but also its related entities); at least one of the tenants must be eligible for the JobKeeper Payment; and landlord must confirm that they have provided rent relief to the affected tenant(s) 	<p>To be eligible for the land tax reduction, a landlord must satisfy each of the following:</p> <ul style="list-style-type: none"> each relevant property included in the application must have an unimproved value of \$300,000 or more and be subject to land tax; one or more of the tenants is a small business (as defined by the <i>Small Business Development Corporation Act 1983</i>); small business tenant(s) suffered a 30% drop in turnover due to the impact of COVID-19 (as defined by the Australian Taxation Office's test for JobKeeper Payment) and they confirm this to the landlord in writing; 	N/A

	NSW	QLD	ACT	VIC	TAS	SA	WA	NT
	<p>For each of the periods above, the amount of land tax relief will be equal to the lesser of:</p> <ul style="list-style-type: none"> the rent relief given in the relevant period; or 25% of the 2020 land tax in respect of the relevant property. <p>To be eligible for the 2021 land tax reduction, the following must be satisfied:</p> <ul style="list-style-type: none"> tenant has an annual turnover of no more than \$5 million (this threshold is applied having regard to not just the turnover of the tenant entity but also its related entities); tenant's ability to pay normal rent must be affected by COVID-19 (defined as a 30% revenue drop); and landlord confirms that they have provided a rent reduction to the affected tenant(s) for any period between 1 January 2021 and 28 March 2021 which is at least as much as the land tax reduction. <p>The amount of 2021 land tax relief will be equal to the lesser of:</p> <ul style="list-style-type: none"> the rent relief given in the relevant period; or 25% of 2021 land tax in respect of the relevant property. 		<ul style="list-style-type: none"> property must have an average unimproved value of \$2 million or less; and tenant's business must have experienced at least a 30% reduction in business income as a result of COVID-19. 	<p>the affected tenant(s).</p> <p>To be eligible for the 2020 50% land tax reduction, a landlord must generally:</p> <ul style="list-style-type: none"> satisfy each of the existing criteria for the 2020 25% land tax reduction; and provide additional rent relief in the form of an outright waiver of 50% or more of at least 3 months' rent to eligible tenants. <p>To be eligible for the 2021 25% land tax reduction, the following must be satisfied:</p> <ul style="list-style-type: none"> for the period between 1 January 2021 and 28 March 2021, landlord must provide rent relief equivalent to the land tax reduction; tenant must generally have an annual aggregated turnover of no greater than \$50m in either of the 2020 or 2021 financial years; and tenant must be eligible for and receive the JobKeeper Payment between 1 January 2021 and 28 March 2021. 		<p>by at least as much as the land tax reduction for either or both of the periods:</p> <ul style="list-style-type: none"> 30 March 2020 and 30 October 2020; and 31 October 2020 and 30 April 2021. <p>For each of the periods above, the amount of land tax relief will be equal to the lesser of:</p> <ul style="list-style-type: none"> the rent relief given in the relevant period; or 25% of the 2020 land tax in respect of the relevant property. 	<ul style="list-style-type: none"> landlord must not seek to recover the rent waiver (in whole or in part) from the tenant(s) during or at the end of the three month period; landlord cannot increase outgoings charges for the six month period from when the rent waiver commenced; and landlord has fully waived tenant's rent for three months or equivalent (e.g. waiver of 50% over six month period) for either or both of the periods: <ul style="list-style-type: none"> 1 March 2020 and 31 August 2020; and 1 September 2020 to 31 December 2020. 	
Application Deadlines	<p>2020 land tax relief: Now extended to 31 May 2021</p> <p>2021 land tax relief: Now extended to 31 May 2021</p>	<p>2019-2020 land tax rebate: 31 October 2020</p> <p>2020-2021 land tax rebate: 26 February 2021</p>	<p>Rates rebate: 31 March 2021</p>	<p>2020 land tax relief: 31 March 2021</p> <p>2021 land tax relief: 30 June 2021</p>	<p>2020-2021 land tax exemption: 30 June 2021</p>	<p>Original 2019-2020 land tax relief (up to 25%): 30 April 2021</p> <p>Additional 2019-2020 land tax relief (up to 25%): 30 April 2021</p>	<p>Original 2019-2020 land tax relief (25%): 31 October 2020</p> <p>Additional 2019-2020 land tax relief (25%): 28 March 2021</p>	N/A

Commonwealth Legislation	<ul style="list-style-type: none"> ▪ Foreign Acquisitions and Takeovers Regulation 2015 ▪ Foreign Acquisitions and Takeovers Act 1975 ▪ FIRB Guidance Note 53 ▪ Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020 (COVID-19 Amendments) ▪ The following legislation amend the current FIRB rules with effect from 1 January 2021 (National Security Reform): <ul style="list-style-type: none"> – Foreign Investment Reform (Protecting Australia's National Security) Act 2020 – Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020
Period of Coverage	<ul style="list-style-type: none"> ▪ The COVID-19 Amendments commenced on 10:30pm 29 March 2020 and will end on 11.59pm 31 December 2020. The National Security Reform will take effect from 1 January 2021.
Applies to (under the COVID-19 Amendments)	<ul style="list-style-type: none"> ▪ Leases with terms longer than 5 years (including an extension or renewal, if there is a material variation to the terms of an existing lease, this can also be caught) (s 12(1)(c) <i>Foreign Acquisitions and Takeovers Act 1975</i>, <i>FIRB Guidance Note 53</i>). <ul style="list-style-type: none"> – Agreements for lease (AFL): agreements where the 'essential elements of the bargain' were reached before 29 March 2020 get the benefit of the previous monetary thresholds. Tenants will need to carefully consider their stage of negotiations to see if they get the benefit of this 'grandfathering' of the rules. AFLs and leases are considered separate actions. Where an AFL was signed prior to the 29 March 2020 announcement date, the lease(s) entered into under an AFL are generally still caught by the new rules. In the rare circumstance that following entry into the AFL, no further documents have to be executed to provide for the grant of the lease(s), the AFL and subsequent lease(s) may be considered as one agreement. AFLs and the annexed lease(s) signed after 29 March 2020 should include a FIRB condition precedent if the lease is reasonably likely to exceed 5 years (including options) and the tenant is foreign. If the tenant is not foreign, the lease should include a warranty from the tenant that they do not need FIRB clearance. (<i>FIRB Guidance Note 53</i>). – Existing option terms: exercising existing lease options (and documenting the extended date of the lease and the terms contemplated to apply during the option period from the original lease document by way of a variation) without any other changes to the terms is unlikely to be caught under the new rules. However, documenting an existing option by way of a new lease can still be caught. – COVID-19 variation: adjustments to lower, defer, or otherwise delay rental payments under an existing lease, particularly where such adjustment is made in relation to COVID-19 and is temporary in nature, would not be a 'material variation'. However, note that an extension of the lease term in addition to a rent adjustment during COVID-19 may be a 'material variation' (see below). Though not stated in the guidance, increases to rent may be considered a material variation. – Material variations: the extension of the term of a lease is considered to be a material variation. The period of time to be considered for whether or not the '5 year' lease has been met is the remaining term of the existing lease, plus the extended period, plus any existing options that are retained or negotiated. However, the period of time under the existing lease that has already passed does not need to be counted. ▪ Certain renewals or variations of leases may not require FIRB if it meets <u>all</u> the following criteria: <ul style="list-style-type: none"> ✓ it is a renewal or variation of an existing lease entered into on and from 4 September 2020; ✓ the tenant is the same legal entity as the tenant in the existing lease; ✓ the tenant is a private foreign person and not a 'foreign government investor'; ✓ the interest is 'substantially the same' as the interest held by the tenant prior 29 March 2020 i.e. the premises comprises the same area through the term of the lease and other commercial terms may vary; ✓ the tenancy is over or within a retail, industrial or commercial building; ✓ the land is not 'sensitive'. There are a broad range of tests here i.e. land is sensitive if there is a government tenant or public infrastructure on the land (for example, electrical substation). Provided the leased premises does not specifically contain 'sensitive' interests, the area of the leased premises is unlikely to be 'sensitive'. However, this should be tested on a case by case basis; and ✓ the total rent is below the reinstated monetary threshold (see below). Total rent is calculated by the sum of the rent payable over the entire term of the lease (including any extensions / renewals), assuming a fixed CPI increase over the entire term of the lease and not discounting any landlord incentives.
Threshold	<ul style="list-style-type: none"> ▪ The monetary screening thresholds: <ul style="list-style-type: none"> – for all foreign investments (including interests in land, shares and businesses) have been reduced to \$0; and – will partially return for certain foreign investments from 1 January 2021, if all of the following criteria are satisfied: <ul style="list-style-type: none"> – the tenant is not a 'foreign government investor'; – the premises is not 'national security land'; – the premises is not 'vacant' or 'residential' land; – the premises is not 'sensitive land' (noting a lower monetary threshold of \$60m is applicable); – the tenant accepts a 10 year call-in risk for the transaction, <p>From 1 January 2021, the foreign tenant will get the benefit of the following reinstated thresholds:</p> <ul style="list-style-type: none"> – for private foreign persons incorporated in Australia or a country that is not a free trade agreement country: A\$275m; and – for a private foreign person incorporated in a free trade agreement country (but not through a subsidiary incorporated elsewhere): A\$1,192m. <ul style="list-style-type: none"> ▪ The consideration for the lease is calculated by the rent payable over the entire term of the lease (including any extensions or renewals) and taking into account rent review, or CPI where rent review is unspecified.

Timing and Fees	<ul style="list-style-type: none"> Where the FIRB application is being made by private foreign persons over space in a developed commercial building, private foreign persons may apply for a fee waiver of \$26,700 down to \$2,100 where the rent payable over the term of the lease (including options) is between A\$10m and A\$55m. (<i>FIRB Guidance Note 53</i>). The new fee regulations from 1 January 2021 have not yet been tabled in Parliament. The statutory decision making timeframe will return to 30 days on 1 January 2021, however, it may be extended at the Treasurer's discretion for an additional 90 days.
Definition of Private Foreign Investors	<ul style="list-style-type: none"> A private foreign investor is an entity which is not a foreign government investor and in which a foreign person, together with its associates, holds a direct or indirect interest of 20% or more; or multiple foreign persons, together with their associates, hold a direct or indirect interest of 40% or more (in aggregate). (s 4 <i>Foreign Acquisitions and Takeovers Act 1975</i>).
Definition of Foreign Government Investor	<ul style="list-style-type: none"> A foreign government investor is an entity controlled by a foreign government (at any level of government) or their related bodies, including corporations in which a single foreign government and its associates has a direct or indirect interest of 20% or more, or multiple foreign governments and their associates have a direct or indirect interest of 40% or more (in aggregate). (s 17 <i>Foreign Acquisitions and Takeovers Regulation 2015</i>). From 1 January 2021, entities that <i>do not</i> meet the 20% aggregation from one country but <i>do</i> meet the 40% aggregation from multiple countries may not be a foreign government investor if certain passive investor rules apply.
*Definitions are general summaries/indications only. We note the tests are very broad and trace to the ultimate upstream owner (in terms of legal and beneficial ownership) and there is a broad definition of 'associate'. Where there is uncertainty about the foreign person status of an entity, please contact MinterEllison.	

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